

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
HOLDEN AT ABUJA
ON THURSDAY 28TH DAY OF MAY 2020
BEFORE HIS LORDSHIP: HON. JUSTICE O. A. ADENIYI
SITTING AT COURT NO. 14 APO - ABUJA

SUIT NO. CV/2024/19

BETWEEN:

ABDUL ADOWN ODOMA CLAIMANT

AND

GALAXY TRANSPORTATION AND } DEFENDANT
CONSTRUCTION SERVICES LTD }

JUDGMENT

The Claimant commenced the instant action for breach of contract vide Writ of Summons and Statement of Claim filed in this Court on 28/05/2019, wherein he claimed against the Defendant, the reliefs set out as follows:

- 1. A declaration that the failure of the Defendant to pay into the Plaintiff's account the agreed sums of money***

in respect of the two contracts entered into between the Plaintiff and the Defendant, which contract commenced on 31/10/2017 and 28/2/2018 respectively constitute breach of contract by the Defendant.

2. An order directing the Defendant forthwith to pay the sum of Two Million, One Hundred and Fifteen Thousand Naira (N2,115,000.00) to the Plaintiff as the agreed “Expected Amount in Return” on the contract of Nine Hundred Thousand Naira (N900,000.00) entered into between the Plaintiff and the Defendant for one year period between 31/10/2017 and 31/10/2018.

3. An Order directing the Defendant forthwith to pay the sum of Three Million Naira (N3,000,000) to the Plaintiff as the agreed “Expected Amount in Return” on the contract of One Million Naira (N1,000,000) entered into between the Plaintiff and the Defendant

for one-year period between 28/02/2018 and 28/02/2019.

4. An Order directing the Defendant to pay to the Plaintiff the agreed “Total Profit Expected” on each of the two contracts between the parties on yearly basis and or pro-rata, for the period of time (year or months) within which the Defendant continues to hold and detain the Plaintiff’s money, from the expiration of each of the two initial contracts until such time that the Defendant fully liquidates its total indebtedness on the two contracts it signed with the Plaintiff.

5. ₦2,000,000.00 (Two Million Naira) only general damages against the Defendant for the breach of contract.

6. Such other or further orders as this Honourable Court may deem fit to make in the circumstance.

It is borne by the record of proceedings in this suit that the Defendant was duly served with the

originating processes and hearing notices for the scheduled hearing dates, but failed, either to file any processes in defence of the suit or to be represented by counsel throughout the proceedings.

At the trial, the Claimant testified in person and called no other witness. He adopted his statement on oath and tendered in evidence a total of three (3) documents as exhibits to establish his case.

In view of the Defendant's failure to file defence to the action, the Court ordered parties to file and exchange their written final addresses as prescribed by the provisions of the **Rules** of the Court.

Expectedly, only the Claimant filed a written address on 29/11/2019, in which his learned counsel, **Olawuni Gideon Olusoji, Esq.**, distilled two issues as having arisen for determination, namely:

1. Whether the plaintiff has by credible evidence proved the existence of two contracts between the parties, which contracts were breached by the Defendant.

2. Whether the plaintiff is entitled to the reliefs claimed in the Writ of Summons and Statement of claim.

I shall proceed to determine the suit on the basis of the issues formulated by the Claimant's learned counsel.

As I proceed, it is pertinent to consider at first, the legal implication of the Defendant's failure to join issues with the Claimant on his claim by not entering an appearance to the suit or filing a defence thereto.

The settled general principle is that where evidence called by the Claimant in a civil suit is neither challenged nor contradicted, his onus of proof is discharged on a minimal of proof; except, however, where his claim involves relief for declaration in which he will be required to establish the same with

cogent and credible evidence. See Kosile Vs. Folarin [1989] NWLR (Pt 107) 1 Monkom Vs. Odili [2010] All FWLR (Pt. 526) 542-563; Dumez Nig. Ltd. Vs. Nwakhoba [2008] 18 NWLR (Pt. 119) 361 @ 373-374.

In the instant case therefore, even though the Defendant failed to defend the action, the Claimant is still duty bound to adduce satisfactory evidence in order to be entitled to the principal relief he seeks from the Court, being declaratory in nature.

RESOLUTION OF ISSUES

I now proceed to resolve the two issues formulated by the Claimant's learned counsel, as set out in the foregoing, together.

