

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA
DELIVERED ON THE 14th DECEMBER, 2021
BEFORE HIS LORDSHIP: HON. JUSTICE ASMAU AKANBI – YUSUF
FCT/HC/CV/1710/19

BETWEEN

AMOS ADEMOLA ADEWOYE ESQ CLAIMANT

AND

SAFETRUST MORTGAGE BANK LIMITED DEFENDANT

JUDGMENT

The claimant on the 24/4/19 filed a writ of summons and other accompanying processes against two defendants. The claimant claims against the defendants jointly and severally as follows:

1. SPECIAL DAMAGES

- | | |
|-------------------------------|---|
| a) Flight for Abuja to Lagos | ₦35,600.00 |
| b) Flight from Lagos to Abuja | ₦45,830.00 |
| c) The sum of ₦2,154,459.89k | being the balance in the claimant's account as at 27 th March, 2019. |
| d) Solicitors fee | <u>₦750,000.00</u> |
| | <u>₦2,985,889.89k</u> |

2. GENERAL DAMAGES

- a) Taxi cab, from Dutse Alhaji BWAC to Abuja International Airport, Abuja. ₦5,000.00
- b) Taxi cab, from Lagos Airport to Ebute Metta, Lagos ₦3,500
- c) From Ebute Metta to Ikoyi ₦3,750.00
- d) Taxi cab, from Sefetrust office Ikoyi back to Lagos Airport, ₦6,500
- e) Taxi cab from Abuja Airport to Dutse Alhaji ₦5,000.00
- f) The sum of 10% interest per annum on the balance sum from 27th December, 2018 to 27th February, 2019.
- g) 10% interest monthly on the Judgment sum from the date of Judgment till the Judgment is finally liquidated.
- h) ₦50 Million as general damages for breach of contract.
- i) Cost.

The defendants were served with the process on the 18/6/2019. The claimant discontinued the suit against the 2nd defendant via a notice of discontinuance filed on the 16th October, 2019. Thus, the name of the 2nd defendant was struck out on the 21/10/2019. This suit is against Safetrust Mortgage Bank Limited.

The claimant testified for himself and adopted his witness statement on oath on the 4/2/2020. The following documents were admitted in evidence

1. Certificate of compliance dated 16th October, 2019 marked as exhibit A
2. An undated Sterling Bank Cheque leaflets [12763716] marked exhibit B

3. A copy of the Confirmation of Terms #6,000,000.00 investment on the letter head of Safetrust Mortgage Bank Ltd dated September 20, 2018 and addressed to the defendant marked as exhibit C
4. An acknowledged letter written by the claimant to the defendant on the 18th December,2018 marked as exhibit D
5. A copy of the online transaction receipt in respect of the sum of #670,000.00 paid by the defendant to the claimant marked as exhibit E1
6. A copy of the online transaction receipt in respect of the sum of #500,000.00 paid by the defendant to one Adebayo Bode Japheth marked as exhibit E2
7. The Arik e-tickets issued to the claimant on the 26th and 27th December,2018 were marked as exhibit F1 & F2
8. A copy of the claimant's statement of account marked as exhibit G
9. A dated Sterling bank cheque [12763714] marked as exhibit H
10. Exhibit I is a copy of a letter tagged Re: Presentation of dud cheque dated the 11th April,2019
11. Exhibit J is the receipt issued to the claimant by his counsel upon the receipt of #750,000.00 only being payment for litigation in respect of this suit.

The defendant failed to appear in court to cross examine and defend the matter. Thus, the matter was adjourned for adoption of final written addresses.

Learned counsel for the claimant filed and adopted the claimant's final written address on the 5/2/2021 and matter was adjourned for judgment. On the 30/3/2021, the claimant's counsel applied to serve the defendant hearing notice via substituted service. The court observed that there was no address of service stated on the face of the application; thus counsel applied for a date to regularize the process. The matter was thereafter adjourned. Learned counsel for the claimant eventually moved his application for substituted service on the 8/7/2021 and same was granted as prayed. On the 21/10/2021, learned counsel for the claimant re-adopted the final written address wherein he formulated two issues for determination, that is;

1. Whether the claimant is entitled to the reliefs claimed by him
2. Whether the failure, neglect and refusal to defend this suit by the defendant is an admission which entitles the claimant to judgment in his favour.

