

**IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT MAITAMA – ABUJA**

BEFORE HIS LORDSHIP: JUSTICE SALISU GARBA
COURT CLERKS: FIDELIS T. AAYONGO & OTHERS
COURT NUMBER: HIGH COURT TWO (2)
CASE NUMBER: FCT/HC/CV/279/2014
DATE: 27TH MAY, 2020

BETWEEN:

STENNO INVESTMENT LIMITED - PLAINTIFF/APPLICANT

AND

**1. VERALLEN NIGERIA LIMITED }
2. CHIEF ALLEN EGBE } - DEFENDANTS/RESPONDENTS**

Parties absent.

S.N. Anlchebe for the Claimant.

David Amaefula for the Defendants.

Claimant's Counsel – The matter is for judgment and we are ready to take same.

J U D G M E N T

By a writ of summons dated 23/01/2014 and further amended statement of claim dated 16/1/2017 and filed on 17/1/2017, the Claimant claim against the Defendants jointly and severally as follows:

1. The sum of N81,000,000.00 (Eighty One Million Naira) as follows:
 - (a) N22,000,000.00 (Twenty Two Million Naira) only being sum advanced by the Claimant to the Defendants.

- (b) N59,000,000.00 (Fifty Nine Million Naira) only being 125% negotiated accrued profit on the sum advanced by the Claimant to the Defendants pursuant to paragraph 3 (Remuneration/Consideration) of Page 2 of the M.O.U.
2. The sum of N2,000,000.00 paid to the Claimant's solicitors on the consent and authority of the Defendants concerning the said transaction between the parties.
 3. The cost of this suit.

In prove of these claims, the Claimant filed a 25-paragraph Further Amended Statement of Claim dated 16/1/2017; 14-paragraph Further Reply to Further Amended Statement of Defence; the said reply is dated 4/10/2017 and called the following witnesses. Chike Okpara one of the Directors of the Claimant testified as PW1. In her evidence-in-chief, she adopted a 26-paragraph Further Witness statement on Oath dated 18/5/2015 and another 26-paragraph Further Witness Statement on Oath dated 13/10/2015 as her evidence-in-chief; the said PW1's Witness Statements on Oath are accordingly adopted as forming part of this judgment.

The gist of the PW1's evidence is that sometime in July 2-12 the 2nd Defendant drew her attention to a sub-contract assignment No. DSC/NIG/SC/2021/01 dated 16/4/2012 for the sum of N1.1 Billion for the construction of Internal Services for GPBCDA in Port-Harcourt, Rivers State. That the Defendants approached the Claimant asking for friendly loans to execute the projects on schedule and promising to repay back. That the Claimant

advanced various sums of friendly loan (money) to the Defendants amounting to N23 Million and other various sums of money plus the expected profit to be made on the said friendly loan totaled the sum of N81 Million in addition to the sum of N2 Million paid by the Claimant to the Claimant's solicitors on 15/1/2013 with the consent and authority of the Defendants and on their behalf.

That the Defendants raised an Irrevocable Standing Payment Order dated 14/1/2013 in favour of the Claimant. That the Defendants to make their promise to replay back the loans, issued various cheques to the Claimant totaling the sum of N81,000,000.00.

The PW1 further stated that the Claimant entered into a Memorandum of Understanding with the 1st Defendant to govern the transaction. That going by the agreed return as could be ascertained from the M.O.U., the percentage profit accruable to the Claimant as the expected profit on return on investment will be 125% of the sums the financier (Claimant) advanced to the contractor (1st Defendant) which said principal sums plus the expected profit to be made on it came up to the sum of N81,000,000.00 plus the sum of N2 Million paid to the Claimant's solicitors with the consent of the Defendants which added up to the total sum of N83 Million.

That after several entreaties by the Claimant to the Defendants to pay back the loan failed, the Claimant had to instruct its counsel

to write to the Defendants to demand the repayment of the sum of N83 Million.

