IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT HIGH COURT MAITAMA –ABUJA

BEFORE: HIS LORDSHIP HON. JUSTICE S.U. BATURE

COURT CLERKS: **JAMILA OMEKE & ORS**

COURT NUMBER: **HIGH COURT NO. 32**

CASE NUMBER: **SUIT NO. FCT/HC/CV/1547/2017**

DATE: **25TH MAY, 2023**

BETWEEN:

ALHAJI AMINU SHAGALI……..…PLAINTIFF

AND

ABAJI AREA COUNCIL…..……..……DEFENDANT

APPEARANCE

G. S. IwuEsq for the Claimant.

Defendant unrepresented.

JUDGMENT

This matter was initiated by a Writ of Summons dated 28th day of April 2017, whereas the Plaintiff Claims the following reliefs against the Defendant thus:-

a. A Declaration that the Oral offer and Representations made by the Defendant sometimes in 2015 to the Plaintiff to supply two Hundred bags of Guinea-Corn, Two Hundred and Seventy bags of Millet and One Hundred bags of Sugar totaling the sum of Six Million, Seven Hundred and Fifty Thousand Naira(₦6,750,000.00) as agreed by both parties, and the acceptance by the Plaintiff to make such supply and the subsequent supply of the said bags of Guinea-Corn, Millet and Sugar by the Plaintiff in accordance with the terms and conditions for the supply amounts to a valid contract between the Plaintiff and the Defendant.
b. An Order that the Plaintiff is entitled to the sum of Six Million Seven Hundred and Fifty Thousand Naira (₦6,750,000.00) being cost for the purchase and supply of two Hundred bags of Guinea-corn, Two Hundred and Seventy bags of Millet and One Hundred bags of Sugar and the sum of Three Hundred Thousand (₦300,000.00) expended by the Plaintiff in transporting the said items to the Defendant.
c. An Order that the Plaintiff is entitled to the total sum of Seven Million and Fifty Thousand (₦7,50,000.00) Naira only being money for the supply of Two Hundred bags of Guinea-Corn Two Hundred and Seventy bags of Millet and One Hundred bags of Sugar and the sum of Three Hundred Thousand (₦300,000.00) expended by the Plaintiff in transporting the said items to the Defendant at its offices.
d. The sum of Two Million (₦2,000,000.00) Naira being damages for breach of Contract.

e. An Order awarding 10% interest on the outstanding contract sum from the date contract was executed and 21/% from the date of Judgment until final liquidation.
f. Cost of this suit.

The Defendant upon being served with the Claimant's processes filed a Notice of Preliminary Objection seeking the following reliefs:-

1. An order striking out the suit against the Defendant for being statute barred.It should be noted that the suit was originally before my learned brother Hon Justice M. Balami (RTD) but was later transferred to the Honourable Court for trial denovo.

The Court after careful review of the Preliminary Objection, relief sought, written address in support and other relevant submissions. The Court affirmed that it had jurisdiction and relied on several authorities inclusive of **YAKUBU V NITEL LTD (2006) 9 NWLR (PT. 985) at PG 367; MUDMAH V SPRING BANK PLC (2005) 3 NWLR (PT.976) 575 – 576 and also COMMISSIONER FOR FINANCE, IMO STATE & ORS V KOJO MOTORS LTD (2018) LPELR-45075 (CA)** among others to further buttress the ruling.

The Learned Claimant Counsel notified the Court that they had one witness and two others who were subpoened witnesses.Trial continued with the Examination-in-chief of PW1, Yusuf SalehAshafa who testified for the Claimant. Adopted his witness statement on Oath and tendered documents, two of which were objected, the Court reviewed the objections and submissions of the Learned Counsel on both sides and ruled in favour of accepting the Claimant's submissions. Consequently, the Court made

reference to **TABLE INVEST LTD & ANOR V GTB** which was mentioned by both Counsel on the grounds for and against the admissibility and also Sections 146, 104 (1) (2) and also Section 90 (1) (f) of the Evidence Act as they relate to dismissing and over ruling the objections raised on the admissibility of Public documents. As a result of this, the following documents were all admitted in evidence and marked as follows:-

1. Pre-action notice addressed to the Chairman, Abaji Area Council, Abaji area Council Secretariat, Abaji Federal Capital Territory, Abuja dated 6th February, 2017 is marked Exhibit B.
2. A letter addressed to the Chairman Abaji Area Council, captioned:- "supply of Guinea-corn, Millet and Sugarin the sum of Six Million and Seven Hundred and Fifty Thousand Naira" Demand for payment, dated 28th day of November, 2016 marked Exhibit B1.
3. CTC of Store Momo by Store officer Admin Department Abaji Area Council, dated 15th day of June, 2015 marked Exhibit C.
4. CTC of payment voucher with minutes attached therein is marked Exhibit C1.

The matter was subsequently adjourned to the 14th day of October, 2021 for continuation of hearing.

On the next adjourned date the matter continued with S. TijjaniEsq who was holding brieffor the Defendant Counsel requesting an adjournment following the fact that the lead counsel was away due to certain reasons. The Claimant Counsel strongly objected, demanding cost, stating that the Application was mere delay tactics and the matter has been going on for a long time while also demanding cost should the application be granted.

