

**IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT JABI, ABUJA**

**BEFORE HIS LORDSHIP: HON. JUSTICE D. Z. SENCHI
HON. JUDGE HIGH COURT NO. 12**

COURT CLERKS: T. P. SALLAH & ORS

DATE: 17/11/2020

FCT/HC/CV/0828/2018

BETWEEN:-

**JULIET EKE (SUING FOR HERSELF, AND AS
REPRESENTATIVE OF ALL STARTIMES TV
NETWORK SUBSCRIBERS WHOSE DECODERS
WERE SCRAPPED BY THE DEFENDANT)**

..... PLAINTIFF

AND

NTA STAR TV NETWORK LTD (STARTIMES)

..... DEFENDANT

JUDGMENT

This suit was commenced by the Plaintiff against the Defendant vide an originating summons filed on the 5th April, 2018. The suit was heard and adjourned to the 20th February, 2019 for judgment by my learned brother, Ndukwe J, (of blessed memory) who passes away before judgment was delivered. The suit was thereafter transferred and assigned to this Court by the Honourable Chief Judge of the FCT High Court of Justice, Abuja.

The Plaintiff, by her originating summons raised three questions for determination against the Defendant as follows:-

- I. Whether the relationship between the Plaintiff, as a StarTimes TV Network subscriber/customer (and all other subscribers), and the Defendant, as TV Network Service Provider, is contractual.
- II. Whether the Defendant can unilaterally scrap the Plaintiff's StarTimes TV Decoder and/or cause it to stop functioning, and those of other millions of StarTimes TV

subscribers/customers, without first notifying the Plaintiff and obtaining her mutual consent, and those of other millions of subscribers/customers.

III. Whether the Defendant can, without the Plaintiff's mutual consent, demand, from the Plaintiff, and other millions of subscribers/customers, the payment of a certain amount before replacing her scrapped TV Decoder and Smartcard (and those of other millions of StarTimes TV subscribers/customers).

If the above questions are answered in the affirmative, the Plaintiff then claims the following reliefs against the Defendant:-

- a) A declaration that the relationship between the Plaintiff, as a StarTimes TV Network subscriber/customer (and all other subscribers), and the Defendant, as TV Network Service Provider, is contractual.
- b) A declaration that the unilateral scrapping of the Plaintiff's StarTimes Decoder and those of other millions of StarTimes TV Network subscribers/customers, without first notifying the Plaintiff and obtaining her mutual consent, and those of other millions of subscribers/customers, is wrongful, illegal, null void and a breach of contract.
- c) An order of this Honourable Court directing the Defendant to, forthwith, reactivate the Plaintiff's StarTimes TV Decoder, Star5000T Model with the following Smart Card Number: 02110023621, or give her a new Decoder and Smartcard free of charge.
- d) An order of this Honourable Court directing the Defendant to, forthwith, reactivate all its Subscribers/customers whose Decoders were wrongfully scrapped or replace their Decoders and Smartcards free of charge and refund all customers who had already paid for new Decoders of any such amount paid.
- e) An order directing the Defendant to pay to the Plaintiff the sum of N15,000,000.00 (Fifteen Million Naira) only as damages for breaching its contractual obligation with the Plaintiff and denying her of her viewing pleasure.

- f) An order directing the Defendant to pay to the Plaintiff the sum of N500,000.00 (Five Hundred Thousand Naira) only as cost of this suit.

The originating summons of the Plaintiff is supported by an affidavit of 20 paragraphs with exhibits attached and marked as exhibits A,B,C and D respectively. The learned Counsel to the Plaintiff in further support of the originating summons filed a written address dated 5th February,2018.

On service of the originating summons on the Defendant, on the 7th March, 2018, the Defendant in opposition to the originating summons filed a counter affidavit of 19th paragraphs with two exhibits marked exhibits STV1 and STV 2. In compliance with the Rules of this Honourable Court, the Counsel to the Defendant filed a written address.

The Plaintiff in response to the counter affidavit of the Defendant filed a further affidavit of 16 paragraphs on 23rd April, 2018 and a further address on 19th June, 2018.

As I said earlier, judgment in this suit scheduled on 20th February, 2019 could not be delivered due to the passing to glory of my learned brother, Ndukwe J, (of blessed memory) and upon transfer of the case to this Court, the matter was adjourned to the 14th January, 2020 for hearing and for parties in the suit to adopt their respective processes. Thus, hearing notices were issued and served on both the Plaintiff and the Defendant. The proof of service or duplicate copies of the hearing notices served were filed in Court as evidence of such service.