In the cause of PW1's evidence, the following documents were admitted as Exhibits:

1. Letter dated 14/1/13 – Exhibit A.
2. 9 Cheques of Skye Bank Plc – Exhibit B¹ – B⁹.
3. Solicitor's Cash Receipts dated 15/1/13 – Exhibit C.
4. Agreement dated 11/7/2012 – Exhibit D.
5. Solicitor's letter dated 15/8/13 – Exhibit E.

Under cross-examination of PW1 by the Defendant's counsel, the PW1 stated that at a point it was agreed that the legal fees of the lawyer should be paid by both parties.

The PW1 further stated that she was aware that N14.5M was paid to the Defendant and that she also made payment of N6,500,000.00 to the Defendants.

Under cross-examination, PW1 stated that terms 1, 2 and 3 are not the only terms in Exhibit D. The witness was accordingly discharged.

On 14/11/2017 this court grants leave to recall PW1. On 8/12/2017 the PW1 was recalled and in her further evidence-in-chief, she adopted a 19-paragraph 2nd witness statement on oath dated 4/10/2017 as her further evidence; the said PW1 further statement on oath is accordingly re-adopted as forming part of this judgment.

The gist of the PW1's further evidence is that the Claimant's equity contribution as contained in paragraph 5 of the M.O.U. was solely meant for the procurement of construction equipment/machineries for the project. That all the construction equipment/machineries so procured shall be receipted in the claimant's name as a lien on the monies so released for the project. That the Defendant did not purchase the equipment and did not show the Claimant any receipts. That the Claimant's equity contribution to the tune of N22 Million Naira was transferred to the 1st Defendant's account with Skye bank Plc within a reasonable time for the Defendants to have purchased the construction equipment and commence the project. That had it been that the Defendants did the needful and requested for further construction from the Claimant, the issue of delay and purported cancellation of contract alleged by the defendants would not have arisen in the first place.

It is also the evidence of the PW1 that the reference by the Defendants to a Joint Venture Agreement (J.V.A.) was misplaced as no such document was executed by the parties in relation to the transaction in issue. Therefore every averment by the defendants in relation to that document is not related to the facts of this case. That it is not correct as alleged by the Defendants that the defendants issued blank cheques and kept same in the custody of the Claimant.

The PW1 further stated that the mathematical expression on the Remuneration/Consideration Clause on Page 2 of the M.O.U. by

the parties come to 125% of the equity contribution by the Claimant out of which the Claimant has contributed N22 Million which is to be ploughed back with the interest calculated at 125% which amounted to N106,875,000.00 negotiated to N81,000,000.00.

That there was no time the Claimant deducted any sum of N1 Million from its equity contribution as solicitor's fee which the 1st Defendant ought to have paid.

It is further stated that the M.O.U. did not provide for the 1st Defendant through the 2nd Defendant to give any document either relating to land/title or otherwise to the Claimant for the purposes of obtaining funds for executing the sub-contract that gave rise to this suit.

Under cross-examination of PW1 by the Defendant's counsel, the PW1 stated that the date for payment of 1st trench in Exhibit D is 12/7/2012 and the 2nd trench was 31/7/12. And by Exhibit H the sum of N14,500,000.00 was paid on 1/8/12. Another sum of N6.5 Million was paid on 15/1/13. That the total amount paid was N22 Million. The further N1 Million was paid on 15/1/13.

The PW1 further stated that the Defendants did not purchase any equipment as no receipt was issued to the Claimant.

That the total amount to be given to the Defendants was N200 Million. The Claimant gave the Defendants the amount they requested for to purchase the equipment for the project. The Claimant stopped giving the Defendants any money because the

Defendants did not bring the receipts for the money already collected.

That the calculation in paragraph 10 of the PW1's further statement on oath was done in line with what is in the M.O.U.

Under re-examination, the PW1 stated that in the M.O.U. (Exhibit D) paragraph 5, the Claimant is supposed to contribute N200 Million. On the fresh issue raised under re-examination and upon being cross-examined by the Defendant's counsel, the PW1 stated that the Defendants will get the contribution of the Claimant and thereafter provide the balance. PW1 was discharged.