The summary of the claimant's case as pleaded and stated in evidence is that he maintains a current account [211000013] with the defendant; that he invested the sum of #6,000,000.00 with the defendant; that the maturity date of the investment is 18th December, 2018 and the amount due then was #6,173,096; that on the 18th December, 2018 he informed the defendant not to roll over his investment. He states that the defendant failed to honour the cheques issued to Bode Adebayo and Ademola

Adewoye; that he made several visits and calls to the Abuja office of the defendant, yet no reason was given for not honouring the cheque. The claimant on the 26th December, 2018 travelled by air to Lagos in order for him to visit the headquarters of the defendant; that on the 27th December, 2018 he was at the headquarters where he had some discussions with one Mr Shola Gbadamosi and two other staff of the defendant; that after much explanation, the defendant transferred the sum of #500,000.00 [Five Hundred Thousand Naira] only to the GTB account of Adebayo Bode Japheth and #670,000 [Six Hundred and Seventy Thousand Naira] only to the claimant's access bank account. He continued that the defendant apologized to him and vouched to pay the outstanding on or before 31st December, 2018. He stated that the defendant failed to honour their agreement; that rather the defendant chose to pay in installments without considering the his plight; that the defendant paid #1,000,000 on the 7th January, 2019 and another #1,000,000 on the 5th February, 2019.

The claimant continued that he returned to Abuja by air; that on the 25th March, 2019 he requested for his statement of account from the defendant and same was issued to him on the 27th March, 2019. Testifying further, he stated that he issued the following cheques in favour of (1) #350,000.00 to Sunday Dada, Esq. (2) #500,000.00 to Kola Olayode & Partners, (3) #2,000,000.00 to Fine Foods & Right Drink Ltd; that only two cheques were honoured, whilst the 3rd cheque was returned. He stated that the

defendant's inability to honour the cheque despite having funds in his account is embarrassing, ridiculous and a breach of banker and customer relationship on the part of the defendant; that he engaged the services of a legal practitioner to institute this action and he paid #750,000.00 [Seven Fifty Thousand Naira] only as professional fee.

I have carefully gone through the pleadings; evidence placed before the court as well as the submission of counsel; only a sole issue calls for determination, that is;

Whether based on the evidence before the court, the claimant is entitled to the relief sought.

The law is that, whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts shall prove that those facts exist. See section 131 (1) evidence act; 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. In the instant case, the claimant must first prove that he invested the sum of #6,000,000.00 with the 1st defendant. In ENGR. MUSTAPHA YUNUSA MAIHAJA v. ALHAJI IBRAHIM GAIDAM & ORS (2017) LPELR-42474(SC)

"Section 131(1) of the Evidence Act, 2011 provides that whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts shall prove that those facts exist. Put streetwise, he

who asserts must prove his assertion. It therefore logically follows that what is alleged without proof can be denied without proof. When a fact is asserted without proof then the existence of the alleged fact is not established. That is why Section 132 of the Evidence Act provides further that 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."

The claimant asserts that he invested the sum of #6,000,000.00 with the defendant and that upon maturity he was entitled to #6,173,095. The claimant further testified that he informed the defendant not to roll over the invested money upon maturity, therefore terminating his contractual relationship with the defendant. These assertions were supported with exhibits C & D. Exhibit C is the confirmation of terms on #6,000,000.00 investment issued by Safetrust Mortgage Bank Limited to the claimant. It is reproduced hereunder;

September 20, 2018

AMOS ADEMOLA ADEWOYE,
ZONE 6, NO: 18 DUTSE-ALHAJI ENAC,
ABUJA.

