

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

(APPEAL DIVISION)

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT MAITAMA

BEFORE THEIR LORDSHIPS:

HON. JUSTICE Y. HALILU - PRESIDING

HON. JUSTICE A.O EBONG - MEMBER

APPEAL NO.:CVA/358/2018

SUIT NO. CV/74/2017

BETWEEN:

1. SLEEK TRAVELS & TOURS LTD }..APPELLANTS
2. MR. STEVEN ONUOHA }..

AND

A.B.I AIR TRAVELS LTD RESPONDENT

JUDGMENT

This is an Appeal against the monetary judgment of the Senior District Court 1 of the Federal Capital Territory, holden at Dutse, Abuja, Coram Ahmed Yusuf Ubangari delivered on 12th November, 2018.

The Respondent as Plaintiff in the lower court by way of plaint filed suit No. CV/74/2017 in which it claimed against the Appellants, jointly and severally the following reliefs;

- a. The sum of N557,944 only as balance of the cost of air tickets which the Appellant's owed the Respondent arising from contractual obligation between parties, they both being air travel agents.
- b. The sum of N500,000.00 as damages and

c. The sum of N200,000.00 as cost of action.

It is worthy to note that the parties opted for amicable settlement of the case before the Lower Court but settlement failed.

On the 26th September, 2018 the Respondent applied for judgment in the matter in the absence of the Appellants and their counsel and Judgment was entered for the Respondent on the 12th November, 2018.

The Appellant being dissatisfied with the decision of the lower court filed an appeal to this Honourable Court and raised the following grounds of Appeal;

Ground 1; that the Learned Magistrate erred in law for entering Judgment against the Appellant in a case where no trial was conducted and which no evidence was led in proof of the claim by the Respondent.

Grounds 2; the learned trial Magistrate erred in law for granting damages against the Appellant when the Respondent never proved any case before the court.

The Appellant sought for an Order of this Honourable Court allowing the Appeal and Judgment delivered by his worship Ahmed Yusuf Ubangari of the senior Magistrate Court of the FCT, Abuja dated the 12th November, 2018 in suit No. CV/174/2017 be set aside.

Two issues were formulated for determination to wit by the Appellant, to wit;

1. Whether the trial court was right in law to enter judgment against the Appellant in a case the Respondent never led evidence or proved before the court.

2. Whether the trial Magistrate was right in law to award damages and cost of action against the Appellant in this case.

On issue one, whether the trial court was right in law to enter judgment against the Appellant in a case the Respondent never led evidence or proved before the court.

Learned counsel contended that the trial court erred in law for letting itself to be Cajoled by the Respondent into entering Judgment when obviously the Respondent never led any evidence in prove of their claim before the court.

Learned counsel argued further that at page 47 of the record of Appeal containing the said Judgment which the judge held as thus;that based on the submissions of the Plaintiff counsel's oral

submission for Judgment in terms of their plaint, made on the 26th day of September, 2018 is hereby adopted. The Plaintiff submission for Judgment is hereby upheld and Judgment is entered in favour of the Plaintiff and against the Defendant, where settlement failed, the proper things to do is for the Plaintiff to prove its case and not to enter Judgment.

Learned counsel cited the case of ***DAVIDSON OPARAJI VS JOHNSON OHIHA (2012) 4 NWLR (Pt. 1290) page 273***, where it was held that “*where a Defendant abandons a claim or counter claim by not adducing evidence on it, the appropriate Order a Court should make is not one of striking out but an Order dismissing it*”

Counsel maintained that, pleading is not evidence, therefore, any pleadings not supported by evidence is

deemed abandoned and liable to be struck out.
***BALOGUN VS AMUBIKAHUN (1988) 3 NWLR
(Pt. 80) at 66.***

It is further the argument of counsel that, there was never a time Appellant admitted the claim of the Respondent and that even if the Appellant paid N250,000.00 in the cause of the proceeding, it does not amount to admitting the entire claim. Court was urged to resolve issue 1 against the Respondent.

On issue two, whether the trial Magistrate was right in law to award damages and cost of action against the Appellant in this case, learned Appellant's counsel argued the fact that you cannot put something on nothing and expect it to stand and that the Respondent never proved any case before the lower court to warrant the said judgment, and that

this court owe a duty to do substantive justice to all persons and not dwell on technicalities *INAKOJU VS ADELEKE (2007) ALL FWLR (Pt. 353) page 119 – 120*. Court was finally urged to allow the appeal.

Upon service, the Respondent filed its brief of argument and adopted the two issues formulated by the Appellants.

On issue one (whether the trial court was right in law to enter judgment against the Appellant in a case the Respondent never led evidence or proved before the court).

It is the argument of the learned counsel for the Respondent that the lower court being a court of summary jurisdiction, was right in entering Judgment in favour of the Respondent, without trial,

regard being heard to the fact that the Appellants not only refused to file a statement of Defence, but also admitted the Respondent's claims.

Learned counsel cited Order XXIII, Rules 1 of the District Court rules of Northern Nigeria which provides as thus;

“If on the day of hearing both parties appear, the plaint shall be read to the Defendant, and the District Judge shall require how to make his answer or defence thereto, and, on such defence or answer being made, the District Judge shall immediately record the same and shall, except where the court consider it necessary to order otherwise, proceed in summary way to hear and determine the case

without further pleading or formal joinder of issues.”

Learned counsel contended that there is nothing on record suggesting that the Defendant denied the allegation against him and therefore the court was right in entering the judgment. ***ADELOYE VS OLONA MOTORS NIG.LTD (2002) 8 NWLR (Pt. 769) 445 at 459.***

Learned counsel further argued that admission of the claims of the Respondent can be made in writing, orally or by conduct. ***F.M.H VS COMET SHIPPING AGENCIES LTD (2009) ALL FWLR (Pt. 483) 1260 at 1276.*** Court was urged to resolve issue 1 in favour of Respondent.