Afam Anene a subpoenaed witness testified as the PW2. In his evidence-in-chief he stated that he was subpoenaed to bring the following documents as a staff of Diamond Bank Plc:

1. Statement of Claimant's Director. The name of the Account of Chika Okpara with No. 0012679585.
2. Transfer Form for same Chika Okpara.
3. 4 Cheques
4. Certificate of Identification from Diamond Bank Plc.

The 3 Diamond Bank Cheques dated 15/2/12, 1/8/12 and 1/8/12 and Fund Transfer Form of Diamond Bank No. 000472909 were admitted in evidence as Exhibits F1, F2, F3 and G respectively. The Statement of Account of Chika Okpara was also admitted in evidence and marked Exhibit H.

Under cross-examination of PW2, he stated that his schedule of duty in the bank is to manage the account of the bank customers and keeping records of the transactions. The he did not know anything in respect of the Claimant's business except its account records.

No re-examination, PW2 was discharged.

Sampa Tom is also a subpoenaed witness testified as PW3. In his evidence-in-chief, he stated that he work with ENTEL NETWORK LTD. He is a Regulatory Support Officer.

That he was served with a subpoena to bring a document and testify. That he is not with the document he was ask to procured, because their company does not have the capacity to access and share the content of text messages of their customers.

That they only have record that a text message left this phone to another phone. However, the Customer Code of Practice Regulation 2007 does not allow to retained record for more than 12 months. PW3 cited Section 21 of the Regulations. That the record he was asked to produce was for the past 4 years.

No cross-examination, PW3 was discharged and that is the case for the Claimant.

In defence of this suit, the Defendants filed a 57-paragraph Further Amended Joint Statement of Defence dated 12/6/2017 and called one witness.

Allen Egbe testified as the DW1. In his evidence-in-chief, the DW1 adopted a 59-paragraph witness statement on oath dated 12/6/2017 as his evidence.

It is pertinent to state here that the DW1's Statement on Oath dated 21/11/17 is evidence towards the counter claim.

The gist of DW1's evidence is that the 1st Defendant secured various contracts for projects from diverse clients and by a M.O.U. dated 11/7/2012, the Claimant agreed to finance the execution of the sub-contract No. DSC/NIG/SC/2021/01 dated April, 2012. That the Claimant was to make available its equity contribution of N200 Million to finance the sub-contract while the Defendants was to provide the balance of N200 Million the sub-contract been N400 Million.

That the Claimant agreed to pay the 1st Defendant its equity contribution of N200 Million in two tranches of N100 Million each within the month of July, 2012.

That the total amount committed to the project by the Claimant was N22,000,000.00 (Twenty Two Million) only out of which N1 Million only was paid to the Claimant's counsel for perfection of the documentation of the claimant's instruction leaving the balance of N21 Million; the said monies paid by the Claimant was received on 1/8/2012 and 15/1/2013 respectively which payment were made after the time stipulated in the M.O.U. had long expired.

The witness further stated that the Defendants made demands for the sum agreed upon in the M.O.U. but the Claimant failed to make further contributions thus breaching the terms of the M.O.U.

That in order to secure more monies from the Claimant for the execution of the sub-contract, the 2nd Defendant handed over title documents to the Claimant. And that the Claimant is yet to return the title documents.

The DW1 further stated that upon grant of the sub-contract on 16/4/2012, the Defendants acquired equipments and machineries which are receipted. That in order to consolidate the status of the Claimant, a Joint Venture Agreement (J.V.A.) between the Claimant and the 1st Defendant was prepared but was signed by the Claimant alone. That pursuant to the J.V.A., the PW1 went with the Defendants to Port-Harcourt branch of Skye Bank where both parties signed document authorizing the Claimants access to the Defendant's account as a partner. In furtherance of the J.V.A. blank cheques were issued to the Claimant to enable them take charge while the 2nd Defendant went for medical treatment outside the country. That the Irrevocable Standing Payment Order (ISPO) was raised upon the fulfillment of certain conditions like the Claimant's financial contribution which was not fulfilled by the Claimant.

