IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT APO

CLERK: CHARITY

COURT NO. 16

SUITNO: FCT/HC/CV/5000/11

DATE: 07/05/2020

BETWEEN

1. DR. S.A DANWAKA

2. BARR.A.U.IMAM …….. PLAINTIFFS

AND

1. **HAJIYA MARYAM H. ABUBAKAR**
2. **MUHAMMED A.H. ABUBAKAR**
3. **FATIMA H. ABUBAKAR ……. DEFENDANTS**

JUDGMENT

(DELIVERED BY HON. JUSTICE S. B. BELGORE)

The plaintiffs in this case commenced thissuit under the undefended list procedure by writ of Summons and an affidavit dated and filed on the 9th day of June 2011 wherein they prayed to court for the following reliefs:

(a) Payment of the sum of **₦ 29,438,520(Twenty Nine Million four Hundred and thirty Eight Thousand and Twenty Naira only)** to balance the **₦31,438,520(Thirty one Million, Four Hundred and Thirty Eight Thousand Five Hundred and Twenty Naira)**being 1% of **₦3,143,852,00.00(Three Billion,**

One Hundred and Forty three Million, Eight Hundred and Fifty Two thousand Naira only) total estate of late Senator Haruna Abubakar to the plaintiffs being the sum agreed upon.

(b) Payment of 20% interest on theJudgment sum from the date of Judgment.

(c) Cost of this action**.**

In response, the Defendants on 26th day of September 2011 filed a notice of intention to defend with an affidavit disclosing a defence on the merit. The matter was thereafter transferred to General cause list by the court. Consequently, the plaintiffs on the 9th day of March 2012 filed their statement of claim dated 8thMarch 2012 and the Defendant filed their statement of defence on 16th May 2012. The Defendants on the 9th June 2013 filed an amendment to their statement of defence which was deemed as properly filed and served by the order of court on 18th July,2013. In response, the plaintiffs filed a reply on 26th July,2013.

In proof of their amended statement of claim, the plaintiffs called two witnesses.

As PW 1, the second plaintiff, on the 4th day of November 2013 adopted his two written statement on Oath dated 9th March 2012 and 26th July 2013 as his evidence in this case. Then the court ordered the parties to comply with **Order 33 of the Rules** of this court through which **Exhibit P1-P5** were admitted in evidence. **P6** was admitted through this witness.

Exhibit P1: is a letter dated 6/6/08.

Exhibit P2: is an agreement to settle legal fees.

Exhibit P3: is a letter dated 2/12/09

Exhibit P4: is a letter dated 3/2/11.

Exhibit P5: is a letter dated 27/4/11.

Exhibit P6: is a letter dated 17/12/09.

Exhibit P7: is the specimen of PW1 signature.

During examination-in-chief. It is the evidence of this witness that the plaintiffs were briefed to handle a case of the management, protection and distribution of the Estate of the late Senator Haruna Abubakar in accordance with Islamic Law since 19/52008.

The Plaintiffs immediately filed a case at upper Area court Kuje and secured an order restraining the Defendants (in that case) from dealing adversely with the estate.

The Plaintiffs proceeded with the case and the case went on appeal to the Sharia Court of Appeal on an interlocutory appeal.

The Plaintiffs got the appeal for the Defendants herein and the case continued at the Upper Area Court, Kuje.

At a stage, when the court directed all parties to produce before the court, the properties under their custody, the Defendants herein approached the Plaintiffs and directed them to withdraw the matter from court and they did.

Priorto this, the Plaintiffs have enteredinto an agreement for the payment of 1% of the estate which was known as at the time of

going into the agreement and which is contained in the report of the estate committee admitted as exhibit Q.