Thus, on the 14th January, 2020 when the matter came up for hearing, the Plaintiff's Counsel was present in Court. However, the Defendant's Counsel was absent despite the notice of hearing of this matter served on her. Hence, the Plaintiff's Counsel adopted his processes in this suit and he equally applied to the Court to deem the Defendant's processes filed as duly adopted as provided by the Rules of this Honourable Court. Hence therefore, the counter affidavit and written address filed by the Defendant was duly deemed adopted by the Defendant.

ISSUES FOR DETERMINATION

In his address, Counsel to the Plaintiff formulated three issues for the determination of his originating summons as follows:-

1. Whether the relationship between the Plaintiff, as a StarTimes TV Network subscriber/customer (and all other subscribers), and the Defendant, as TV Network Service Provider, is contractual.
2. Whether the Defendant can unilaterally scrap the Plaintiff's StarTimes TV Decoder and/or cause it to stop functioning, and those of other millions of StarTimes TV subscribers/customers, without first notifying the Plaintiff and obtaining her mutual consent, and those of other millions of subscribers/customers.
3. Whether the Defendant can demand, from the Plaintiff and other millions of subscribers/customers, the payment of a certain amount before replacing her scrapped TV Decoder and Smartcard (and those of other millions of StarTimes TV subscribers/customers).

The Defendant's Counsel for his part formulated the following two issues for the determination of the Plaintiff's originating summons:-

1. Whether, from the totality of the facts of this case as presented by both the Plaintiff and the Defendant, there is breach of any contract with the Plaintiff.
2. Whether from the circumstance of this case, the Plaintiff has established any reasonable cause of action triable by this Honourable Court.

I believe the issues distilled by the Plaintiff's Counsel can all be adequately addressed under the first issue formulated by the Defendant's Counsel. I shall therefore adopt the issues as distilled by the Defendant's Counsel in the determination of the instant matter. I shall however address the second issue first as it relates to the competence of this suit and, ultimately, the

jurisdiction of this Court to entertain this suit. Pursuant thereto, the issues for determination are as follows:-

1. Whether from the circumstance of this case, the Plaintiff has established any reasonable cause of action triable by this Honourable Court.
2. Whether, from the totality of the facts of this case as presented by both the Plaintiff and the Defendant, there is breach of any contract with the Plaintiff.

ISSUE NUMBER ONE

"Whether from the circumstance of this case, the Plaintiff has established any reasonable cause of action triable by this Honourable Court."

On this issue, learned Counsel to the Defendant submitted that it flows naturally that if the Plaintiff has not recharged or subscribed to the network of the Defendant, she cannot be held to have a valid or subsisting contract with the Defendant and therefore cannot rightly and legitimately complain about the scrapping of her decoder. Counsel argued that the Plaintiff's suit thus lacks reasonable cause of action. He relied on the cases of ***P.N. UDOH TRADING CO. V. ABERE (2001) 11 NWLR (PT. 723) P. 114*** and ***DAILY TIMES (NIG) LTD V. D.S.V LTD (2014) 5 NWLR (PT. 1400) P. 327*** for the meaning of 'cause of action' and 'reasonable cause of action'. He posited that the Plaintiff does not have any right to claim before this Court because she cannot legally stop an action that is propelled by the Federal Government or for the benefit of all Nigerians. Counsel submitted that where there is no cause of action, the Court lacks the jurisdiction to entertain such matter and ought to strike same out. He urged this Court to hold that the Plaintiff has not disclosed any reasonable cause of action.

Replying on this issue, learned Counsel to the Plaintiff submitted that the Defendant never denied that the Plaintiff bought its decoder. He posited that the Plaintiff is entitled to notice and replacement of decoder by the Defendant in the

circumstances of this case. It is his submission that the scrapping of the Plaintiff's decoder is therefore a fundamental breach of contract by the Defendant which constitutes reasonable cause of action. Counsel contends that the Plaintiff has reasonable cause of action against the Defendant.

In determining the instant issue, the law is trite that cause of action is the facts which give a person a right to judicial relief. It is the interest and circumstances giving right to an enforceable claim. The term also includes all things which are necessary to give a right of action and every material fact which has to be proved to entitle the plaintiff to succeed or entitles him to the relief he claims. See the cases of ***IKECHUKWU OKPOKIRI V. VINCENT NWOGWUGWU & ANOR (2014) LPELR-22497(CA)*** and ***UWAZURUONYE V. THE GOVERNOR OF IMO STATE & ORS (2012) LPELR-20604(SC)***. A reasonable cause of action on the other hand is a cause of action which, when only the allegation in the statement of claim or originating process are considered, has some chances of success. See ***UWAZURUONYE V. THE GOVERNOR OF IMO STATE & ORS (supra)***.