The Claimant's case is simple and straight forward. He testified that the Defendant had pleaded with him to invest some money in her sand haulage

business so as to revive the business, with the undertaking to pay back the invested money with substantial returns at the end of the investment period. He testified further that he agreed to invest in the Defendant's business as a result of which they both entered into two separate contracts. By the first contract, the Claimant invested the sum of **₦900,000.00** to the Defendant's buying and selling of excavated sand and is expected to receive profit of **₦1,215,000.00** after a period of **twelve (12) months**; meaning that, in accordance with the agreement, the Defendant shall pay back both the principal sum of **₦900,000.00** and the expected profit of **₦1,215,000.00**, totaling the sum of **₦2,115,000.00** to the Claimant through his bank account at **Zenith Bank Plc**. The Claimant tendered in evidence as **Exhibit C1**, original of the said contract dated October 13, 2017 with the terminal date fixed at 31 October, 2018.

The Claimant further testified that he entered into the second contract with the Defendant on December 29, 2017, by which he invested the sum of **₦1,000,000.00** into the Defendant's business of buying and selling of excavated sand and in which the Defendant was equally expected to pay him the sum of **₦2,000,000.00**, as return on the investment after a period of **twelve (12) months**; meaning that, in accordance with the agreement, the Defendant shall pay back both the principal sum of **₦1,000,000.00** and the expected profit of **₦2,000,000.00**, totaling the sum of **₦3,000,000.00** to the Claimant through his bank account at **Zenith Bank Plc**. The Claimant further tendered in evidence as **Exhibit C2**, original of the said contract dated December 29, 2017 with the terminal date fixed at 28 February, 2019.

To further establish that the Defendant took benefit of the said principal sums, the Claimant tendered in

evidence as **Exhibit C3**, statement of his account at **Zenith Bank Plc**, which reflects that on 13/10/2017, he deposit the sum of **₦900,000.00** to the Defendant's account and that on 29/12/2017, he again credited the Defendant with the sum of **₦1,000,000.00**.

The Claimant further testified that upon the maturity of the two contracts on 31/10/2018 and 28/02/2019 respectively, the Defendant failed to credit his account either with the principal sums or the agreed interest, as agreed to by the contracts, **Exhibits C1** and **C2** respectively.

The Claimant testified further that he demanded repeatedly for the payment of the said sums but the Defendant had continued to hold on to his funds to run her business as a result of which he instituted the present action to recover the money.

I should state that the Claimant's testimony, summarized in the foregoing, remained sacrosanct, unchallenged and uncontroverted. The Court therefore has no difficulty in believing the same, more so that no aspect thereof appeared incredible.

Now, the position of the law is elementary, that by the doctrine of sanctity of contract, where parties have entered into a contract or an agreement voluntarily and there is nothing to show that same was obtained by fraud, mistake, deception or misrepresentation, they are bound by the provisions or terms thereof. This is because a party cannot ordinarily resile from a contract or agreement just because he later found that the conditions of the contract or agreement are not favourable to him. See Larmie Vs. Data Processing Maintenance & Services (D.P.M) Ltd. [2005] 12 SC (Pt. 1) 93 @ 103; Baba Vs. Nigerian Civil Aviation Training Centre, Zaria [1991] 5 NWLR (Pt. 192) 388; Union Bank of

Nigeria Ltd. Vs. B. U. Umeh & Sons Ltd. [1996] 1 NWLR (Pt. 426) 565; S.C.O.A. Nigeria Ltd. Vs. Bourdex Ltd. [1990] 3 NWLR (Pt. 138) 380 and Koiki Vs. Magnusson [1999] 8 NWLR (Pt. 615) 492 at 514.

In the present case, the Claimant has by **Exhibits C1** and **C2** successfully established the existence of the said two contracts which expressed the clear intention of both parties; and which, without any evidence challenging the same, remain valid and enforceable as between the two parties. I so hold.

In the circumstances therefore, failure of the Defendant to repay the principal sums invested, together with the expected accrued interests or profit after they became due at the end of the **twelve (12) months** maturity periods agreed to by the parties, amounted to a flagrant breach of the contracts. I further so hold.

A breach of contract is said to occur when a party to a contract, without lawful excuse fails, neglects or refuses to perform an obligation he undertook in the contract or either performs the obligation defectively or incapacitates himself from performing the contract. See Best (Nig.) Ltd. Vs. Blackwood Hodge Nigeria Ltd. [2011] LPELR-776(SC); Tsokwa Oil Marketing Company Vs. B.O.N. Ltd. [2002] 11 NWLR (Pt. 777) 163.

The trite position of the law is further that in an action of this nature, where breach of contract is established, the only remedy available to the Claimant, is in damages. In other words, where two parties have made a contract which one of them has broken, the damages which the other party ought to receive in respect of such breach of contract should be such as may fairly and reasonably be considered either as arising naturally, that is, according to the usual course of things from such breach of contract

itself, or such as may reasonably be supposed to have been in the contemplation of the parties at the time they made the contract, as the probable result of the breach of it.