Dear Sir/Ma

CONFIRMATION OF TERMS ON =N=6,000,000.00 INVESTMENT

We confirm your deposit taking/rollover of =N=6,000,000.00 (Six Million Naira Only) under the following terms and conditions.

PRINCIPAL SUM	=N=6,000,000.00
TENOR	90 DAYS
INTEREST RATE	13% PER ANNUM
VALUE DATE	19-SEP-2018
MATURITY DATE	18-DEC-2018
INTEREST PAYABLE	=N=192,328.77
LESS 10% WHT TAX	=N=19,232.88
NET INTEREST PAYABLE	=N=173,095.89
AMOUNT DUE AT MATURITY	=N=6,173,095.89

Please note that the advised rate is subject to change and may not be applicable to subsequent investments or should investor decide to roll over this instant deposit.

Also termination of this deposit in whole or in part before its maturity date shall attract a charge of 25% flat on the interest earned.

Thank you

Yours Faithfully,

FOR: SAFETRUST MORTGAGE BANK LIMITED

signed
.....
AUTHORIZED SIGNATORY

...signed.....

EXHIBIT D

18th December, 2018

Zone 6, No. 18, Dutse Alhaji,
BWAC, Abuja.

Safetrust Mortgage Bank Ltd,
Suite 102, Plot 1104,
16, Adetokunbo Ademola Crescent,
Wuse II, Abuja.

Dear Sir,

RE: CONFIRMATION OF TERMS ON ₦6,000,000.00 INVESTMENT

ACCOUNT NUMBER 211000011

Above subject matter dated 20th September, 2018, refers

We do not intend to rollover amount invested. We hereby call for its termination. The amount and accrued interest to be credited to may account with the Bank.

Yours Faithfully,

Signed

Amos Ademola ADEWOYE

211000011

In the instant case, it appears there are no other evidence which contradicts the testimony as well as the documentary evidence before the court. Per CHUKWUNWEIKE IDIGBE, JSC (P. 16, paras. A-D) in ISAAC OMOREGBE v. DANIEL PENDOR LAWANI (1980) LPELR-2655(SC) *"...where evidence given by a party to any proceedings was not challenged by the opposite party who had the opportunity to do so, it is always open to the Court seised of the proceedings to act on the unchallenged evidence before it (See Odulaja v. Haddad (1973) 11 S.C. p. 35; Nigerian Maritime Services Ltd. v. Alhaji Bello Afolabi (1978) 2 S.C. 79 at 81-82; see also the Privy Council on the Nigerian case of Adel Boshali v. Allied Commercial Exporters Ltd. (1961) All NLR 917 per Lord Guest)."*

On the strength of the aforementioned case and also the evidence adduced by the claimant, it is established that the claimant invested the sum of #6,000, 000.00 and as of the 18/12/2018; he was entitled to #6, 173,096 as agreed by parties[see exhibit C].

Furthermore, the claimant testified that the cheques he issued on the 19th December, 2018 were not honoured by the defendant and no reason was given by the defendant. He testified further that the failure of the defendant's office in Abuja in resolving the issue made him travel by air to

Lagos as a result of which he incurred the cost of #35,600.00 and #45,830.00 being payments for the air tickets. He supported these facts with exhibits F1 & F2

He further stated that based on his instruction to one Mr Shola Gbadamosi and two other staff of the defendant, the defendant paid the sum of #500,000.00 [Five Hundred Thousand Naira] in December 27th 2018 into the GTB account of Adebayo Bode Japheth and #670,000.00 [Six Hundred & Seventy Thousand Naira] in December 27th 2018 into the Access Bank account of Ademola Adewoye. He supported these facts with exhibits E1 & E2. He testified further that the staff of the defendant apologized to him and vouched to pay the outstanding balance on or before the 31st December, 2018. He said they failed to comply with the agreement, but rather chose to pay him in installments. He continued that on the 25th March, 2019, he requested for his statement of account with the defendant and same was given to him on the 27th March, 2019. He tendered exhibit G to support this fact. Going further, he stated that he issued three cheques to the following person, #350,000.00 to Mr Sunday Dada Esq, #500,000.00 to Kola Olayode & Partners; #2,000,000.00 to Fine Food and Right Drink Limited; that out of the three cheques issued only two were honoured i. e #350,000.00 paid to Sunday Dada Esq. and #500,000.00 paid to Kola Olayode & partners. Also the claimant claims #750,000.00 as professional fees for engaging the service of a legal practitioner to institute this action