A cause of action is determined by reference to the plaintiff's originating processes (writ of summons, statement of claim, originating summons and affidavit in support thereof etc). The immediate materials a court should look at in determining cause of action in any given case are therefore the averments in such originating processes. See the cases of ***HON. GOODLUCK NANA OPIA V. INDEPENDENT NATIONAL ELECTORAL COMMISSION & ANOR (2014) LPELR-22185(SC)***, ***ABUBAKAR V. BEBEJI OIL & ALLIED PRODUCTS LTD & ORS. (2007) 18 NWLR (PT. 1066) P. 319*** and ***OGUNDIPE V. NDIC (2009) 1 NWLR (PT. 1123) P. 473***.

This appears to be the problem with the Defendant's Counsel's submissions of lack of reasonable cause of action. The facts relied on by the Defendant's Counsel are not borne out by the Plaintiff's originating processes in this case i.e. her affidavit in support of her originating summons. The allegation of fact that

the Plaintiff did not subscribe or that the Federal Government has a policy is contained in the Defendant's counter affidavit. This Court is however not obliged to consider the Defendant's counter affidavit in determining the issue of the Plaintiff's cause of action in this suit.

Now I have looked at the Plaintiff's affidavit in support of her originating summons, which is the only process this Court is obliged to consider in determining the Plaintiff's cause of action. The Plaintiff's allegation is simple. She bought a decoder from the Defendant for the purpose of accessing the Defendant's TV services. The Plaintiff's decoder however stopped working and she later discovered that the Defendant had scrapped it. The Plaintiff's grouse is that the Defendant unilaterally scrapped her decoder without her consent or notifying her or replacing same but was compelling her to purchase another decoder from it. The Plaintiff alleges that this is breach of contract. On these allegations alone, the Plaintiff has a possibility of success in her cause of action if the defence were not to be considered. Thus, by the averments in the affidavits of the Plaintiff in support of originating summons especially paragraphs 3-8 of the affidavit, the facts avers by the Plaintiff therein, I hold the view that the Plaintiff has disclose a reasonable cause of action in this suit and I so hold. The first issue is therefore resolved in favour of the Plaintiff and against the Defendant.

Having resolved the first issue in favour of the Plaintiff that bothers on jurisdiction, I shall now proceed to consider the merit of the instant case by addressing the second issue for determination thus:-

"Whether, from the totality of the facts of this case as presented by both the Plaintiff and the Defendant, there is breach of any contract with the Plaintiff"

The Plaintiff's case against the Defendant is presented by her affidavit in support which she personally deposed to. Her case essentially is that the Defendant-company is a TV Network

service provider from whom she bought StarTimes Decoder Star5000T Model with Smart Card No. 02110023621. A copy of the said Smartcard is attached to her affidavit in support marked as Exhibit A. That at the time of obtaining the decoder, there was no agreement between herself and the Defendant that the decoder shall expire by 2017 or a condition that the Decoder will be scrapped unilaterally. The Plaintiff avers that many other Nigerians also bought similar models of the Decoder and she (Plaintiff) had been enjoying the Defendant's services, upon subscription, without any interruptions for more than three years. That she however switched on her decoder sometime in January 2018 to discover that it had stopped working. The Plaintiff visited the Defendant's office outlet at Karu, Abuja to lodge a complaint where she was informed by the Defendant's Customer Service Officer that the decoder had been scrapped and the Plaintiff should pay for another one at a cost of N3,600.00. The Plaintiff was also given a flier to that effect, a copy of which is attached as Exhibit B to the Plaintiff's affidavit. It is the Plaintiff's averment that the Defendant failed to put her on notice of its intention to scrap her decoder, let alone obtain her mutual consent to do so. The Plaintiff says that the condition unilaterally imposed on her to pay for another decoder is unacceptable to her. That the Defendant's act has denied her of her viewing pleasure and her contractual right. That the decoders of many other customers/subscribers were scrapped under similar circumstances and suffered the same fate. That DSTV, which renders substitute services, once recalled its decoders from customers/subscribers and replaced same with new decoders free of charge. She averred that she engaged the services of Counsel, Malachy C. Nwaekpe of M.C. Nwaekpe & Associates to write to the Defendant requesting immediate reactivation or replacement of her Decoder and Smartcard, but the Defendant failed to do so. Exhibit C is a copy of the Plaintiff's Counsel's letter dated 15th January, 2018. It is the Plaintiff's averment that she paid her Counsel the sum of N500,000 as professional fees for prosecuting this suit. Exhibit D is a copy of payment receipt dated 18th January, 2018.