The witness stated that the Claimant having failed to adhere to the terms of the M.O.U. cannot now enjoy the benefits of the remuneration/consideration.

That had the Claimant adhered to the M.O.U. between the parties, the project would not have been frustrated to the extent of its being terminated. DW1 urged the court to dismiss the Claimant's claim.

In the cause of DW1's evidence, the following documents were admitted in evidence as Exhibits:

1. Copy of document dated 21/2/13 – Exhibit I.
2. Receipt dated 20/7/12 – Exhibit J.
3. Receipt dated 20/7/12 – Exhibit K.
4. Invoice dated 15/7/12 – Exhibit L.
5. Proforma Invoice dated 19/6/12 – Exhibit M.
6. Proforma Invoice dated 14/6/12 – Exhibit N.
7. EFCC Letter of Invitation – Exhibit O.
8. Diamond Bank Deposit Slip – Exhibit P.
9. Joint Venture Agreement – Exhibit Q.

Under cross-examination by the Claimant's counsel, the DW1 stated that he admitted the Claimant advanced the sum of N22 Million to the Defendants out of which N1 Million was paid to the Claimant's lawyer. The balance of the money was not return to the Claimant as it was used for the job.

The DW1 further stated that they were given certain target to meet and when they were not able to meet the target, the project was finally terminated.

That the Claimant did not give the Defendant's money to buy equipment. The parties used the money contributed for the project.

The DW1 stated that he never disputed that he collected the sum of N21 Million from the Claimant.

Based on the said admission, the Claimant's counsel applied that judgment be entered for the Claimant in the said sum of N21 Million. The court in its wisdom entered judgment for the Claimant in the admitted sum of N21 Million against the Defendants under Order 20 Rule 4 of the Rules of this Court 2018.

The DW1 went further to state that Exhibit B1 – B7 are his cheques. No figures were written on the cheques he gave the Claimant. That he (DW1) wrote the dates with his signature and not the date on the cheque. The date on his signature and that of the cheque are the same.

The DW1 further stated that he gave the Claimant the cheques so that they can be used in the site. It was the Claimant that was running the site day to day.

The witness also stated that there was another agreement that the Claimant will be running the business.

Under re-examination the DW1 stated that by the name “**you**” he refers to himself and the word “shall”, he refers to Chika Okpara. That there was a joint account between the parties also money was sent to that account.

The DW1 was discharged and that is the case for the defence.

The Defendant's Counsel filed a 21-page final written address dated 21/10/2019 wherein counsel formulated two issues for determination:

1. Whether the Claimant has successfully proved its case to warrant a judgment of this court in his favour.
2. Whether the counter claim of the Defendant has not been proved by the Defendants' counter claimant to warrant a grant of the reliefs sought.

On Issue 1, it is the submission that from the facts in the several witness statements on oath adopted by PW1, it could be safe to state that the dispute between both parties is about an amount purportedly furnished to the 1st Defendant. It was from the amount contributed that the Claimant alleged a profit which was to have accrued therefrom.

It is the law that parties are bound by the terms of their contract freely entered and parole or oral evidence cannot be involved to contradict, add to or vary the terms of a agreement. See VASHE v UMAR (2003) 13 NWLR (Pt 838) 465.

It is submitted that the word loan as used by the Claimant should be discountenanced as same is not operative here in view of the content of Exhibit D.

Furthermore, the amount paid by the Claimant which are in evidence before this Honourable Court clearly run foul of the terms and conditions of Exhibit D which the Claimant signed.

It is the submission that assuming without conceding that it was a loan agreement, a loan is essentially a sum of money lent at interest and a loan agreement includes applicable interest rates or fees and how the loan will be repaid and over what period. See *OLOWU v BUILDING STOCK LTD* (2018) 1 NWLR (Pt 1601) 343 at 398 – 393 Paras H – B.