In such circumstances, the Claimant will be entitled to be restored, in so far as monetary compensation can do, to the position he would have been had the contract not been breached, as depicted in the maxim *restitutio in integrum*. See Okongwu Vs. NNPC [1989] 4 NWLR (Pt. 115) 295; Orji Vs. Anyaso [2000] 2 NWLR (Pt. 643) 1; Adekunle Vs. Rockview Hotel Limited [2004] 1 NWLR (Pt. 853) 161; Cameroon Airlines Vs. Otutuizu [2011] 4 NWLR (Pt. 1238) 512.

In the present case, the Claimant has claimed a refund of both the principal sums and the expected profits as agreed to on the two contracts. He further claimed the expected profit on the two contracts on

pro-rata basis from the date of the breach until the Defendant finally liquidates the debts. He also claimed the sum of **₱2,000,000.00** as general damages.

On the basis of the uncontroverted evidence on record therefore, and the settled position of the law, it will be appropriate, in the circumstances of the present case, to grant the Claimant's claim for refund of the principal sums he invested together with the expected profits as agreed by both parties; in order to return the Claimant to the position he would have been if the contract had not been breached.

Furthermore, I agree with the submissions of the Claimant's learned counsel that the Claimant is entitled to compensation to assuage for his losses. The authority of *Stabilini Visioni Ltd. Vs. Metalum Ltd.* [2008] 9 NWLR (Pt. 1092) 416 @ 433-434, cited by the Claimant's learned counsel seems apposite to

drive this argument. In that case, the Court of Appeal, per **Mshelia, JCA**, held, *inter alia*, as follows:

“In a situation arising from commercial matters, I should think that a party holding on to the funds of another for so long without justification, ought to pay him compensation for so doing.”

The evidence on record established that the transaction between the parties in this suit is commercial in nature. It is also established that the Defendant had held on to the Claimant’s money long after he was due to have been paid in accordance with the contract terms. The Court must equally take judicial notice of the fact that the said sums due to the Claimant since 31/10/2018 and 28/02/2019 respectively, would have lost value, considering the dwindling value of the Naira, since those periods. There is also no guarantee as to when exactly the Defendant shall pay back. In all of these

circumstances, I hold that the Claimant is rightly entitled to compensation in the form of general damages as well as post-judgment interest on the liquidated debts.

With respect to post-judgment interest the position of the law is that the Court is empowered by its **Rules** to exercise its discretion in awarding the same to a victorious party in a claim involving liquidated debts, at a rate not exceeding 10% per annum, from the date of judgment until the same is finally liquidated. It is also immaterial whether or not the same is claimed. It is usually granted by the Court in deserving cases, considering the facts and circumstances thereof. See the provision of **Order 39 Rule 4** of the **Rules** of this Court. See also *Stabilini Visioni Ltd. Vs. Metalum Ltd.* (*supra*); *Crown Flour Mills Ltd Vs. Olokun* [2008] 4 NWLR (Pt. 1077) 254.

With respect to the Claimant's claim for payment of expected profit on *pro-rata* basis, my view is that this claim was not within the contemplation of the parties as of the time the contract was entered into. It is considered a remote claim and it is on that ground hereby refused.

In the final analysis, the Claimant's claim succeeds in substantial part. Accordingly, judgment is hereby entered in his favour against the Defendant in the following terms:

- 1. It is hereby declared that failure of the Defendant to pay into the Claimant's account the agreed sums of money in respect of the two contracts entered into between the two parties, which contracts commenced on 13/10/2017 and 28/2/2018 respectively and terminated on 31/10/2018 and 28/02/2019 respectively, constituted breach of contract by the Defendant.***

- 2. An order directing the Defendant to pay to the Claimant forthwith the sum of ₦2,115,000.00 (Two Million, One Hundred and Fifteen Thousand Naira) only, being the principal sum and the agreed “Expected Amount in Return” on the contract of 13/10/2017 between the two parties.**
- 3. An order directing the Defendant to pay to the Claimant forthwith, the sum of ₦3,000,000.00 (Three Million Naira) only, being the principal sum and the agreed “Expected Amount in Return” on the contract of 29/12/2017 between the two parties.**
- 4. The sum of ₦1,000,000.00 (One Million Naira) only, is hereby awarded in favour of the Claimant against the Defendant as damages for breach of contract.**

5. The Defendant shall pay interest on the sums in (2) and (3) above at the rate of 10% per annum from the date of this judgment until the same is finally liquidated.

6. I further award costs of this action, in the sum of ₦200,000.00 (Two Hundred Thousand Naira) only, in favour of the Claimant against the Defendant.

OLUKAYODE A. ADENIYI
(Presiding Judge)
28/05/2020

Legal representation:

Olawuni Gideon Olusoji, Esq. – for the Claimant

Defendant is unrepresented by counsel