On the otherhand, byits Counter Affidavit deposed to by one EbiOgola, the Defendant's Abuja Operations Manager, the Defendant admits registering the decoder in the Plaintiff's name. The Defendant however denied the Plaintiff's claim against it. The Defendant avers that the Plaintiff stopped being its customer since 10th August,2017 when she abandoned and exited the Defendant's Network/broadcast service. Exhibits STV1 and STV2 were attached in support of the said averments. It is the Defendant's averment that its products and services are subject to industry regulations, adapted terms and conditions as well as international best practices which are public knowledge. That customers are usually notified at point of sale/service and through product manuals, fliers, handbills etc. That sometime in 2015, the Federal Government of Nigeria (FGN), through the Nigerian Broadcasting Commission (NBC) began to pursue its National Digital Switch-over policy with greater intensity, the sole purpose of which is changing broadcast pattern in Nigeria from analog to digital. That this necessitated a regulatory directive to broadcast license holders/operators to migrate their broadcast technology from T1 to T2, which directive the Defendant complied with in stages and notified its customers. That in implementing the Defendant's policy of T1 to T2 migration, existing/active subscribers on the Defendant's network are not denied their subscription. The Defendant avers that the Plaintiff had terminated her subscription and could not be expected to be connected to the Defendant's network. That the T1 broadcast service of customers in Karu area of the FCT was still active as at the time the Plaintiff purported to have been disconnected from the Defendant's network. That the Defendant conducts its business in accordance with extant laws, regulations and updated terms and conditions.

In response to the counter affidavit of the Defendant, in her Further Affidavit, the Plaintiff avers that she never terminated her contract with the Defendant. That she never ceased being the Defendant's customer and not subscribing for some months does not mean she ceases to be a customer. It is her further averment that Exhibits STV1 and STV2 to the Defendant's

affidavit do not reflect her true subscription status. That each subscriber is entitled to three free Channels which the Plaintiff enjoys even when her subscription had expired. That the only flier given to her by the Defendant was when she complained to it. The Plaintiff avers that the Defendant has been a digital broadcast service provider from its inception and has at no time rendered analogue services. She said it is common knowledge that any network provider that uses decoder is a digital broadcast network provider.

Arguing his issues for determination in his written address, learned Counsel to the Plaintiff submitted that there is a binding contract between the Plaintiff (as subscriber) and the Defendant (as TV Network Service Provider) from the act of purchasing the decoder with the smartcard with the Defendant rendering television network services upon subscription. Counsel posits that there is agreed reciprocal legal obligation as well as mutuality of intention and purpose. He relied on the cases of ***ORIENT BANK (NIG) PLC V. BILANTE INT'L LTD (1997) 8 NWLR (PT. 515) P. 76*** and a host of other cases. Counsel further argued that the Defendant cannot unilaterally resile from its contractual obligation to the Plaintiff by scrapping her decoder or causing it not to function within the subsistence of their agreement. He submitted that although a Court cannot form contracts for parties, it can imply some terms into the contract. He thus submitted that there is an implied condition that the Defendant cannot, *suomotu*, scrap the Plaintiff's decoder or cause it not to function without the Plaintiff's consent. On whether the Defendant can demand the payment of a certain amount before replacing the Plaintiff's scrapped TV Decoder and smartcard, Counsel submitted that such conduct amounts to novation or substitution of an existing contract with a new one. He posited that for the novation to be valid, it must be done by mutual agreement and not by presumption or imposition by either party. It is his position that having not obtained the mutual consent of the Plaintiff and other subscribers, the Defendant cannot be *ad idem* with the Plaintiff. He submitted therefore that the Defendant's request that the Plaintiff should pay additional money for a new decoder is

wrong, illegal, null and void. He finally urged this Court to resolve all issues in favour of the Plaintiff and grant her reliefs as prayed.

