

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT MAITAMA, COURT 4, F.C.T., ABUJA.

BEFORE HIS LORDSHIP: HON. JUSTICE O. O. GOODLUCK

SUIT NO. FCT/HC/CV/961/2020

B E T W E E N:

OLUDOTUN SOWEMIMO } **PLAINTIFF**

AND

1. DANMADU OIL AND GAS LIMITED } **DEFENDANTS**
2. EMEKA NZELU

J U D G M E N T

The Plaintiff is claiming against the Defendants the sum of \$1,000,000.00 (USD) (One Million US Dollars) representing the legal fees due and payable by the Defendants.

In furtherance of the Plaintiff's claim, the Plaintiff filed a 13 paragraph affidavit in support deposed to by Oludotun Sowemimo, the Plaintiff herein. The facts disclosed in the affidavit briefly stated are that the Defendant's Managing Director who is also the 2nd Defendant in this suit engaged the Plaintiff to secure the release of a vessel MV San Padre Pio, belonging to

Augusta Energy SA hereinafter referred to as Augusta leased by the Defendant but arrested on the Nigerian High seas.

The Plaintiff itemized the work done by him in furtherance of the Defendant's brief. A bill of \$1,000,000.00 (USD) (One Million US Dollars) was then sent to the Defendant by the Plaintiff for services rendered. To this end, he attached Exhibit OS1 and OS2, the letters respectively dated 25th May, 2018 and 16th July, 2018.

By the Plaintiff's letter of the 5th June, 2018, 2nd Defendant notified the Plaintiff that Defendant's professional fees will be settled "*this week*" with a request that the Plaintiff is to bear with the Defendant as they expect the matter to be resolved this week. See Exhibit OS3.

Still on the Defendant's indebtedness to the Plaintiff, the 2nd Defendant on the 5th June, 2018 vide his email address 'emeka @ danmadu.com to the Plaintiff's email address 'barristerdotun@gmail.com' assured the Plaintiff that Plaintiff's fees would be "*...settled this week..*" hence the Plaintiff is to "*...kindly bear with us as we expect the matter to be resolved this week unfailingly...*"

Again, on the 19th June, 2018, the Defendant acting through the 1st Defendant informed the Plaintiff by email that the Defendant was unable to settle the Plaintiff's fees due to an issue with the 1st Defendant's bank that

is, the Guaranty Trust Bank. Thereafter, the Plaintiff asserts that the Defendants have failed and/or neglected to respond to the Plaintiff's demands for the payment of his professional fees.

In sum, the Plaintiff contends that the Defendants have no defence on the merit to his claim against the Defendant in this suit.

In reaction to the Plaintiff's claim, the Defendant filed a 25 paragraph Notice of Intention to Defend dated the 19th February, 2010. The Defendant categorically denied any indebtedness to the Plaintiff in their statement of defence and witness statement on oath. The facts disclosed in the defence, briefly stated, are that the Plaintiff was never engaged by the Defendant to provide legal representation for the Defendants and Mr. San Padre Pio, the owners of the ship. The Defendants further posits that all payments of statutory fees for NIMASA as well as the procurements of the regulatory permits are the exclusive duty of the owners of the vessel, consequently the owners of the ship bears the responsibility of engaging a solicitor.

It is also asserted by the Defendant that they do not have any mandate to engage a solicitor for the purpose of paying all the NIMASA fees as well as for securing the release of the ship. They maintain that as

charterers of the vessel they had limited power to deal with the vessel hence they could not have appointed the Plaintiff to act as solicitors.

Besides, the Defendant maintained that they never agreed to pay the Plaintiff \$1,000,000.00 (USD) (One Million US Dollars) as professional fees for the release of the vessel.

The 2nd Defendant also disclosed that he informed the Plaintiff as a friend about the arrests of the vessel and Plaintiff volunteered to render assistance in getting the vessel released through his contact with the Nigerian Navy and the Economic and Financial Commission (EFCC). This being the case, Defendant maintains that they never instructed the Plaintiff to write any letter to any authority in his professional capacity. Defendant therefore denied knowledge of any letter written to the Nigerian Navy and Economic and Financial Commission except that contained in the professional fees served on the Defendant, Exhibit OS1 dated 25th May, 2018.

It is the contention of the Defendants that the Defendants never negotiated any fees with the Plaintiff, neither was any fee served on the Defendant or owners of the vessel prior to service of Exhibit OS1.

