IN THE HIGH COURT OF JUSTICE OF THE F.C.T.

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT KUBWA, ABUJA

ON FRIDAY 11TH DECEMBER, 2020

BEFORE HIS LORDSHIP:HON. JUSTICE K. N.OGBONNAYA

JUDGE

SUIT NO.: FCT/HC/CV/706/16

BETWEEN:

1. GOOPEX NIGERIA LIMITED ---------
2. FRAD FLOMAN INTERNATIONAL LIMITED } **PLAINTIFFS**

AND

HON. MINISTER OF INTERIOR ---------
NATIONAL IDENTITY MANAGEMENT COMMISSION } **DEFENDANTS**

JUDGMENT

In a matter predicated on debt and liquidated money demand the Plaintiffs Goopex Nigeria Limited and Frad Floman International Limited instituted this action against the Hon. Minister of Interior and National Identity Management Commission claiming the sum of Eleven Million Naira (₦11, 000,000.00) for contract awarded and timeably executed by the 1st Plaintiff for the rehabilitation of water supply system and access road of DCNR Zonal Office at Enugu State.

The Plaintiffs are also claiming the payment of the sum of Four Million Naira (₦4, 000,000.00) for the provision of Security Burglary Proofing Spiral Wiring in DCNR Zonal Office executed by 2nd Plaintiff.

The Writ was filed on the 18th day of January, 2016. Because it was predicated on a debt and liquidated money demand it was placed under the Undefended List Proceeding and Defendant were served.

On 7th of April, 2016 the Court granted application by the 1st Defendant to join the 2nd Defendant – National Identity Management Commission.

The Court later transferred the case to the General Cause List for all parties to be heard, exercising their right to fair-hearing.

Both contracts were awarded on the 19th of March, 2003. Upon receipt of the Letter of Award the Plaintiffs mobilized into site and promptly executed the jobs to specification. They notified the 1st Defendant who inspected, verified and issued the Plaintiffs Certificate of Completion showing that the job was well and duly executed. But the 1st Defendant refused to pay for the jobs so well executed by the Plaintiffs despite several oral and written demands made by the Plaintiffs. In order to get paid for the job, the Plaintiff, as law abiding citizen, instituted this action instead of resorting to self-help, instituted this action.

The Plaintiff supported the Suit with eight (8) documents marked as **EXH 1 – EXH 8** which are Letters of Award in favour of 1st Plaintiff & 2nd Plaintiff – **EXH 1 & 2.**

Contract Agreement in favour of 1st & 2nd Plaintiffs – **EXH 3 & 4** respectively.

Job Completion Certificate issued in favour of the 1st & 2nd Plaintiff – **EXH 5 & 6.**

The Plaintiffs also attached Letter of Demand from their Solicitor – **EXH 7.** Also attached is the 1st Defendant's response to the Letter of Demand – **EXH 8.**

The Plaintiffs opened its case, called one Witness PW1, who testified that the Plaintiffs entered into contract agreement (to execute the job) with the 1st Defendant and not with the 2nd Defendant. That a formal agreement was drawn with them and not with the 2nd Defendant.

After the Examination in Chief the Defendants asked for a date to Cross-examine the PW1. After that the Court reserved the matter for Defendants to open their defence in turn. But they never did. Meanwhile the Cross-examination was conducted on the 7th of May, 2018. The Defendants stopped attending Court and the Court on several occasions refused to foreclose the Defendants, allowing them time to exercise their right to fair hearing. But they did not.

It is imperative to state that the 1st & 2nd Defendants filed a Statement of Defence. Since that is the case, this Court will summarize their Statement of Defence as part of this Judgment notwithstanding that they never called any Witness to testify in person. This is done in the interest of fair hearing.