The Defendant's Counsel, for his part, argued in his written address that the Plaintiff has displayed limited knowledge of the broadcast industry in Nigeria. He submitted that the Plaintiff and the Defendant maintain a form of rolling contract relationship whereby upon subscription you are given access to view the Defendant's channels and upon failure to subscribe, the contract is determined (although renewable). He contended that pursuant to conditions imposed by the Federal Government of Nigeria (FGN) through its National Broadcasting Commission (NBC), the Defendant rolled out Exhibit B attached to the Plaintiff's affidavit in support. Relying on Exhibits STV1 and STV2 attached to the Defendant's Counter Affidavit, it is Counsel's submission that having not subscribed to the Defendant's network, the Plaintiff cannot claim to be in active contract with the Defendant and therefore cannot claim the reliefs in this suit. He contended that it is immoral for the Plaintiff who had abandoned the Defendant's network for months to suddenly wake up to file a suit to use this Court to rip off the Defendant. It is his submission that part of the terms and conditions ingrained in the relationship of the parties is that the Defendant can adjust content of their broadcast with or without notice to subscribers. Counsel submitted that the Defendant reserves the right to conduct its affairs in the best suitable way, so far as it is not in breach of any extant regulation, and cannot be compelled to do its business the way its competitors do or the way the Plaintiff wants.

Replying to the Defendant's address, Counsel to the Plaintiff submitted in his additional address that the Defendant woefully failed to show any stipulation to the effect that failure of a customer to subscribe monthly terminates the contract. He posited that failure to subscribe does not warrant scrapping the Plaintiff's decoder which she bought from the Defendant. He submitted that the Defendant's Counter affidavit shows that it

has been a digital TV service provider ab initio and its averment therein that there was transition from analogue to digital broadcast is contradictory and must be rejected by the Court.

To now resolve the contending issues in the instant suit, the Plaintiff seeks reliefs the effect of which is declaration of the existence of a contract between the Plaintiff and the Defendant, declaration of breach thereof by the Defendant and damages for the said breach of contract.

It is trite law that a party whose claim is based on contractual rights should plead and prove the contract, the term which gave the right or created the obligation and what constituted the breach. – see the cases of **S.P.D.C.N. LTD. V. NWAUKA (2003) 6 NWLR (PT.815) P. 184** and **KLM ROYAL DUTCH AIRLINES V. IDEHEN (2017) LPELR-43575(CA)**. Further, a party who seeks declaratory reliefs must adduce credible evidence in proof thereof. See **HAJIYA LAMI MUSA V BASHIRU AHMED, (2018) LPELR 44247 (CA), ANYARU V MANDILAS LTD (2007)4SCNJ 288.**

In the instant case, it does not appear to be in dispute that the Plaintiff herein purchased the Defendant's decoder and smartcard for the purpose of accessing the Defendant's Television Network Broadcast services. The Plaintiff thus purchased the necessary hardware equipment to access the Defendant's services. It is however not in dispute that subscription was necessary to be able to enjoy the Defendant's services. The Plaintiff avers in paragraph 5 of her affidavit in support as follows:-

5. That I had been enjoying the Defendant's services upon subscription without any interruptions for more than three years.

From the affidavits before this Court, it appears that it is not also in dispute that the Plaintiff had originally subscribed to the Defendant's services. It therefore follows, that a contractual

relationship was created between the Plaintiff and the Defendant whereby, upon subscription by the Plaintiff, the Defendant was obliged to provide the Plaintiff with access to its broadcast services. It is therefore clear that a contractual relationship was formed between the Plaintiff and the Defendant.

In a contractual relationship of this nature (as was formed between the Plaintiff and the Defendant), mere purchase or possession of the necessary equipment does not entitle the Plaintiff to access the Defendant's services. An implied condition is subscription. It is in the event that the Defendant fails to provide the required services upon purchase of the necessary equipment and valid subscription that a breach of contract occurs.

In the instant suit, one of the issues raised in the Defendant's defence is that the Plaintiff did not have a valid subscription as at the time she complained of not being able to access the Defendant's services. The Defendant produced Exhibits STV1 and STV2. It is the Defendant's defence that the Plaintiff therefore cannot complain that she cannot access the Defendant's broadcast services as she does not have a valid subscription thereto. In the case of **AIRTEL NETWORKS LTD V IMERM, (2017) LPELR 43459**, the Court of Appeal held thus:-

"The Defendant owed the Plaintiff a duty of care in respect of the use of the network. When the Defendant barred the Plaintiff's line on 4th January, 2011, it acted in a breach of their duty of care. It was clearly an act of negligence for the Defendant to deprive the Plaintiff of the use of the line when the Plaintiff had duly subscribed and paid on the credit. This amounted to a breach of the Defendant's obligation to the Plaintiff."

