

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY  
IN THE ABUJA JUDICIAL DIVISION  
HOLDEN AT ABUJA  
DELIVERED ON THE 28<sup>TH</sup> JUNE, 2021  
BEFORE HIS LORDSHIP: HON. JUSTICE ASMAU AKANBI – YUSUF  
FCT/HC/CV/722/19**

**BETWEEN:**

- **PETER UZOIGWE**
- **MAUREEN UZOIGWE**
- **PRINCEWILL AMAECHI**
- **SOLOMON UZOIGWE**
- **CHINAZA FAVOUR AMAECHI**
- **IKECHI OBASI**
- **CHUKWUKA EDMOND DIKE**
- **MOSES EMMANUEL EKEMINI**
- **ALOYSIUS MADUKA**
- **DANIEL UZOIGWE**
- **VICTORIA C. IHIWURU**
- **LOVETH AMAECHI**

**.....CLAIMANTS**

**AND**

**MRS BELANDINE NNAMDI**  
(Trading under the name and  
style of bella express business services)

..... **DEFENDANT**

### **JUDGMENT**

By a writ of summons and Statement of claim filed on the 24/12/19, the Claimants Claim against the defendant as follows:

- AN ORDER mandating the Defendant to pay the sum of N3, 168, 000.00 (Three Million, One Hundred and Eighty Six Thousand Naira) only being the principal sum and accrued interest invested in the Defendant's business.
- AN ORDER mandating the Defendant to pay the sum of N2,400,000.00 (Two Million, Four Hundred Naira) only to the 2<sup>nd</sup> Claimant being the principal and accrued interest the Defendant has refused to pay back to the 2<sup>nd</sup> Claimant.
- AN ORDER mandating the Defendant to pay the sum of N768,000.00 (Seven Hundred and Sixty Eight Thousand, Naira) only to the 3<sup>rd</sup> Claimant being the principal and accrued interest the Defendant has refused to pay back to the 3<sup>rd</sup> Claimant.

- AN ORDER mandating the Defendant to pay the sum of N480, 000. 00 (Four Hundred and Eighty Thousand Naira) only to the 4<sup>th</sup> Claimant being the principal and accrued interest invested in the Defendant's business.
- AN ORDER mandating the Defendant to pay the sum of N960, 000. 00 (Nine Hundred and Sixty Thousand Naira) only to the 5<sup>th</sup> Claimant being the principal and accrued interest invested in the Defendant's business.
- AN ORDER mandating the Defendant to pay the sum of N960, 000. 00 (Nine Hundred and Sixty Thousand Naira) only to the 6<sup>th</sup> Claimant being the principal and accrued interest invested in the Defendant's business.
- AN ORDER mandating the Defendant to pay the sum of N480, 000. 00 (Four Hundred and Eighty Thousand Naira) only to the 7<sup>th</sup> Claimant being the principal and accrued interest invested in the Defendant's business
- AN ORDER mandating the Defendant to pay the sum of N875, 000. 00 (Eight Hundred and Seventy Five Thousand Naira) only to the 8<sup>th</sup> Claimant being the principal and accrued interest invested in the Defendant's business

- AN ORDER mandating the Defendant to pay the sum of N1, 600,000.00 (One Million, Six Hundred Thousand Naira) only to the 9<sup>th</sup> Claimant being the principal and accrued interest invested in the Defendant's business
- AN ORDER mandating the Defendant to pay the sum of N1, 600,000.00 (One Million, Six Hundred Thousand Naira) only to the 10<sup>th</sup> Claimant being the principal and accrued interest invested in the Defendant's business
- AN ORDER mandating the Defendant to pay the sum of N380,000.00 (Three Hundred and Eighty Thousand Naira) only to the 11<sup>th</sup> Claimant being the principal and accrued interest invested in the Defendant's business
- AN ORDER mandating the Defendant to pay the sum of N160,000.00 (One Hundred and Sixty Thousand Naira) only to the 12<sup>th</sup> Claimant being the principal and accrued interest invested in the Defendant's business

- AN ORDER directing the Defendant to pay the sum of N1, 000. 000.00 (One Million Naira) as cost of this suit.

The defendant despite being served via substituted service failed and/or neglected to defend this matter. On the 10<sup>th</sup> June, 2020, Peter Uzoigwe, the 1<sup>st</sup> claimant testified as CW1; he adopted his witness statement on oath filed the 24/12/19.