It is the law that a condition necessary to bring to force a loan agreement is the disbursement of the loan. Thus, where there is no reliable evidence of the disbursement of the loan, the agreement will be inoperative and from it no obligation for repayment of the loan. See *E.T.B. BUILDING SOC. LTD v ADEBAYO* (2003) 11 NWLR (Pt 832) 497 at 519 Paras A – C.

In the instant case, there is no evidence to show disbursement of complete fund within the prescribed period agreed by parties in Exhibit D.

It is submitted that this suit could only have emanated from a Contract Agreement to execute sub-contract with Assignment No. DSC/NIG/SC/2021/01 unlike the interpretation given to the contract of Exhibit D by the Claimant.

It is the contention of the Defendant that the only sum advanced by the Claimant to the Defendant was N21 Million which the Defendant never denied but further reiterated that the sum paid was in breach of the agreement; that the sum was not sufficient to carry out the transaction or contract which required N400 Million to execute. The sum of N21 Million is different and it will be against

the tenet of the law for the Claimant to urge this court to grant such a reliefs. See DIAMOND BANK LTD v UGOCHUKWU (2008) 1 NWLR (Pt 1067) 1 at 23 Para G.

It is submitted that the only contribution made by the Claimant was N21 Million which this court had already entered judgment against the Defendants in respect of the judgment of the court puts to rest the amount given to or received by the defendant.

It is the submission that having established that the Claimant had breached the contract, this court cannot give to the Claimant that which its default has robbed him of the benefit of. It is trite that a court of law will not oblige a party to benefit from its own wrong or mischief. See B. MANFAG (NIG) LTD v M.S.O.O. LTD (2007) 14 NWLR 9Pt 1053) 109 at 153 Paras G – H.

It is further submitted that it would be a misapplication of the principles governing contract for this court to grant any further relief in the form of profit where the Claimant failed to fulfill its duty in Exhibit D.

It is submitted that a party to a contract is in breach of a contract between him and another when without lawful excuse he failed to perform the obligation in the agreement. The failure of the Claimant to pay the complete amount in the agreement in Exhibit D was not backed by any legal excuse known to law. See ADEDEJI v OBAJIMI (2018) 16 NWLR (Pt 1644) 146. Court is urged to resolve Issue 1 in favour of the Defendants and dismiss this suit.

On Issue 2, I am of the considered view that it is an issue for the counter-claim. The Claimant's counsel filed a 15-page final written address dated 6/12/2019 wherein counsel formulated two issues for determination:

- 1 ***“Whether having contributed to the project, the Claimant is entitled to profit within the meaning of Exhibit D”***
- 2 ***“Whether the Defendants have proved their entitlement to the sums claimed in their counter-claim”***

On Issue 1, it is the submission that the Claimant having part-performed its obligation under the M.O.U. Exhibit D with the 1st Defendant is entitled to all the reliefs claimed in the Further Amended Statement of Claim in line with the provisions of the M.O.U.

It is submitted that going by the agreed return as can be ascertained from Exhibit D, the percentage profit accruable to the Claimant as expected profit on return on investment will be 125% of the sum the Claimant (Financier) advanced to the 1st Defendant (Contractor).

It is submitted that going by the spirit and intendment of the parties as can be ascertained from the M.O.U., the Claimant as the financier is entitled to claim as profit the sum equivalent to 125% of the sum actually advanced to the Defendants which principal sum plus the expected profit is totaled the sum of N81 Million. If we remove the sum of N21 Million being the money the Claimant advanced to the Defendants which sum was awarded

to the Claimant as per the ruling of this Honourable Court dated 17/9/2018, we will be having a balance of N60 Million representing the profits accruable from the money advanced by the Claimant to the Defendants and N1 Million portion of the solicitor's fees to be paid by the Defendants.