As I said earlier the payment of subscription is what constitute an implied contract between the Plaintiff and the Defendant. see paragraph 7 of the counter affidavit of the Defendant and

paragraphs 3 and 4 of the further affidavit of the Plaintiff admitting none subscription for some months.

The Plaintiff in her affidavit avers to facts that she discovered that her decoder stopped working in January, 2018 and, upon enquiries at the Defendant's office she was informed that her decoder had been scrapped. She was thereat further given Exhibit B to that effect. Exhibit B is the Defendant's flier. The Plaintiff's case is that the Defendant does not have the right to scrap her decoder without notice to her or her mutual consent.

I believe this has gone beyond the matter of simple subscription to access the Defendant's broadcast services. The issue is the hardware equipment itself (decoder) which the Plaintiff requires to be able to access the Defendant's broadcast services. If the equipment is not working, subscription may not be the paramount consideration in such circumstances. Without functioning equipment, valid subscription may amount to naught.

Now the explanation which the Plaintiff said she was given by the Defendant's staff for the non-functioning of her decoder is that it had been scrapped and she was given Exhibit B. Although the Defendant denied most of the Plaintiff's allegations, the Defendant's Counsel did rely on Exhibit B in his written address.

I have looked at Exhibit B. It is a flier published by the Defendant. By Exhibit B, the Defendant gave notice that old decoders (T1 decoders) will stop receiving the Defendant's signal on 10th December, 2017. The advantages of the Defendant's new T2 decoder over the old T1 decoder are given in Exhibit B as follows:-

- Better signal coverage
- More Channels
- Better signal & sound quality
- Access to HD channels – HD channels on StarTimes DTT
- More content – New content & sports channels

In its Counter affidavit, the Defendant further explained that the migration from its old T1 decoder to the new T2 decoder was influenced by the FGN's National Digital Switch-over policy of changing broadcast pattern in Nigeria from analogue to digital.

In this respect the learned Counsel to the Plaintiff referred me to paragraphs 1 and 11 of the counter affidavit of the Defendant and submitted that there is contradiction in the affidavit evidence of the Defendant. He contended that the Defendant's averment in paragraph 1 of its Counter-Affidavit contradicts paragraph 11 of the same Counter-Affidavit.

In the case of **DAGAYYA V. STATE (2006) LPELR-912(SC)**, the Supreme Court held per Tobi JSC (of blessed memory) as follows:-

"A contradictory statement is a statement which states the opposite of what is being contradicted. A contradictory statement is an affirmation of the contrary of what was earlier stated or spoken. For a statement to be contradictory, it should be a direct opposite of what was earlier stated or spoken."

In paragraph 1 of its counter-affidavit, the Defendant averred thus:-

"1. That the Defendant is a licensed digital and terrestrial television broadcast outfit in Nigeria that operates within the law."

In paragraph 11 of the same counter-affidavit, the Defendant averred:-

"11. That sometime in around 2015, the Federal Government of Nigeria through Nigeria Broadcasting Commission (NBC) began to pursue its National Digital Switch-over policy with greater intensity (with

the sole purpose and objective of changing broadcast pattern in Nigeria from analog to digital) and this necessitated a regulatory directive to broadcast license holders/operators to migrate their broadcast technology from T1 to T2, Defendant in compliance began this process in phases and duly and sufficiently notifying its customers through all communication channels.”

I have read both statements and I cannot come to the conclusion that they are direct opposites of each other. They are not contradictory as wont to be argued by learned Counsel to the Plaintiff. The mere fact that the Defendant has said it is a digital and terrestrial television broadcast outfit does not directly contradict its statement that its T1 to T2 decoder migration was in compliance with the Federal Government’s policy to change broadcast pattern from analog to digital. Even if it is, is it material enough to further the Plaintiff’s case in this matter? I think not. – see the case of **DAGAYYA V. STATE (supra)** where the Supreme Court held that if a contradiction is immaterial, it will not be of any assistance to the party raising it. Thus, therefore I hold the view that paragraphs 1 and 11 are not opposite of each other and not fundamental and I so hold. The seeming objection or submission of the Plaintiff’s Counsel is misconceived and it is accordingly discountenanced.