The following documents were admitted in evidence:

- Exhibit A is the photocopy of a document headed Registration form strictly confidential.
- Exhibit B is the 1<sup>st</sup> claimant Access bank statement of account for the period of 20<sup>th</sup> March to 30<sup>th</sup> April, 2018 together with the certificate of compliance.
- Exhibit C is the print out of text messages and certificate of compliance signed by the 1<sup>st</sup> claimant.
- Exhibit D is a copy of a letter addressed to The Area Commander Maitama Police Station, Abuja with caption "Petition against Bella Express Business Services" dated the 17<sup>th</sup> May, 2018.

- Exhibit E is the demand letter written by the claimants' counsel and addressed to the Managing Director of the defendant.

The matter was adjourned for cross examination. It is on record that the defendant was served with hearing notices at all adjournments; she however failed to appear in court to put up her defence. Thus the rights of the defendant to cross examine and defend the suit were foreclosed. Learned Counsel to the claimant filed a written address on the 2/2/2021 and same was adopted on the 18/ 3/ 2021.

As it is, the evidence before the court is an unchallenged one. The claimants raised two issues for determination, that is:

- *Whether the Claimant has proved their case by preponderance of evidence before this Honourable Court.*
- *Whether the Claimant is entitled to the cost of this suit.*

Learned counsel to the claimants submits that the 1<sup>st</sup> claimant has discharged the burden of proof in respect of the claims; that since the defendants failed to defend the case, the claims of the claimants' are deemed admitted

and established. See **EMEKE V. CHUBA-IKPEAZU (2017) 15 NWLR (PT 1589) 345 @ 371 PARAS B-C** and some other authorities were cited by counsel to buttress his argument.

He submits further that the absence of a statement of defence or evidence by the defendant does not exonerate the responsibility placed on the claimant to prove her case; that a party must succeed on the strength of his case and not rely on the weakness of the defence;. Counsel referred to **HARKA AIR SERVICES LTD V KEAZOR (2006) 1 NWLR (960) 160; OGUNYADE V OSHUNKEYE (2007) 15 NWLR (1057) 218**. Learned counsel to the claimant argued that since the Pw1's evidence was not controverted or discredited, the court should act on the evidence and enter judgment for the claimants'.

Also on the issue of cost, counsel argued that the claimants' are entitled to the refund of the monies paid to the defendant. He submits that the claimants' performed their own side of the contract and have till date not benefitted from the money paid to the defendant. Counsel relies on **DANTATA V MOHAMMED (2000) 7 NWLR (PT 664) 176 @ PARAS 199 PARAS G- H**.

He states further that the 10% interest from the date of judgment until the final liquidation of same is statutory; that the court should award same, even though it was not stated in the claim before the court.

Learned Counsel further submits that there is no evidence before the Court to discredit the evidence of PW1, that where there is no defence to the Claimant claim, the Claimant is entitled to judgment. Learned Counsel among others referred the Court to the case of **OGUNLEYE V. AREWA (1959) SCNLR 603, NWADIKE V. IBEKWE (1997) 4 NWLR (PT.67) 718** and urged the Court to grant all the reliefs sought.

I must state that the fact that the defendant didn't file a statement of defence does not mean the claimants claim is grantable; the onus lies squarely on the claimants' to prove their claims. See **FRANCIS OSAWE ESEIGBE v. FRIDAY AGHOLOR & ANOR (1993) LPELR-1164(SC)** *"A party in a civil case, where the proof is on the preponderance of evidence, cannot safely decline to offer evidence where on the evidence led a rebuttal of such evidence is required. The onus of proof is not static; it shifts depending on the nature of the case and the evidence offered by either party.*



*However the onus of adducing further evidence is always on the party who would fail if such evidence were not produced."*

As rightly submitted by counsel to the claimant in civil cases where a defendant fails to file a defence or rebut any issue in claim, the burden of proof becomes minimal. It is also the law that where the evidence is uncontradicted, the onus of proof is satisfied on minimal proof since there is nothing on the other side of the scale. However minimal proof remains minimal and does not mean no proof. Thus, the failure on the part of a defendant to give evidence does not exonerate the claimant from proving his case though minimally. See **also UWAJE vs. MADUEMEZIA (2015) LPELR (24543) 1 at 25-26**. So a Court still has the bounden duty to evaluate the evidence adduced by the Claimant to see whether the evidence before the court has established and proved the claims sought by the claimants' and having considered the evidence before the court, I adopt the issue 1 of the claimant with slight modification, that is;