This PW1 under cross-examination, Mr. Imam Aliyu Usman, a practising lawyer said under affirmation that he was aware that Defendants have obtained letter of Administration of Estate of deceased. He said further that legal fees were discussed after institution of the action because of the urgency of the case. He said the two Million Naira ₦2M paid to the plaintiffs was part payment of the professional fees. He said the estate has not been distributed because they were asked to stop half way. Still under cross-examination,he said the mother of the deceased share is 1/6 of the entire estate and that the total value of the entire estate is **₦1.3 Billion.**

PW2 is subpoenaed witness. His name is Dr. Aliyu Alhaji Ramadan. He is a businessman and traditional title holder. He testified under affirmation to speak the truth. He said he was asked to come and testify and produce a document and as a result of his testimony, exhibit Q was admitted in evidence through him.

Exhibit Q is a document titled "Report of the estate committee of late Senator Haruna Abubakar (Daniyan Lafia) February, 2009.

Under cross-examination, the PW2 said he was a member of that committee who produced exhibit Q. He said the report is not based only on the valuation Report of Mr. Kola Abejide. It is based on the discharge of one of our terms of reference that is to collate all the assets and liabilities of the deceased Senator. He said he did not know the value of the estate and that the value of the Eatate is not contained is exhibit Q.

With the evidence of PW2, the Plaintiffs closed their case.

Immediately, the Defendants entered their defence by calling their sole witnesss.

DW1. Mr. Mohammed Awwal Abubakar resides at flat B3 P5, Ibrahim Nasiree close, Amina Court Estate Apo, Abuja. He testified under affirmation. He said he know the Plaintiffs and that they rendered legal services to their family in 2007-2008. He said they all made court appearances during the period.

He referred to his earlier Sworn statement on Oath and adopted same as his evidence in this case. Exhibit R was admitted in evidence through him.

Exhibit R, is a letter of Administration (without will) issued by the Probate Division of the High court of Federal Capital Territory on 13/10/16.

Under cross-examination, he said he was not aware that his mother asked the Plaintiffs to handle their matter as he was not around when the agreement as to payment of fees was made. He was only asked to sign when exhibit P2 was brought to Abuja and he signed. He said, he did not know the value of his father's estate. Also, he said his share in the estate is yet to be determined and referring to exhibit R he said the value of the estate is **₦71 million.** He said he was not a member of committee set up by the Emir. He equally said he disagree with exhibit Q and that he did not sign the Report.

With the testimony of DW1, the eldest son of the deceased, the Defendants closed their case.

At this juncture, I think it is apposite to note that the facts of this case is not complex and infact, it is straight forward.

It is a case of recovery of legal fees by the plaintiffs as legal practitioners against the Defendants simpliciter. There is no doubt

that the Defendants engaged the services of the Plaintiffs what is the doubt is the amount to be paid as a professional feesfor the services rendered. It is equally of importance to note that, the Plaintiffswere stopped half way as the estate of the deceased was not distributed by the Plaintiffs as part of the services expected to be rendered by the Plaintiffs.

Be the above at it may, the two learned counsel from both sides filed final written addresses.

The Defendants' learned counsel filed his final written address dated 13/3/2017 on the same day. He distilled a lone issue for determination. The issue is this: **"whether in the light of the established facts, circumstancesand evidence before this Honourable court the Plaintiffs can be said to have proved their case on the balance of probability and thus entitled to reliefs sought**"

Adopting the same issue word for word as formulated by Mr. UchenaUgonabo of counsel to the Defendants for determination in this case,Mr. Usman Ibrahim Esq, said their final written address was dated and filed on the 21/11/18. They both adopted their addresses as their oral arguments and submissions in this case.

The plaintiffs' learned counsel in arguing the sole issue drafted for consideration started by referring to the provision of the **Section 16 of the Legal Practitioners Act,2014** which provides for the recovery of the legal practitioner professional fees, which is main issue in this case.

According to the submission of the learned counsel to the plaintiffs in his paragraph 3.05 of his unpaginated address referred to some salient issues raised by the defendantscounsel in their final

written submissions which he referred to as technicalities. However, he did not mention any of such salient issues he referred to as technicalities upon which he submitted andurged the court to do substantial Justice at the expense of technicalities. He referred the court to the case of **ADDAX PETROLEUM DEV. (NIG) LTD VSCHIEF J.I.E. DUKE(2009) LPELR-8850(CA).**

Furthermore, he argued that the plaintiffs have discharged their duty pursuant to the instructions of the defendants up to the stage they were instructed to withdraw the case at the Upper Area Court on the 26th November 2009. He further submitted that the instruction came when the matter is about to be concluded. So, the defendants cannot be heard now to complain about the fees or to say that the Plaintiffs did not complete the Job. He referred the court to **exhibit P3**.