Now from the nature of the industry in which the Defendant carries on business (i.e. broadcasting industry) and the nature of services the Defendant provides (i.e. digital terrestrial television service), judicial notice must be taken of the fact that the Defendant would need to upgrade its systems from time to time to improve on its said services to the Plaintiff and its other subscribers. Naturally, an upgrade of the Defendant’s equipment including its decoders may be necessary from time to time. It would therefore be absurd to say that the Defendant cannot upgrade its decoders. The law is that the service providers can upgrade or migrate for improved services but must inform and sensitize its subscribers for such migration. See **AIRTEL NETWORKS LTD V IMERH (supra)**

The Plaintiff's complaint is that the Defendant caused her decoder to stop functioning without her mutual consent or notice.

Again, from the nature of the relationship of the Plaintiff and the Defendant and other subscribers/customers, it would indeed be absurd to say that the Defendant needs to obtain their consent before it can upgrade its equipment and decoders. How exactly is the Defendant expected to obtain the consent of each of its customers? Certainly consent of subscribers or customers inclusive of the Plaintiff such a term is not or cannot be implied into the Contract between the Plaintiff and the Defendant. What can be implied in law is an obligation on the Defendant to give its customers/subscribers notice of such upgrade as it affects them. See **AIRTEL NETWORKS LTD V IMERM (supra)**

The Defendant in this case says it usually notifies its customers of its products and services at point of sale/service as well as through product manual, fliers, hand-bills, etc. That it duly and sufficiently notified its customers of its T1 to T2 decoder migration through all communication channels. See paragraphs 10, 11 and 14 of the Defendant's counter-affidavit.

The Plaintiff did say that she was given Exhibit B by the Defendant's staff when she went to complain that her decoder was not working. As I said earlier, by Exhibit B, the Defendant gave notice that old T1 decoders would stop receiving its signal on 10th December, 2017. The Defendant thus gave notice of its migration from T1 to T2 decoder. The Plaintiff however avers that she did not receive any notice before her decoder was scrapped and only received Exhibit B when she went to complain.

It is relevant to note at this point that the Defendant avers that the Plaintiff stopped her subscription since 10th August, 2017. Exhibits STV1 and STV2 were produced by the Defendant to support this allegation of fact. I have looked carefully at

Exhibits STV1 and STV2. They are documents showing the details, dates and status of the Plaintiff's subscription account with the Defendant. The said exhibits show that the Plaintiff's subscription with the Defendant was not renewed beyond 10th August,2017.

Although the Plaintiff stated in her further affidavit that the said Exhibits STV1 and STV2 do not reflect her true subscription status, she however was unable to state any fact contrary to the information provided in the said documents. She did not say that her subscription never expired at any time or that she renewed same beyond 10th August,2017. It follows therefore that she has not been able to satisfactorily impeach the credibility of Exhibits STV1 and STV2 and therefore this Court can rely on them.

The fact is therefore firmly established that the Plaintiff in this case did not renew her subscription to the Defendant's services beyond 10th August,2017. The Plaintiff was not subscribed to the Defendant's services for months before she discovered her decoder had stopped functioning in January, 2018. It is quite possible(even more than likely in the circumstances) that she missed the Defendant's notices that her decoder would stop receiving the Defendant's signal by 10th December,2017 and requesting her to approach the Defendant for a swap of decoders. It was after this date (and when her decoder had stopped receiving signal) that she went to the Defendant's office to complain and got the notice vide Exhibit B. The fact also remains that the Defendant gave notice vide Exhibit B due to the failure of the Plaintiff to subscribe to the Defendant's services for months before the Defendant's migration from its old T1 to new T2 decoders took effect and hence I hold the view that the Defendant cannot be penalised or punished for the Plaintiff receiving the notice a little late and I so hold.

Having found that the Defendant can upgrade its equipment by causing a migration from its old T1 to new T2 decoders, and having also found that the Defendant gave notice of this to its

customers (including the Plaintiff), the next issue to determine is whether the Defendant can lawfully charge a fee from the Plaintiff to purchase its new T2 decoders. This is another complaint raised by the Plaintiff in the instant case.