To the 1st Defendant, contract was done on behalf of ____ DNCR which metamorphosed into National Identity Management Commission (NIMC) and was enjoyed by NIMC, that the 1st Defendant did not enjoy the contract. That upon creation of National Identity Management Commission (NIMC) they assumeed all the liabilities of DNCR by virtue of NIMC Act 2007. That the purported unpaid contract sum are part of the liability assumed by NIMC. That the Plaintiffs failed to establish a reasonable cause of action against the 1st Defendant. Again Plaintiffs failed to explore Arbitration before going into litigation as provided by Clause 8 of the Agreement and that it robs Court of the jurisdiction to try this case.

To the 2nd Defendant, it did not award the contract and that the Plaintiffs are not among the liabilities it inherited from DNCR – EXH 9. They are not privy to the contract. That Court has no jurisdiction to try the Suit. Plaintiff did not write to 2nd Defendant. They attached 2 documents – **EXH NIMC 1 & NIMC 2.**

The Court reserved the matter for Final Address. The 1st & 2nd Defendants were duly notified about that. But they did not file any Final Address. The Plaintiffs filed and served on them.

In their Final Address the Plaintiffs raised 2 Issues for determination which are:

(1) "Whether having regards to the totality of Evidence adduced at trial, the Plaintiffs has proved existence of a contract between them and the 1st Defendant only?

(2) Whether the uncontroversial evidence of the Plaintiffs is proof of the facts it contains?"

On Issue No.1 on whether Plaintiffs has proved existence of a contract between them and 1st Defendant, they submitted that PW1 had categorically stated in both Examination in Chief and Cross-examination that the Plaintiff never entered into any contract with the 2nd Defendant. That it entered into contract with 1st Defendant in which parties signed contract Agreement – EXH 3 & 4. That 1st Defendant crossed examined the PW1 but the 2nd Defendant was foreclosed from doing so for lack of seriousness, undue delay and lack of diligent prosecution.

On the question of valid contract, they submitted that they have proved existence of a valid contract in that there was offer by the Letter of Contract Award – (EXH 1 & 2) to the 1st & 2nd Plaintiffs by the Defendant. Again there was the contract Agreements – EXH 3 & 4 and the evidence of completion of the contract as shown by the job Completion Certificate issued to them by the 1st Defendant EXH 5 & 6. That all these satisfied the principle as stated in the Supreme Court case of:

Omega Bank Nigeria PLC V. OBC
(2005) LPELR – 2636 (SC)

That EXH 1 & 2 is the Offer

EXH 3 & 4 is the Acceptance and EXH 5 & 6 is the consideration.

That is valid contract between the Plaintiffs and 1st Defendant. That the contract was awarded to them by 1st

Defendant as shown in EXH 1 & 2. That the Defendants did not refute those facts. That they established the fact that contracts were awarded to the Plaintiffs. That those documents were admitted without any objection.

That Plaintiff mobilized and executed the contract within the time line. That this is evidenced in the Certificate of Completion by 1st Defendant which the Plaintiffs exhibited and admitted without any challenge – EXH 5 & 6 respectively. That the parties are bound by their contract. They referred to the case of:

Hilary Farms Ltd V. M.V. Mathia
(2007) 14 NWLR (PT. 1054) 201

That 1st Defendant entered willingly into the contract with the Plaintiffs where it was agreed that the 1st Defendant shall pay the sum of Eleven Million Naira (₦11, 000,000.00) and Four Million Naira (₦4, 000,000.00) respectively to 1st and 2nd Plaintiffs. Upon completion of the contract which the Plaintiffs did in record time and Certificate of Completion was given/issued. That Court had a duty in this circumstance to give effect to such agreement. They referred to the case of:

Stag Engineering Company Ltd V. Sabalco Nig. Ltd & Anor
(2008) LPELR – 8485 (CA)

That the Defendants did not deny that the contract was awarded or that the jobs were not completed. That they only contended that they are not liable as they were not beneficiaries to the said contracts. That EXH 3 & 4 is

very evident. That 2nd Defendant was never listed as a party and cannot therefore be held liable or bound by the contract. That 1st Defendant wanted to import what was never in the contract Agreement terms and conditions. They urged Court to decline that.