As to whether the Plaintiffs' action was champertous, he argued that the context of this case does not constitute or fall within the purview of a champertous agreement as the Plaintiffs acted within their professional line and limits. He cited the case of **OKOLO VS UBE (2001) 15 WRN 116;** exhibit 'P2' was also referred to and the case of **MR.EGBOR VS OGBEBOR(2015) LPELR 24902(CA).**

On whether the plaintiffs claim is speculative, he argued that Plaintiffs' claim is based on the strongest form of evidence which is documentary. And that documentary evidence is used as a hanger from which to test the veracity of evidence whether oral or by deposition. It is also settled that it could be used to resolve issue or conflicting evidence. Relying on the unreported case of **GBILEVE and ANOR VS ADDINGI and ANOR, Court of Appeal,Makurdi Division, Appeal No: CA/MK/149/2011** forhis submission.

He equally submitted that where evidence tendered by a party to any proceeding was no challenged or put in any issue by the other party who had the opportunity to do so, it is always open to the court seized of the matter to act on such unchallenged evidence before it. A number of caseswere cited to wit: **ISAAC OMOREGBE VS DANIEL LAWANY(1980)3-4SC 108; ODULAJA VS HADDAD(1973) 11 SC 357; N.M.S LTD VS AFOLABI (1978)2 SC 799.**

He said exhibit 'P2' when taken with exhibit 'Q' alongside all the other exhibits, it is quite obvious that the defendants used the services of the Plaintiffs and benefited there from and they cannot be excused from paying for these services. The case of **YUSUFU AND ANOR VS KUPPER INT. NV.(1996) LPELR 3519(SC)**referred to**.**

Lastly and most importantly, he concluded his submission that the plaintiffs have discharged their responsibility of proving their claim as far as this case is concerned. He said the imaginary scale of justice set by the law in civil cases titled in favour of the plaintiffs having advanced evidence is proof of their case as is set out in the Legal Practitioners Act,2014 that governed this kind of claimed they have complied with the procedure as set out in **Section 16 of the Act**. **See.WILLIAMS VS CIVIL SERVICE COMMISSION, OGUN STATE (1997) 9 NWLR(PT. 521); RAYMOND S. DANGTOE VS CIVIL SERVICE COMMISSION, PLATEAU STATE (2001) LPELR 959 (SC).**

He finally urged the court to hold that the plaintiffs have discharged their evidential burden and grant all their prayers.

So far this is the substance of the final written address of the plaintiffs in this case.

I now move to the submissions of the defendants in this case.

In arguing the single issue submitted for determination, the learned counsel started by submitting that our adversarial system of litigation places burden of proof in civil matters like the instant case on the plaintiffs to satisfy the court by leading concrete, cogent and valid evidence with the view to establishing his claim. He relief on the Apex Court decision in the case of **OREDOLA OKEYA TRADING CO AND ANOR VS BANK OF CREDIT AND COMMERCE INTERNATIONAL AND ANOR (2014) LPELR SC 96/2003.** He equally relied on **Sections 131(1) and (2) of theEvidence Act.**

He submitted that the Plaintiffs claim as per their amended statement of claim is for the sum of **₦25,508,705.00 (Twenty Five Million,Five Hundred and Eight Thousand Seven Hundred and Five Naira) to balance the ₦27,508,000.00 (Twenty Seven Million, Five Hundred and Eight Thousand, Seven Hundred and Eight Thousand Naira)** only for 1% of ₦2,750,870,500.00.(Two Billion, Seven Hundred and Fifty Million, Eight Hundred and Seventy Thousand, Five Hundred Naira only) totalestate of later Senator Haruna Abubakar less one eight(1/8) share of his mother which is **₦392,981,500** (Three Hundred and Ninety Two Million, Nine Hundred and Eighty One Thousand, Five Hundred Naira only)to theplaintiffs as agreed upon.