It doesn't appear to be in dispute that the Plaintiff was asked by the Defendant to replace her old decoder with the new T2 decoder. Exhibit B which was given to the Plaintiff by the Defendant is a confirmation of this fact. Paragraph 7 of Exhibit B (under the heading:- Frequently Asked Questions " FAQs) states as follows:-

7. How much would I pay for a swap?

All you need to do is visit any of our business halls or designated dealer outlets in your location with your existing decoder and smart card and recharge as follows:-

- N2,600 – 1 month Classic Bouquet viewing
- N1,000 – SD Decoder

Exhibit B is very clear. From the above, the Defendant's customers are expected to pay for a subscription fee, which by the nature of the contractual relationship between the Defendant and its customers (Plaintiff inclusive) is a condition precedent to accessing the Defendant's services. I have mentioned this earlier. From Exhibit B, the subscription fee is N2,600.00 for a month. The actual cost to the Defendant's customers for the replacement of their old T1 decoder with the new T2 decoder is N1,000.00

I must say categorically that the Plaintiff has not directed this Honourable Court's attention to any provision of the law or term (whether express or implied) under the contractual relationship between the Defendant and its customers that prevents the Defendant from charging a fee for replacing old decoders of its existing customers with new ones. There is actually nothing under the law or that can be implied from the Defendant's relationship with its customers (Plaintiff included) that prevents the Defendant from charging a token fee for replacing old T1

decoders of its existing customers. From the affidavits of the parties in this suit, it is clear that the Defendant is a private business concern. It is a notorious fact that such business concerns are set up with the objective of making profit. While nothing stops the Defendant from exchanging with its customers' old decoders with newer models for free, it would be oppressive to say that the Defendant must do this and bear the total cost of the newer models.

In order for this Court to say that the Defendant cannot charge the amount it is charging for the swap of its decoders, the Plaintiff should be able to show that the cost of production of these new decoders or their open market value is so low that the Defendant's conduct is fraudulent or at least unfair. The Plaintiff has not shown this and failed to lead evidence by her affidavit to that effect.

As clearly stated in Exhibit B, the new T2 decoder comes with a number of improvements and advantages to the benefit of the Defendant's customers (Plaintiff included). Thus I hold the view that N1,000.00 cost to the Plaintiff and other customers of the Defendant for swapping their old T1 decoders with the better and improved T2 decoders has not been shown to be unfairly oppressive in the circumstances and the Defendant has not been shown to be culpable of fraud or unfair dealing in the instant case and I so hold.

Thus, having properly examined the questions raised in the originating summons and the affidavit evidence in support, the questions raised by the Plaintiff are hereby answered as follows:-

- (1) On the first question, I agree that the relationship between the Plaintiff with the Defendant is contractual in so far as the Plaintiff purchased the Defendant's decoder and smartcard and is willing to subscribe to the Defendant's services.
- (2) On the second question, it is answered in the affirmative that the Defendant can (for good reason) cause the Plaintiff's decoder (and that of other subscribers) to stop

functioning without her consent but with notice which the Defendant in this case gave notice. See **AIRTEL NETWORKS LTD B IMERM (supra)**.

- (3) The third question is answered in the affirmative that the Defendant can without the Plaintiff's consent or its customers/subscribers, request the payment of a certain amount for replacing her scrapped decoder in the peculiar circumstances of this case.

Now that I have answered the questions raised by the Plaintiff, the Plaintiff alleged breach of contract against the Defendant in this case. And without ado, the law is trite that a breach of Contract means that the party in breach has acted contrary to the terms of the contract by performing the contract negligently and not in accordance with its terms. See **CAMEROON AIRLINES V OTUTUIZU (2011) LPELR 827(SC)**.

The Plaintiff in this case has failed to establish any breach of the contractual obligations owed to her by the Defendant under the contractual relationship of digital terrestrial television service.

Thus, although the Plaintiff is entitled to the first relief of the originating summons, that is a declaration that a contractual relationship exists between parties in the instant case, the Plaintiff however has failed to show any wrong doing on the part of the Defendant to entitle her to the other relief's i.e reliefs B-F of the originating summons. This is because the law is firmly established that a party who seeks a relief from the Court must prove by evidence such entitled relief he or she claims otherwise the claim would be dismissed. See **UNIJOS V IKEGWUOHA, (2013) 9 NWLR (pt1360) p. 478**.

Accordingly, the Plaintiff having failed to adduce evidence inprove of her entitlements, reliefs B-F are hereby dismissed. Hence, the issue for determination is hereby resolved in favour of the Defendant and against the Plaintiff.

That is the judgment of this Honourable Court.

HON. JUSTICE D.Z. SENCHI
(PRESIDING JUDGE)
17/11/2020

Parties:- Absent.

Gabriel Egharevba:- For the Plaintiff

Donald Ayibiowu:- For the Defendant.

Sign
Judge
17/11/2020