Defendants further avers that they decided to talk with the owners of the vessel Mr. San Padre Pio who were oblivious of the role played by the

Plaintiff with the objective of reimbursing the Plaintiff even though the vessel had not been released. Defendants contends that it was based on their intention to reimburse the Plaintiff that the email of 5th June 2018 was written.

Defendants contend that by the email of the 5th June 2018 that, it was noted thus: *“matter of your fees noted in the email was on account of the fact that fees”* was never disclosed between the Plaintiff and Defendant nor was the owner of the vessel aware of the Plaintiff’s involvement.

The Defendants also recounted that the vessel has not yet been released consequently the instruction to release the vessel which is denied by the Defendant is yet to be perfected as the Plaintiff has not secured the release of the vessel.

On the email of the 12th June, 2018 attached as Exhibit OS4, Defendant reason that the letter was addressed to Guaranty Trust Bank hence it has nothing to do with the Plaintiff’s professional fees.

Having set out the facts relied upon by both sides in this suit, I am of the view and will so hold that the Plaintiff categorically demanded his professional fees of \$1,000,000.00 (USD) (One Million US Dollars) from the Defendant having enumerated the services he rendered culminating to the professional fees demanded in his letter of the 25th May, 2018 Exhibit OS2.

Much as the Defendants have refuted the existence of a solicitor/Client relationship between them and the Plaintiff, the email Exhibit OS3 belies the Defendant's denial of indebtedness to the Plaintiff for professional service rendered by the Plaintiff.

The Defendant's story that Exhibit OS3 concerning the reference to Plaintiff's "matter of fees", Defendants, assurance to the Plaintiff that his bill will be passed on to the owners of the ship does not add up with the facts contained in Exhibit OS3. In view of the consequences of Exhibit OS3 on the Plaintiff's claim before this Court, I find it needful to restate the contents of the email correspondence hereunder.

"Dear Dotun,

The matter of your fees will be settled this week as we have confirmed our inflows from Addax.

The delay was because EFCC also contacted Addax and our payment was flagged kingly bear with us as we expect the matter to be resolved this week unfailing kind regard Emeka"

The deduction one can make from the foregoing email is an acknowledgment of liability of indebtedness by the Defendant. There is nothing indicative of a denial or the impression created by the Defendant in its statement of defence that the Plaintiff acted as a friend who "volunteered

to render assistance in getting the vessel released” these denials does not align with the facts contained in the Defendants’ email to the Plaintiff.

Aside from this, it cannot also be deduced that the Defendant denied liability nor can it be inferred that the Defendants were shocked by the Plaintiff’s letter of demand for his professional fees of \$1,000,000.00 (USD) (One Million US Dollars). I am unable to allude with the position taken by the Defendant that the matter of the fees was to be looked into as the issue of fees was never disclosed between the Plaintiff and the Defendant and the Plaintiff and the vessel owners.

The inescapable conclusion that can be garnered from the Defendant’s email of the 5th June, 2018, Exhibit OS3 (which is not denied by the Defendant) is that the Defendant intends to settle that “...*week unfailingly*” This is an admission against interest, flowing from this Court’s evaluation of the facts and evidence before this Court, I am of the view that this suit is an action for an in liquidated demand. Hence it was properly instituted under the undefended cause list. The Defendant as I see it have failed to file a defence on merit that is worthy of ordering that this suit be transferred to the general cause list for trial.

In the light of the foregoing considerations, I am disinclined to allow the Defendants’ application for leave to defend this suit as it would amount

to a waste of time, having regard to the proposed Statement of Defence filed by the Defendant.

In the circumstance, I am of the view and will so hold that this Court will be acting judiciously and judicially by invoking its powers pursuant to Order 35 Rule 4 of the High Court of the FCT, Civil Procedure Rules, 2018 in favour of the Plaintiff.

Judgment is hereby ordered in favour of the Plaintiff.

The Defendants are jointly and severally ordered to pay the Plaintiff the sum of \$1,000,000.00 (USD) (One Million US Dollars) representing the professional fees due and payable to the Plaintiff.

O. O. Goodluck
Hon. Judge
7th May, 2020

Appearance

Parties absent

Ifeoluwa Fakunle Esq.: For the Plaintiff

Defendants' Counsel was notified by sms.