The big question now is;"what direct evidence has the plaintiffs placed before this Honourable Court in proof of afore mentioned claim to entitle him to judgment? He referred the court to exhibit 'P2', P3, P4 and P5 and submitted that those exhibits did not prove the case of the plaintiffs. Also, he said exhibit 'Q' being the report of an estate committee of late Senator Haruna Abubakar did not assist the plaintiffs in their efforts to prove their case.

He observed that PW1 by virtue of paragraph 4 of his witness statement on Oath dated 26th July 2013 testified to the fact that the value of the estate is contained is exhibit 'Q' contrary to PW1's testimony. PW2 who was a member of the defunct estate committee during cross-examination informed the court that the value of the estate of the deceased Senator Haruna Abubakar is not contained in exhibit 'Q'. he therefore concluded, that, it is factually impracticable for the said exhibit 'Q' to contain the value of the estate since the terms of reference of the committee that produced exhibit 'Q' did not mandate them to determine the estate of the deceased Senator.

He submitted that exhibit that 'R' is the only exhibit before this Honourable court that shows the value of estateof the deceased Senator Abubakar.

Also, he submitted that there is also absolutely nothing before this court to show and or prove the plaintiffs' clam for the sum of **₦27,508,000.00 (Twenty Seven Million, Five Hundred and Eight Thousand Naira only).**The evidence before this Honourable court is silent on the issue of how the plaintiffs arrived at their claim for that sum. He said mere averment by the plaintiffs in paragraph 17 of their amended statement of claim that the estate of the deceased Senator Haruna Abubakar is valued at the sum of **₦ 3,143,852,000.00 w**ithout any shred of evidence to support same is no proof of the value of the said estate. He relied on the case of **OLORUNFEMI & ORS VS ASHO & ORS (2000)2NWLR(PT.643)1434.**

Furthermore, he submitted that a plaintiff must succeed on the strength of his own case, and not on theweakness of the defendants' case. He referred to the case of **ADEYERI & ORS VS. OKOBI & ORS (1997) LPELR SC 277/1990**. He said it is when the court has satisfied itself that the plaintiff has discharged this burden, then it can

proceed to consider the defence of the defendant. **See<u>RAJCO INT'L LTD VS LE CAVALIER MOTELS AND RESTAURANTS LTD &ORS (2016) LPELR CA/1912/2009; EGBUCHE VS EGBUCHE (2013) LPELR 22512(CA)</u>.** He urged the court to hold that plaintiffs have failed to discharge the burden of proof placed on them by the Evidence Act.

It is the defendants learned counsel arguments that a party relying on documents like the plaintiffs in this case in proof of his case must specifically relate each of such documents to that part of his case in respect of which the document is being tendered. He relied on the case of **<u>ADEYEYE VS ODUOYE & ORS(2010) LPELR – 3623(CA): EZEKWESILI VS AGBAPUONWU(2003)9 NWLR (PT. 825)337.</u>**

He submitted further that the plaintiffs have failed and or neglected to link exhibit 'Q'to paragraph 17 and 3 of their amended statement of claim and reply respectively thereby robbing this Honourable Court of its power to attach any evidential value to same. He referred to the testimony of PW2 through whom the said exhibit 'Q' was tendered. He said nowhere in the length and breadth of the testimony of PW2 did the Plaintiffs establish a nexus between Exhibit 'Q' and the value of estate of the deceased Senator which the plaintiffs allegedly placed at **₦3,143,852,000.00.** Hesaid the plaintiffs merely dumped exhibit 'Q' on the court without as much as showing the court the relationship between Exhibit 'Q' and the plaintiffs' claim.