That doctrine of Priority of Contract is apt in this case as it is about the sanctity of contract between the parties to it. That it does not extend to others from outside. That by the principle of Priority of Contract it is only the parties to it that are bound by the terms and condition of such contract. They referred to:

Oando V. Benue Links Nig. Ltd
(2019) LPELR – 46876 (CA)

That the 1st Defendant contending that they are not liable to pay the contract sum because the 2nd Defendant allegedly benefited from it.

That 2nd Defendant contends that they never entered into contract with the Plaintiffs and as such are not liable under the said contract. That at the time the contract was completed they were not even in existence. That the 1st Defendant elected not to plead evidence to substantiate their defence. That by that the 1st Defendant has not placed anything in the judicial imaginary scale for the Court to weigh. That it is therefore only the evidence of the Plaintiff that is worthy of consideration in this case. They referred to the case of:

Owner of M.V. Gongola & Anor V. Smufit Cases Nig. Ltd & Anor
(2007) LPELR – 2849 (SC)

That the averments in the Statement of Defence are deemed abandoned. That the fact is that the Defendants did not deny the averments in the Plaintiffs' Statement of Claim and they did not adduce evidence to controvert Plaintiffs evidence. That it is the correct position of the law that evidence given by a party to proceeding who had all the opportunity to do so the Court is entitled to act on the unchallenged evidence unless it is patently incredible. They referred to the case of:

Ezeanya V. Okeke
(1995) 4 NWLR (PT. 388) 143

They urged the Court to hold that the evidence put forward by the Plaintiff in this case is unassailable and is relied on in proof of the facts it contains.

That they have been able to establish that there is a valid contract which was properly executed and accepted by Certificate issued to Plaintiffs. The 1st Defendant had tried unsuccessful to push the blame on the 2nd Defendant refusing to fulfill their own side of the Agreement. That they are bound by the contracts they entered into as they have coroneted to pay but had refused to pay despite the several demands to do so. That there is no iota of evidence to show that there was a relationship between Plaintiffs and 2nd Defendant notwithstanding who benefited from the contract.

That evidence of Plaintiff still remains unchallenged and uncontroverted and that Plaintiffs had discharged the burden on it. They urged Court to enter Judgment in their favour against the 1st Defendant only as per the Writ of Summons and Statement of Claims.

COURT:

It is the law and had been held in plethora of cases that unchallenged facts are deemed admitted and uncontroverted. But in this case the 1st & 2nd Defendants filed their respective Statements of Defence, partly attended hearing up to the point of the 1st Defendant cross-examined the PW1 who is the sole Witness for the Plaintiffs on the 7th of May, 2018. But the 2nd Defendant declined to cross-examine and the same 1st Defendant Counsel who was in Court applied for time to open its case but never did for over one (1) year. Two (2) years after the Plaintiffs closed its case the Court foreclosed the Defendants from opening and closing its Defence because it cannot wait on the Defendants in perpetuity.

The Court reserved the matter for Final Addresses. The Defendants never filed any Final Address and never responded to the Final Address of the Plaintiffs which was served on them on the 26th of June, 2020. On the 29th of September, 2020 the Court allowed the Plaintiffs to adopt its Final Address and then reserved the matter for Judgment. The Defendants were duly notified of all the goings on in that they were served Hearing Notice and SMS sent to their respective Counsel on record.

From the above can it be said that the case of the Plaintiffs was unchallenged given the fact that the Defendants filed and served the Plaintiffs their respective Statements of Defence and 1st Defendant Counsel cross-examined the PW?

In the spirit of frontloading which has been part of our jurisprudence, the case of the Plaintiffs was controverted

and challenged since the Defendants filed their Statements of Defence and the 1st Defendant cross-examined the PW and the 2nd Defendant said they have no question for the PW1. But can it be said that the facts as contained in the case of the Plaintiffs were effectively controverted?