It is the evidence that the Claimant stopped further monetary advancement to the Defendants when the Defendants failed to bring any receipt issued in the name of the Claimant for the equipment meant to be purchased with the money advanced by the Claimant to the Defendants.

It is submitted that the Defendants in failing to purchase any equipment in the name of the Claimant to be receipted in the Claimant's name have breached a fundamental term of the agreement they entered with the Claimant and are therefore estopped from turning around to claim that the inability of the Claimant to advance all the money stated in the M.O.U. led to the cancellation of the contract, the subject of the M.O.U.

It is further submitted that the Claimant is entitled to recompense on the money already advanced in line with the agreement of the parties. See *DANTATA & ANOR v MOHAMMED* (2000) LPELR – 925 (SC) at 18 Paras B – D. Court is urged to hold that the Claimant in addition to the money advanced to the Defendants which the court has already awarded to the Claimant, the Claimant is also entitled to claim the profits accruable on that amount from the date the money was advanced to the 1st Defendant to bring it in line with the agreement of the parties

under the M.O.U. See S.B.N. PLC v OPANUBI (2004) LPELR – 3023 (SC) (pp 19 – 20 Paras D – C).

It is submitted that the contract stipulated that post-dated cheques should be issued to the value of not more than N10 Million to sum up each monthly payment and the cheque the Defendants issued was to the value of not more than N10 Million to cover the monthly payment as stipulated in the M.O.U. (Clause 4).

It is further submitted that it will be mischievous for the Defendants to now turn around to claim that the Claimant was the one that put figures on the post-dated cheque issued by the Defendants. The Claimant was not part of the management of the 1st Defendant's company and will not be in a position to be in possession of the 1st Defendant's cheques.

It is submitted that the profit the Claimant is asking for does not amount to variation of the agreement by the parties. See VASHE v UMAR (2003) 13 NWLR (Pt 383) 465.

It is submitted that the issue of loan did not arise again when the parties decided to put their intentions into a written instrument.

Again, the Defendants claimed that the sub-contract for GPBCDA Project was terminated. However, the Defendants did not tender before this Honourable Court the Letter of Termination, nor did the Claimant see or receive any purported letter of termination from the Defendants. In answer to the Defendant's contention in paragraph 4.15 of their final written address that the Claimant did

not abide by the terms of the M.O.U by failing to make the disbursements it made to the Defendants within the time stipulated in the Agreement, it is submitted that the Defendants having accepted the disbursement by the Claimant at the time it was made have waived their right to complain. See *EZE v OKECHUKWU & ORS* (2002) LPELR – 1194 (SC); *OLUFEAGBA & ORS v ABDULRAHEEM & ORS* (2009) LPELR – 2613 (SC). Court is urged to resolve this issue in favour of the Claimant and enter judgment for the Claimant.

On Issue 2, I am of the firm view that it is an issue for the counter-claim.

The Defendants filed a Reply on Points of law dated 18/12/2019 wherein counsel in response to paragraph 2.12 of the Claimant's address, submitted that a lien is merely a right to retain the goods subject to it until the amount of the lien has been paid. The lien does not give to the holder any property in the goods. See *AFROTECH TECH. SERV. (NIG) LTD v MIASONS LTD* (2000) 15 NWLR 9Pt 692) 730.

In response to paragraphs 2.14, 4.07, 4.08, 4.09 and 4.10 of the Claimant's address, it is submitted that the law is settled that where a party can prove the rendering of services under an unenforceable contract, the contract is admissible as evidence of the value of the services rendered and he may recover on a quantum meruit basis. The law provides remedies for cases of unjust enrichment and thus to prevent one from retaining some benefit from another which it is unconscionable that he should

keep. Such remedies strictly speaking are different from remedies in contract or tort and are recognized to fall within the Common Law remedy of quasi contract. See ALFOTRIN LTD v A.G. FED. (1996) 9 NWLR (Pt 475) 634.

In response to paragraph 4.08 of the Claimant's final address, it is submitted that this court is *functus officio* having delivered judgment on 17/9/2018 on the issue of the admitted N21 Million.