He argued further that dumping a document on court during trial, means putting the document in evidence as an exhibit without the vital evidence of witness to relate or link with the specific aspect or part of the case in support of which the document tendered or put in evidence by a party. He cited the cases of **<u>LUMATRON (NIG.) LTD</u>**

& ANOR VS FCMB (2016) LPELR-CA; AWUSE VS ODILI(2005) 16. NWLR(PT. 952) 416 where it was held thus:

> *"The correct view of the law is that a party relying on document in proof of his case must specifically relate each of such documents to that part of his case in respect of which the document is being tendered. The court cannot assume the duty of tying each of a bundle of documentary exhibits to specific aspects of the case for a party when that party has not done so himself. The foundation of the principle is that it is an infraction of fair hearing for the court to do in the recesses of its chambers what a party has not himself done in advancement of his case in open court".*

See **TERAB VS LAWAN (1992)3 NWLR (PT. 231)569: EJIOGU VS ONYEAGUACHA(2006) ALL FWLR (PT.317) 467 AND ARABAMBI VS ADVANCE BEV. IND-LTD (2006) ALL FWLR (PT.295) 581.**

Still submitting, he said the law is settledon documents tendered in court which purpose and worth must be demonstrated through a witness. He said it is settled also that the duty lies on a party who wants to rely on a document in support of his case to produce,tender and link or demonstrate the documents tendered to specific parts of his case. The fact that a document was tendered in the course of proceedings does not relieve a party from satisfying the legal duty placed on him to link his document with his case. See

C.P.C VS INEC (2011)18 NWLR(PT.1279)493; OKEREKE VS UMAHI & ORS (2016) LPELR-SCwhere the Apex court held thus**:**

> ***" Now on the the issue of dumping of these documents on the tribunal, this court decided in replete of numerous authorities to the effect that in any case, whether election or non-election matter, any party tendering documentary evidence has the task of linking such document to the specific aspects of the case for which such documents so tendered be leading evidence of the purport of the document in relation to the aspect of his case.In order words, he should not merely dump them in the court or Tribunal and expect the Tribunal or court to embark on speculation in determining the purport for which it was tendered or to which aspect of the case the document relates without being guided by any oral evidence led in open court."***

He started further that admission of a document in evidence with or without objection is distinct and different ball game in law from its evaluation or assessment for the purpose of the probativevalue to be ascribed or attached to it in the overall determination of the case. See **UBN PLC VS SPARKLING BREW LTD (2000)15 NWLR (PT. 689)310.**

He submitted conclusively, that the plaintiffs have a duty to tie exhibit 'Q' to the facts he pleaded and anything short of that would amount to dumping evidence on the court. And that the plaintiffs having failed to perform this duty cannot be said to have discharged the onus of proof placed on them by **Section 133(1) of the Evidence Act**. He urged the court to refrain from attaching any evidence value to the exhibit 'Q' for it is trite that the court as an arbiter cannot get into the arena and engaged itself in doing a case for one party to the disadvantage of other party.

I have consideredthe arguments and submissions of both learned counsel in support and against the grant of the plaintiffs' reliefs. I also adverted strictly to the simple facts of this case.

In my own strict view, the issue to be determined here is simple. The answer to the big question will lead me to the resolution of this issue. The question is that, has the plaintiffs discharged the burden of prove placed on them by **Section 133(1) of the Evidence Act** in ascertaining the value of the estate of the deceased Senator Haruna Abubakar upon which the 1% professional fees of the Plaintiffs is based or premised?

To start with, I will like to quote the provision of **Section 133(1) of the Evidence Act.** It says:

> *"In civil cases, the burden of first proving existence or non-existence of a fact lies on the party against whom the judgment of the court would be given if no evidence were produced on either side regard being had to any presumption that may arise on the pleadings."*

Section 131(1) and (2) of Evidence Act will not be out of context here so I quote them as well.

Section 131(1) provides thus;

> *"Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts shall prove that those facts exist*"

Section 131 (2) states:

> *"When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person"*

The combination effect of the above quoted provisions of Evidence Act can be summarised to or substituted for a popular principle of evidence that says he who asserts must prove.

