

IN THE HIGH COURT OF FEDERAL CAPITAL TERRITORY
HOLDEN AT ABUJA
ON MONDAY 19TH DAY OF OCTOBER 2020
BEFORE HIS LORDSHIP: HON JUSTICE O. A. ADENIYI
SITTING AT COURT NO. 13 APO – ABUJA

SUIT NO: /CV/491/19

BETWEEN:

INNOCENT EZEUGO }
(*Suing under the name and style* } CLAIMANT
(*of Nkem Ezeugo & Associates*) }

AND

MR. EJIOFOR OKE DEFENDANT

JUDGMENT

The Claimant, a legal practitioner, sometime in September, 2018, entered into a yearly retainership agreement with the Defendant, a property agent, to provide professional legal services for the Defendant, at an annual retainership fee of

₦500,000.00 (Five Hundred Thousand Naira) only.

It turned out that within the said retainership year, the Claimant undertook a number of legal services for the Defendant, which included writing of letters and accompanying the Defendant to respond to invitations by the Police, *inter alia*; but that the Defendant was only able to pay the Claimant a total of **₦200,000.00 (Two Hundred Thousand Naira)** only, out of the agreed retainership fees.

After his efforts at getting the Defendant to pay the balance of the retainership fees for the 2018/2019 year was fruitless, the Claimant commenced the instant action, *vide* Writ of Summons and Statement of Claim filed on 02/12/2019, wherein he claimed against the Defendant, the reliefs set out as follows:

- 1. An order directing the Defendant to pay to the Claimant the sum of Three Hundred and Fifteen Thousand Naira, only being outstanding balance for***

the legal services rendered to the Defendant by the Claimant under the retainership agreement.

2. Damages in the sum of Twelve Million Naira (N12,000,000.00) only.

It is borne by the records of the Court that the Defendant was duly served with the originating processes in this suit; together with the Hearing Notice for the scheduled hearing date, but had opted not to enter appearance to the action or file any processes in defence thereof.

Nevertheless, the matter proceeded to trial. The Claimant testified in person in proof of his claim. He adopted his witness statement on oath, deposed to on 02/12/2019, as his evidence – in – chief. He further tendered four (4) documents in evidence as exhibits; and in the absence of the Defendant to subject the Claimant to any cross-examination, he

was accordingly discharged and he thereon closed his case.

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

Expectedly, only the Claimant filed a written address. In the said address filed on 02/09/2020, by **Ken Obi Duruzo, Esq.**, of counsel for the Claimant, two issues were framed for determination in this suit, namely:

- 1. Whether the Claimant has been able to establish and prove his case to warrant judgment given in his favour.*
- 2. Whether the refusal of the defendant to attend Court, despite knowledge of the matter amount to denial of fair hearing/trial.*

I shall proceed to determine the two issues together; and in doing so, I had carefully considered the arguments canvassed by the Claimant's learned counsel in his final address; and whenever it is considered necessary in the course of this Judgment, I shall make specific reference to his submissions.

As a preliminary point, it is pertinent to consider the legal implication of the failure of the Defendant to join issues with the Claimant upon his claim, by neither entering an appearance to the suit nor filing a defence thereto.

The position of the law is well settled that where an adversary fails to adduce evidence to be placed on the other side of the imaginary scale of justice in an action, minimum legally admissible evidence adduced by the other side will suffice to prove his case. Thus, where a Defendant, as in the instant case, refused to adduce any evidence in his defence, the trial Court is

entitled to proceed to find for the Claimant, in the event that the evidence adduced by him has satisfactorily established his claim as endorsed. See Newbreed Organization Limited Vs. Erhomosele [2006] 5 NWLR (Pt. 974) 499; NEPA Vs. Inemech [2002] 11 NWLR (Pt. 778) 397; Malle Vs. Abubakar [2007] All FWLR (Pt. 360) 1569.

Proceeding on the footing of this legal principle therefore, the task the Court is now to undertake an examination of the evidence on record as adduced by the Claimant; and the law applicable thereto, in order to determine whether or not such evidence has satisfied the requirement of proof imposed by the provisions of **sections 131** and **132** of the **Evidence Act** (as amended), to substantiate his claim as endorsed.

TREATMENT OF ISSUES

The Claimant's case is predicated on the retainership agreement executed between him and the Defendant on 25/09/2018, which he tendered in evidence as **Exhibit C1**. By **Exhibit C1**, the Defendant retained the professional legal services of the Claimant's law firm for a period of one year, upon terms expressed in the agreement. As agreed to by both parties, the Defendant shall pay the Claimant the sum of **₱500,000.00** for the duration of the retainer, excluding transport expenses and filing fees for Court processes.