In response to paragraph 4.13, it is submitted that the request for profit can only be sustained by proof that the work was completed and that the Defendant received benefit which could only have been possible had the Claimant made its contribution as agreed.

In response to paragraph 4.15 – 4.19, it is submitted that the amount to be contributed was never waived by the Defendants. The right over receipt is tied to a valid contribution. The first tranche of 100 Million was never completed so even the right to insist that the receipt be issued in the Claimant's name had not crystallized. Court is urged to dismiss this case.

I have carefully considered the processes filed, evidence of witnesses and submission of learned counsel on both sides, I am in one with the learned counsel to the Defendants that the sole issue that calls for determination is whether the Claimant has successfully proved its case to warrant a judgment of this court in its favour.

It is trite that he who assert must prove. It follows that it is the duty of the Claimant to prove her case on the balance of probabilities.

From the evidence of PW1, it is clear that the Claimant was aware of the sub-contract with Assignment No. DSC/NIG/SC/2020/01 dated 16/4/2012 for the sum of N1.1 Billion for the construction of Internal Services for GPBCDA, in Port-Harcourt, Rivers State. And that the Claimant as the financier and the 1st Defendant as the Contractor agreed that the Claimant is to contribute the sum of N200 Million in two tranches of N100 Million each within the month of July 2012 toward the said project. Parties in their wisdom executed a Memorandum of Understanding Exhibit D to guide their transaction.

In the Remuneration/Consideration Clause in Exhibit D, it is the agreement of parties that in consideration of the N200 Million, equity contribution of the Claimant/Financier to the project, the Claimant/Financier shall be entitled to claim in return from the 1st Defendant/Contractor Profit of N250 Million along with the principal equity contribution of N200 Million.

Under cross-examination of PW1 by the Defendant's counsel, she admitted that the total amount paid to the Defendants was N22 Million. This fact was also corroborated by the DW1 under cross-examination that the Claimant advanced the sum of N22 Million to the Defendant out of which N1 Million was paid to the Claimant's lawyer and that the balance of the money was not returned to the Claimant as it was used for the job.

The DW1 went further to state as follows:

“The money advanced to me by the Plaintiff was part of her own contribution. It was my N200 Million that was used on carrying on the job”

From the above testimony of DW1, it is without doubt that the money contributed by the Claimant was used for the project.

It is the contention of the Defendants that the project was terminated, however the Defendants failed to proffer credible evidence to support same. Under cross-examination of DW1 he stated that the project was terminated and that he has the letter of termination but could not produce or tender the said letter in evidence.

Accordingly, I hold that the contention of the Defendants that the project was terminated holds no water and of no moment.

The DW1 under cross-examination admitted that the Defendants collected the sum of N21 Million from the Claimant. As a result of the said admission, judgment was partly entered for the Claimant in the sum of N21 Million on the 17/9/2018.

Now going by the spirit and intendment of the parties as can be ascertained from the M.O.U. Exhibit D, the Claimant as the financier is entitled to claim as profit the sum equivalent to 125% of the sum of N21 Million actually advanced/contributed to the Defendants for the project.

A simple mathematical calculation of 125% of N21 Million will give you the sum of N26,250,000.00.

It is the evidence of PW1 that the Claimant stopped further monetary advancement to the Defendants when the Defendants failed to bring any receipt issued in the name of the Claimant for the equipment meant to be purchased with the money advanced by the Claimant to the Defendant.

Under cross-examination, the DW1 stated that he did not know whether the Claimant was given the receipts for the purchase of the equipment because he was not at the site.

From the testimonies above, it is without doubt that the Defendants are in breach of the Security/Lien Clause of Exhibit D the M.O.U.

It is settled law that the Claimant's entitled to recompense on the money already advanced in line with the M.O.U. See DANTATA & ANOR v MOHAMMED (2000) LPELR – 925 (SC).