The crux of this case entirely rests in paragraph 17 of the amended statement of claim where the plaintiffs aver thus:

> *" The total estate stands at ₦3,143,852,000.00(Three Billion,One Hundred and Forty Three million, Eight Hundred and Fifty Two Thousand Naira Only)less ⅛ share of the deceased mother ₦392,981,500(Three Hundred and Ninety Two Million ,Nine Hundred and Eighty one Thousand, Five*

> *Hundred Naira Only) leaving the balance of ₦2,750,870,500(Two Billion, Seven Hundred and Fifty Million, Eighty Hundred and seventy Thousand, Five Hundred Naira Only) out of which the plaintiffs are entitled to ₦27,508,705(Twenty seven Million , Five Hundred and Eight Thousand, seven Hundred and Five Naira only) as 1% as agreed".*

Now**,** where is the evidence to buttress this assertion. I have produced in this Judgment the evidence of PW1 and to some extent the relevant part of PW2 evidence. With due respect to the learned counsel to the plaintiffs, I cannot see any piece of the evidence supporting this assertion documentary or otherwise. Exhibit 'Q' that is largely relied upon by the plaintiffs is not watertight evidence that can save the plaintiffs from running away from the evidentialburden of proof placed upon them by the provisions of Evidence Act.

In the case of **ARIYO & ORS VS JULIUS BERGER (NIG.) LTD & ANOR(2016) LPELR 4147(CA)**theAppellate Court held as follows:

> *"The law is thus well settledthat it is he who alleges the positive that must prove what he alleges positively and there is no burden on he who asserts the negative."*

In the case of**OMISORE VS AREGBESOLA(2015) 7 SCM 92,** the Apex Court said as follows:

> *"Now, there was an old maxim which was very popular in the latin days of the law. This maxim which developed from the old Roman Jurisprudence, was expressed thus: Incumbitprobation qui dicit non qui negat. It comes to this the burden of proving a fact rests on the party who asserts the affirmative of the issue and not upon the party who denies it ……"*

With due to respect to the plaintiffs learned counsel, exhibit 'Q' was dumpedon the court to embark on the voyage of discovery as PW2 through which this exhibit was admitted in evidence said categorically under cross-examination that it does not contain the value of estate of the late Senator Haruna Abubakar. No question was asked by the plaintiffs' counsel as to relate the relevant part of the exhibit 'Q' to their case and established from exhibit 'Q' through PW2 that value of estate of the late Senator was the amount they alleged is their amended statement of claim. No expert witness was called as a witness to establish from the exhibit 'Q' the real value of estate whether the amount they alleged or any other value at all is stated or could be inferred from exhibit 'Q'.

It is highly unfortunate, none of this was done during the trial. I therefore, agree in toto with the submissions of the learned counsel to the defendants that they have failed woefully to establish from exhibit 'Q' the amount stated by them as the value of estate of the late Senator Haruna Abubakar upon which their 1% depend as professional fees.

However, it is established fact, that the plaintiffs rendered legal services to the plaintiffs upon which **₦2,000,000(Two Million Naira** was paid to them as part payment.

Here, the provisions of **Section 16 of the Legal Practitioner Act, 2014** will come into play. It provides for the recovery of the legal practitioner professional fees and having complied with subsection 2 of the section 16, from where can I source for the 1% of the estate value as agreed under exhibit 'P2'.

Luckily for the plaintiffs, exhibit 'R' was admitted and it provides therein precisely the value of estate as **₦71M(Seventy one Million Naira Only).**

Without much do, 1% of this **₦71 M** which is **₦ 710,00(Seventy Hundred and Ten Thousand Naira is ordered** by the court as amount due to plaintiffs being the 1% of the value of estate as established before the court.

It is equally ordered the payment of 20% of the Judgment sum until final liquidation of same.

As for the cost of the suit, no evidence was placed before the court,no receipt of payment for processes filed or other miscellaneous, this prayer for cost is refused.

…….
Suleiman Belgore
(Judge) 7-5-2020.