***Whether from the totality of the evidence before the court, the claimants' are entitled to the reliefs sought.***

Now in considering this issue, the starting point is the exhibit A which is said to be a copy of the registration form filled by the 1<sup>st</sup> claimant; also a notice to produce was given to the defendant. It is the evidence of the cw1 that sometimes in 2018 he was introduced to one Chukwunonso Eze, a client officer with the defendant; that he paid the sum of #5,000 as registration fee; that he knows as a fact that the terms of the business was that he would receive a triple return of 60% interest on every investment he made to the defendant's business together with the invested sum. [See paragraphs 4 & 5 of the witness statement on oath and paragraphs 3 & 4 of the statement of claim] I have carefully considered the exhibit A, it appears to me that the names of the claimants are not stated therein. The name on the form is one Success Dangana, whose next of kin is said to be Esther Paul. The witness also failed to connect or link the claimants' to the exhibit A. Therefore, the exhibit A is of no moment in the consideration of this case and I so hold.

Another issue is the Exhibit B which is the statement of account of the 1<sup>st</sup> claimant for the period of 20<sup>th</sup> March 2016 to 30<sup>th</sup> April, 2018 and exhibit C, the alleged text messages between the 1<sup>st</sup> claimant and one Chukwunonso

Eze failed to disclose the purpose of the transaction between the Claimants and the Defendant.

In civil cases, the burden of first proving the existence or non-existence of a fact lies on the party against whom the judgment of the Court would be given if no evidence were produced on either side, regard being had to any presumption that may arise on the pleadings. See **Section 133(1) of the Evidence Act 2011**. Again **Section 132 of the Evidence Act 2011** provides:-

The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side. See **MTN NIGERIA COMMUNICATIONS LTD v. OLAJIRE A. ESUOLA (2018) LPELR-43952(CA)**

It is trite law that for a contract to exist there must be an offer, an unqualified acceptance of that offer and a legal consideration. Indeed, there must be a mutuality of purpose and intention, the two contracting parties must agree. See **NEKA B.B.B. MANUFACTURING COMPANY LTD v. AFRICAN CONTINENTAL BANK LTD (2004) LPELR-1982(SC)**

The question I ask here, have the claimants in this case discharged the burden placed on them? I do not think so! There is no single document disclosing the rights and

obligations of parties or the amount agreed as consideration in this suit. The amounts claimed by the Claimants as the money paid into the account of the Defendant are bare facts which have no evidential value.

A claimant who wishes to recover debt, particularly running into millions of naira must place cogent and credible evidence before the court to show at least the terms and conditions in the alleged business transaction. It is not for a witness to make claims without supporting his testimony with credible and cogent evidence, even matters placed under the undefended procedure; the claimant is expected to annex document(s) which tends to support the claim. The claimants in this case want the court to speculate or decide without any documentary or credible evidence. Speculation on evidence is not one of the functions of a Court; rather a Court receives and acts on evidence placed before it by parties in accordance with the law. **ROYAL EXCHANGE ASSURANCE NIGERIA PLC v. MICHAEL G. ANUMNU (2002) LPELR-6071(CA); See ARIGBABU v. OYENUGA (2019) LPELR-47381(CA)**

*"In civil cases the initial burden of proof is on the party who desires that Judgment be entered in his favour based on facts which he asserts to prove those facts as required by*

*law...SECTIONS 131, 132 AND 133 OF THE EVIDENCE ACT 2011. But the burden of proof in civil cases is not static; it shifts depending on the state of the pleading of the parties. See the case of BUHARI VS OBASANJO (2005) 7.S.C. PART II PAGE 123. The standard of proof in civil cases is on the balance of probabilities or preponderance of evidence. See SECTION 134 OF THE EVIDENCE ACT 2011."*

The law is that standards of proof in civil cases are discharged on the balance of probabilities or the preponderance of evidence and it is the duty of the court to weigh the evidence before its on an imaginary scale of justice before arriving at a decision and from the totality of the evidence adduced by Cw1, it is crystal clear that the claimants failed to discharge the onus placed on them.

I am not unmindful of the fact that the defendant didn't file a statement of defence, the failure to file one does not prevent the claimants from proving their claims. As stated earlier, civil matters are decided on the preponderance of evidence or probabilities; a claimant must succeed on his own strength. **See s.134 Evidence Act.** Having placed the testimony of the Cw1 on the scale of evidence, I cannot

attach any weight to the evidence adduced, thus the case is resolved against the claimants.

On the whole, I hold that the claimants failed to prove their case on the balance of probabilities and thus not entitled to Judgment in their favour. The claim of the Claimants' fails and the suit is dismissed accordingly.

There is no order as to cost.

**ASMAU AKANBI-YUSUF**  
**(HON. JUDGE)**

APPEARANCES;

J. A Audu Esq, for the Claimant

1<sup>st</sup> Claimant present