against the defendant. See paragraph 24 of the statement of claim and his witness statement on oath. He further tendered exhibit J to buttress his assertion. The matter was instituted on the 24th April, 2019 and there is evidence to show that the claimant counsel prosecuted the matter diligently and also ensured service on the defendant at various times. There is no contrary evidence to the claim of the claimant, therefore I am satisfied that the claimant is entitled to this claim.

It is the law that special damages must be strictly proved; anyone claiming special damages must show by credible evidence that he is indeed entitled to the award of special damages. See SAIDU H. AHMED & ORS v. CENTRAL BANK OF NIGERIA (2012) LPELR-9341(SC) Per OLABODE RHODES-VIVOUR, JSC (Pp. 23-24, paras. F-B). The evidence adduced by the claimant is not contradictory and also not in conflict with the exhibits placed before the court. See exhibits E1, E2, F1, F2 & J; paragraphs 16, 17, 18 & 20i & ii & 24 of the statement of claim and witness statement on oath. Therefore, I hold that the claimant is entitled to the special damages as claimed.

On the claim for general damages, it is the law that general damages flows from the type of wrong complained about by the victim; that they are compensatory damages for harm that frequently results from the tort for which a party has sued. See EMMANUEL UKPAI v. MRS. FLORENCE OMOREGIE & ORS (2019) LPELR-47206(CA)

Also, the claimant claims the following as general damages:

- a. Taxi cab, from Dutse Alhaji BWAC to Abuja International Airport, Abuja. ₦5,000.00
- b. Taxi cab, from Lagos Airport to Ebute Metta, Lagos ₦3,500
- c. From Ebute Metta to Ikoyi ₦3,750.00
- d. Taxi cab, from Sefetrust office Ikoyi back to Lagos Airport, ₦6,500
- e. Taxi cab from Abuja Airport to Dutse Alhaji ₦5,000.00
- f. The sum of 10% interest per annum on the balance sum from 27th December, 2018 to 27th February, 2019.
- g. 10% interest monthly on the Judgment sum from the date of Judgment till the Judgment is finally liquidated.
- h. ₦50 Million as general damages for breach of contract.
- i. Cost.

The claimant clearly stated the circumstances which gave rise to the claims in 2a, b, c, d & e. see paragraphs 12, 13, 14 & 15 of the statement of claim.[see also paragraphs 12, 13, 14 & 15 witness statement on oath] It is not in doubt that the abovementioned claims arose directly from the conduct of the defendant as can be deduced from the evidence before the court; thus he is entitled to the claims; the claims in 2a, b, c, d & e are awarded as general damages against the defendant.

On the issue of the 10% pre-interest judgment sum from 27th December, 2018 to 27th February, 2019 the claimant did not produce any evidence to support this claim; therefore relief 2f fails.

Furthermore, pursuant to Order 39 R 4 HCR, this court has the power to grant post judgment interest at a rate not less than 10% per annum; thus relief 2g succeeds.

I have come to a conclusion that the claims of the claimant succeed in part. The defendant is directed to pay to the claimant as follows:

1. The sum of #35,600.00 being payment for air ticket from Abuja to Lagos
2. The sum of #45,830.00 being payment for air ticket from Lagos to Abuja.
3. The sum of #2,154, 459. 89k being the balance in the claimant's account with the defendant as at the 27th March, 2019.
4. The sum of #750,000.00 being solicitor's fee.
5. The sum total of 2a to 2e which is #23,750
6. 10% post judgment sum [#2,154,459.89k] per annum from today until the entire judgment sum is liquidated.
7. There is no order as to cost.

ASMAU AKANBI – YUSUF

(HON. JUDGE)