In the case of S.B.N. PLC v OPANUBI (2004) LPELR – 3023 the Supreme Court held inter alia:

“The law is that if an innocent party has rendered services (or has supplied goods) under a contract, which has not been fully performed and which has been determined by him because of the Defendant’s repudiatory breach of contract, he may sue for damages for loss arising from the breach of contract or bring a restitutionary claim to recover the value

of the services rendered or goods supplied, on a quantum meruit”

In the instant case I am of the firm view that the Claimant is entitled to be compensated on the restitutionary remedy of quantum meruit on the amount contributed to the project which the Defendants took benefit of but failed to perform their own obligation in line with the Clause 1/Security Lien Clause of the M.O.U. (Exhibit D).

On the issue of the cheques Exhibits B1 to B9 the Defendants contended that they only issued blank cheques to the Claimant. This position is absurd, given the fact that the Claimant was not part of the management of the 1st Defendant's company and will not be in a position to be in possession of the 1st Defendant's cheques. It is instructive to point out here that the figure written on the cheques tallied with the figure in Clause 4 on Security/Lien in Exhibit D the M.O.U. The DW1 under cross-examination admitted that he gave the Claimant the cheques so that they can be use in the site. That it was the Claimant that was running the site day to day, that the PW1 was not signatory to the 1st Defendant.

As stated earlier in this judgment, judgment for the sum of N21 Million has been entered in favour of the Claimant against the Defendants based on the admission of the DW1.

In conclusion, I am of the considered view that the Claimant has adduced credible evidence to warrant the judgment of this court

in her favour. Accordingly, judgment is entered in favour of the Claimant against the Defendants jointly and severally as follows:

1. The sum of N26,000,000.00 (Twenty Six Million Naira) only is awarded against the Defendants being 125% negotiated accrued profit on the sum of N21 Million advanced by the Claimant to the Defendants pursuant to paragraph 3 the Remuneration/Consideration Clause of the Memorandum of Understanding executed by the parties.
2. The sum of N4,640.00 is awarded as cost of this action.

(Sgd)
JUSTICE SALISU GARBA
(PRESIDING JUDGE)
27/05/2020

JUDGMENT IN THE COUNTER CLAIM

The Defendants/Counter Claimants filed a Counter Claim dated 12/6/2017 wherein the Counter Claimant counter claim against the Claimant/Defendant to the counter claim as follows:

1. A Declaration that the failure of the Claimant to abide by the terms of the Memorandum of Understanding frustrated execution of the contract.
2. An Order of this Honourable Court directing the Claimant to pay the sum of N50 Million to the Defendants/Counter Claimant being general damages for the financial loss suffered by the termination of the contract.
3. An Order of the court directing the Claimant to return to the 2nd Defendant the title document deposited with it through its Director, Chika Okpara.

In prove of this counter claim, the Defendants/Counter Claimant filed 57-paragraph Further Amended Statement of Defence/Counter Claim dated 12/6/2017.

I am of the considered view that with the holding in the judgment just delivered in the substantive suit, it will be an exercise in futility to proceed with the counter claim having entered judgment in favour of the Claimant/Defendant to the Counter claim in the substantive suit.

It is pertinent to also state that this court has the inherent powers to look at processes before it. A close look at the counter claim shows clearly that the appropriate filing fees in line with the rules of this court was not paid; accordingly making the counter claim incompetent.

The only assessment on the face of the Further Amended Joint Statement of Defence is the sum of N570 representing the filing fee for the Further Amended Joint Statement of Defence only.

As earlier stated in this judgment, having entered judgment for the Claimant in the substantive suit, proceeding with this judgment will end in an academic issue.

Accordingly, this counter claim fails and it is hereby dismissed.

(Sgd)
JUSTICE SALISU GARBA
(PRESIDING JUDGE)
27/05/2020

Claimant's Counsel – We thank the court for the judgment.

Defendant's Counsel – We are most grateful for the considered judgment.

(Sgd)
JUSTICE SALISU GARBA
(PRESIDING JUDGE)
27/05/2020