It is the humble view of this Court that those facts and evidence were controverted by the Defendants. Though they did not call evidence. They filed Statement on Oath of their Witnesses. The Court deemed them as adopted.

To start with both Defendants agreed that there were contracts awarded to the Plaintiffs as claimed. The 1st Defendant did not deny that. The 2nd Defendant did not deny that the contract was awarded for the benefit of the DNCR which later metamorphosed into National Identity Management Commission (NIMC).

The contract sum and the purpose for the contract are not controverted. The contract sum is Eleven Million Naira (₦11, 000,000.00) for the Rehabilitation of Water Supply and Access Road of the DNCR Zonal Officer in Enugu State. The Defendants all acknowledged that the DNCR metamorphosed into NIMC. They both agreed that the contract was awarded by the 1st Defendant. This fact the 1st Defendant did not deny.

The Plaintiffs attached the Letters of Award of the two (2) contracts.

The Defendants did not deny or challenge that the contract was fully executed within the time frame. The 1st Defendant did not challenge or deny issuing Certificate of

Completion to the Plaintiffs after the jobs were completed. That document was tendered in Court and was not challenged by the Defendants. Again the Defendants did not deny receipt of Letters of Demand for payment. Those documents were equally frontloaded, tendered and admitted as an Exhibit. The same 1st Defendant did not deny writing to the 1st Plaintiff asking for time to look into the matter and requesting Plaintiff to forward the Contract Agreement duly executed in respect of the project as required by paragraph 3 of the Letter of Award.

But Article 8 of the Contract Agreement contains an Arbitration Clause.

It is imperative to state that the major challenge raised by the 1st Defendant in defence of this case is on the issue of Article 8 in the Contract Agreements which is the Arbitration Clause – EXH 3 & 4. The said Article 8 provides:

> **"In the event of any dispute, claim or differences which may arise out of or in relation to this contract and touching on the performance or breach thereof, the same SHALL first be settled amicably between the parties hereto and on failure to reach settlement, the matter SHALL BE REFERRED TO ARBITRATION in accordance with the provision of the Arbitration Act CAP A18 LFN .... And the Award of the Arbitrator shall be binding on all parties hereto."**

The above Article 8 in EXH 3 & 4 clearly stated that any issue in dispute arising from the contact in issue shall

where amicable settlement fails, be settle via Arbitration. The contract did not give room for litigation as a means of settling any dispute. That is what the 1st Defendant raised in their Statement of Defence. Also in the cross-examination of PW1 the 1 Defendant raised that issue and challenged the Suit of the Plaintiffs on that ground and under cross-examination they controverted that. When the 1st Defendant Counsel asked the PW1 this question:

Question: **"Look at Article 8 of EXH 3 & 4 did you fulfill the contractual Agreement in that Article 8 as contained therein?"**

Answer: **"I discussed with my lawyers and they advised me that it will be better to come to Court instead of resorting to Arbitration."**

By this above, the 1st Defendant controverted and crashed the case of the Plaintiff and their claim. This is so because ab inition parties in this case had agreed to settle any differences emanating or arising from the Contract Agreement on which this dispute was predicated by first using amicable settlement and where that fails, they resort to Arbitration and whatever is the outcome of Arbitration, parties are bound by it. This means that settlement of this between the parties can never be by litigation.

So Plaintiff filing this Suit without is a waste of time and Resources. This Court going into this in the first place is wrong because the Court has no jurisdiction to do so.

That means that the Court lacks competence and requisite jurisdiction to do so. The Court has no right to grant the Claims of the Plaintiffs or even make any pronouncement whatsoever on the issues in dispute in this case.

This Court therefore holds that it has no jurisdiction to try and determine this Suit.

This is the Judgment of this Court.

Delivered today the ___ day of _____ 2020 by me.

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K.N. OGBONNAYA
HON. JUDGE