On issue two, whether the trial Magistrate was right in law to award damages and cost of action against the Appellant in this case.

Learned counsel argued that Respondent's claim is for general damages which do not need strict proof like special damages. *KOPEK CONSTRUCTION LTD VS EKISOLA (2010) ALL FWLR (Pt. 519) 1035 at 1040 ratio 8*, and that the court was right to have entered Judgment.

Learned counsel urged the court to dismiss this appeal in the interest of justice.

COURT:-We have gone through the brief of Argument as canvassed by the learned counsel for the Appellant and the response by Respondent's counsel in this Appeal. We shall be brief but succinct in addressing the issues raised in this Appeal.

Issue No. 1 formulated by the Appellant for determination in our opinion seem all encompassing. We therefore adopt same as lone issue for determination, to wit;whether the trial court was right in law to enter judgment against the Appellant in a case the Respondent never led evidence or proved before the court.

Indeed, it's a fundamental principle of law that the burden of proof is on a party who alleges and asserts and not the other way.

Section 131 of the Evidence Act 2011 provides that *“whoever desires any court to give judgment as to any legal right or liability dependant on the existence of facts which he asserts, shall prove that those facts exist.”*

Sub section (2) of section 3 provides that *“the burden of proof in a suit or proceedings lies on that person who would fail if no evidence at all were given on either side.”*

Appellant’s grouse is that the lower court did not embark upon full trial of this case before arriving at the judgment.

Whereas it is the contention of the Respondent that the lower court, being a court of summary jurisdiction, was right in entering judgment in favour of the Respondent without trial, regard being had to the fact that the Appellants not only refused to file a statement of Defence, but also admitted the Respondent’s claims.

Learned counsel for the Respondent cited and relied on Order XXIII, Rule 1 of the District court Rules of northern Nigeria which provides as thus;

If on the day of hearing both parties appear, the plaintiff shall be read to the Defendant and the District Judge shall require him to make his answer or defence thereto, and, on such defence or answer being made, the district Judge shall immediately record the same and shall, except where the court considers it necessary to order otherwise, proceed in summary way to hear and determine the case without further pleading or formal joinder of issue.

The question that begs for answer arising from the ensued conundrum is; were the claim of Respondent admitted by Appellant to warrant judgment in favour of the Respondent to this Appeal!

In answering the above poser, we shall look at the record of proceedings before the lower court.

Indeed at pages 30 of the record of proceedings of 31st October, 2017 the following took place;..

Parties are absent. EmekaAliohaEsq. for the Plaintiff.

N.S. Egbaji Esq for the Defendant.

Plaintiff's counsel:- The matter is slated today for report of settlement or hearing. We are constrained to urge the Honourable court to allow us more time to settle. We saw some good intentions from the Defendant to settle. He said he lost his mother.

It's a matter of fact. I called my client this morning and he confirmed that he actually spoke to the Defendant and he got assurance that the Defendant

this morning will be paying in part of the debt. And the discussion the Defendant had personally with me last night. He promised to pay the balance of whatever by the end of next month.

In line with section 26 and 27 of the district court law, I urge the court to allow us this one month up to the 30th of next month in the belief that the Defendant will make good his promise.

Defence counsel – The truth is that parties are exploring moves to settle.

Court – Case adjourned to 30th November, 2017 for report of settlement/hearing.

Similarly at page 32 of the record of Appeal the following was captured;

“Plaintiff counsel, we are still exploring possibilities of settlement and if it pleases the court to oblige us the 27th of September, 2018 to adopt our terms of settlement which we intent to file before then, Defense counsel; that is the position, we are optimistic that by that time, we would have brought this matter to final conclusion, Court case adjourned to the 26th September, 2018 for adoption of terms of settlement.”

Also at page 47 of the Record of Appeal wherein the Judgment appealed against was handed down contained the following:-

“Judgment; based on the submissions of the Plaintiff counsel’s oral submission for Judgment in terms of their plaint, made on the

26th September, 2018 is hereby adopted. The Plaintiff submission for Judgment is hereby upheld and judgment is entered in favour of the Plaintiff and against the Defendant.”

From above revealing proceedings as contained in the record of proceedings of the trial Court, we have no difficulty arriving at the conclusion that no evidence was led in support of the Respondent's claims before the trial court.

The law is that, when a party fails to give evidence in support of its pleadings, he is deemed to have abandoned same, and same liable to be struck - out *YASHE VS UMAR (2003) 13 NWLR (Pt. 838) at 456.*

BALOGUN VS AMUBIKATIUN (1988) 2 NWLR (Pt. 80) at 66.

Indeed, as clearly contained in the record of Appeal at page 32, Appellant was absent in court, yet judgment was given without evidence of any testimony. We are of the opinion that the justice of the case required that the Respondent ought to have led evidence to establish its claim before any decision could have been reached. Any judgment so handed down without such prove by evidence is liable to be set aside, the Appeal before us, inclusive. What the trial judge has done in this appeal amounts to deprivation of fair hearing to the Appellant which is a constitutional right. This appeal succeeds.

Accordingly the Judgment of the lower court be and is hereby set aside. We hereby Order the lower court to hear this matter on its merit.

Hon. Justice Y. Halilu
Presiding Judge
17th December, 2020

Hon. Justice A.O Ebong
Hon. Judge
17th December, 2020

APPEARANCES

N. S EGBAJI – for the Appellants.

EMEKA A. – for the Respondent.