The long and short of the Claimant's testimony is that he undertook some legal services for the Defendant, principally by writing legal letters on his behalf and accompanying him to Police Stations to respond to Police invitations. The Claimant tendered in evidence as **Exhibit C2**, one of such letters he wrote on behalf of the Defendant to one **Ahmed Maidawa, Esq.** of

Wadata Chambers, in response to a claim for the refund of **₦22,000,000.00** made against the Defendant.

According to the Claimant, the Defendant failed to adhere to the agreed timelines for payment to him of the agreed retainership fee; hence he had to write to him reminder letter contained in **Exhibit C3** written to the Defendant on 22/10/2018.

The Claimant further testified that the Defendant eventually paid to him a total of **₦200,000.00 (Two Hundred Thousand Naira)** only, leaving a balance of the sum of **₦300,000.00** unpaid. The Claimant further testified that the Defendant failed to pay him the sum of **₦15,000.00** representing transport costs owed him for accompanying the Defendant to the office of the Police Special Anti Robbery Squad, (SARS) office on 13/11/2018 and to the Police AIG Zonal Office at Wuse Zone 7, Abuja.

The Claimant further testified that he continued to render legal services to the Defendant for the duration of the retainership year, the last assignment being on 26/09/2019, when he accompanied the Defendant to the Police Command office.

He testified that the Defendant has refused to pay the outstanding balance of ~~N~~**315,000.00**, hence the instant legal action to recover the sum.

The position of the law is well settled that parties are bound by the terms of their agreement and the duty of the Court is to give effect to such an agreement. See S. P. D. C. (Nigeria) Limited Vs. Emehuru [2007] 5 NWLR (Pt. 1027) 347; Fagge Vs. Tukur [2007] All FWLR (Pt. 387) 880.

I had carefully examined the retainership agreement, **Exhibit C1**. It contains the elements of an enforceable contract and there is nothing in its face

that renders it incredible or illegal. As such, the Court must and I hereby give legal effect and force to it.

Evidence on record is further that the Claimant rendered legal services expected of him in accordance with **Exhibit C1** but the Defendant on his part failed to abide in full by his obligations to the Claimant under the agreement.

I am therefore satisfied that the Claimant, by the uncontroverted and credible evidence led on the record, is entitled to relief (1) of his claim.

The Claimant has also claimed the sum of **₦12,000,000.00 (Twelve Million Naira)** only as damages for breach of contract. In *Stabilini Visioni Ltd. Vs. Metalum Ltd.* [2008] 9 NWLR (Pt. 1092) 416 @ 433-434, the Court of Appeal, per **Mshelia, JCA**, held, *inter alia*, as follows:

“In a situation arising from commercial matters, I should think that a party holding on to the funds of

another for so long without justification, ought to pay him compensation for so doing.”

The evidence on record established that the Claimant had earned his retainership fees since April, 2019, according to the retainership agreement, **Exhibit C1**. The Claimant also testified of his efforts to get the Defendant to pay the fees as at when due, including writing letters, **Exhibit C3** and **C4** respectively to him.

On these grounds, I hold that the Claimant is rightly entitled to compensation in the form of general damages as a result of the Defendant’s act in holding on to fees the Claimant earned which constrained him to take out this action to recover the same.

I am equally satisfied that the Claimant is entitled to post-judgment interest on the liquidated debt, even though it is not claimed for, by virtue of the provision of **Order 39 Rule 4** of the **Rules** of this Court.

In the final analysis, I resolve the issues set out for determination by the Claimant's learned counsel in favour of the Claimant. Accordingly, judgment is hereby entered in favour of the Claimant against the Defendant on terms set out as follows:

- 1. The Defendant shall pay the Claimant the sum of ₦315,000.00 (Three Hundred and Fifteen Thousand Naira) only, being balance of retainership fees for legal services rendered by the Claimant for the Defendant under the retainership agreement executed by the two parties.**
- 2. The Defendant shall further pay the Claimant the sum of ₦1,000,000.00 (One Million Naira) only as damages for breach of contract.**
- 3. Interest on the liquidated sum in (1) above shall be paid by the Defendant to the Claimant**

at the rate of 10% per annum from the date of this judgment until the same is finally liquidated.

- 4. I award costs of the action, in the sum of ₦100,000.00 (One Hundred Thousand Naira) only, in favour of the Claimant against the Defendant.*

OLUKAYODE A. ADENIYI
(Hon. Judge)
19/10/2020

Legal Representation:

K. O. Duruzo, Esq. – for the Claimant

Defendant unrepresented by counsel