The Court after careful consideration and review of the Application granted it while cautioning the Defendants against further delay declining that no further Application would be entertained for frivolous or unnecessary adjournments as justice delayed is justice denied. The Application was granted with cost and the matter adjourned.

On the next adjourned date the matter was to be for continuation of Cross-Examination, however, the defence Counsel notified the Claimant's Counsel that he would be unavoidably absent and had written the Court notifying same.

The Learned Claimant Counsel pointed out that he would like the Court to take notice of the fact that it was the third (3rd) adjournment at the instance of the Defendant and would be obliging it for the last time.

The Court granted the adjournment while making a stern declaration that it would be the last for there was the need for expeditious hearing of the suit. The matter was further adjourned for Cross-Examination of PW1.

At the next trial date Claimant Counsel was ready for Cross-Examination but the Defendant was absent and unrepresented and had not communicated any reason to the Claimant or the Courtfor the absence.

In light of the above circumstance, the Learned Claimant's Counsel applied to have the Defendant foreclosed. It further stated that the Defendant wereat the moment still yet to file their defence since 2016 when the matter began.

The Honourable Court made recourse to the Court record where it become evident that the matter had been adjourned several times at the instance of the Defendant.The Court arrived at the conclusion after a review of its

records that the Claimant has been diligent in prosecuting his case and had made himselfavailablethroughout the course of trial for the Defendants. Cross-Examination, who had failed, refused and/or neglected to do so.

The Court declared that the Defendant's action was at their own peril and consequently the learned Claimant Counsel's Application was granted and the Defendant's right to Cross-Examine PW1 was foreclosed. Matter was adjourned and service of hearing notice was ordered by the Court.

As the next trial date Defendant was absent and also unrepresented, following which the Claimant Counsel prayed that the Defendant's right of defence be foreclosed. The Court after careful review of it records granted the Application of the Claimant's Counsel and the matter was adjourned for adoption of final written address as the Defendant's right to defence was foreclosed.

At the continuation of trial, Defendant was absent.The Claimant Counsel proceeded to notify the Court that the matter was for adoption of final written address, he proceeded to adopt same and the matter was adjourned for Judgment by the Honourable Court.

In the said written address the Claimant Counsel formulated one issue for determination to wit:

> **"Whether the Claimant has sufficient proved his case to be entitled to the reliefs sought"**

In arguing the sole issue, the Claimant Counsel contended that the entire of the Claimant's suit remains undisputed and not controverted by the Defendant, flowing from the fact that the law is settled where a Defendant fails to file a statement of defence, he will be deemed to be admitting the

statement of Claims of the Plaintiff. The Learned Claimant Counsel made reference to the Supreme Court case of **OKE & ORS V AIYEDUN (1986) LPELR-2427 (SC) where per ANINGOLU, JSC held at PP 31 -32, PARAS E-C as follows:-**

> ***"It is a principle of pleading that, that which is not denied is deemed to have been admitted and at a plaintiff filed a statement of Claim and the Defendant failed or refused to file a statement of defence. In answer thereto he clearly, will be deemed to have admitted the statement of Claim, leaving the trial Court with the authority to peremptorily enter Judgment for the Plaintiff."***

The Learned Claimant's Counsel proceeded by further retracting the fact that there was no Cross-Examination of PW1 by the Defendant and relied on **OFORLETE V THE STATE**to support this point.

The Claimant Counsel concluded by declaring that there was nothing before the Court adduced by the Defendant that would prevent Claimant from having his claims granted and adopting the written address as the Claimant's final argument in the matter.

The Learned Claimant Counsel urged the Court to grant his Application taking into account the evidence adduced, testimony given document tendered and especially the fact that the Defendant have not filed a defence and the testimony of the Claimant remain uncontroverted, unchallenged and uncontested.

Finally, Counsel further declared that Court cases such as the current one were resolved on the balance of probability and following the provision of

Section 134 of the Evidence Act, 2011 as amended, he stated the Claimant had discharged the burden on him.

There was no written address or response of any sort filed before the Court by the Defendant.

Well, I have carefully considered the writ of Summons, the statement of Claim the relief sought. I have equally gone through the entire evidence adduced before the Court both oral and documentary in proof of this case. In the same vein, I have studied extensively the final written address of the Claimant as well.

Having considered all the issues canvassed, I shall raise a sole issue for determination to wit:-

"Whether the Claimant has proved his case on the balance of probabilities to be entitled to the reliefs sought."

Before I dwell on the issue for determination, it is pertinent to state that it is the case of the Claimant briefly as gathered from the Statement of Claim that sometime in 2015, the Defendant made an oral offer to him for the purchase and supply of Two hundred bags of Guinea-corn, Two Hundred and Seventy bags of Millet and One Hundred bags of Sugar at the agreed sum of Six Million and Seven Hundred and Fifty thousand Naira only (N6,750,000).

The Claimant stated that the Defendant urged him to expedite the supply of the said items for Defendant intended to deliver them to muslimfaithfuls of the Defendant during the Ramadan fasting for the year 2015. That it is also traditional for the Defendant to buy and distribute food items during such a period.

The Claimant also further stated that upon receiving instructions from the Defendant he took steps to ensure the timely supply of the said items by instructing one Saleh Yusuf Ashafa to comply with the terms of the

Agreement. The Claimant also mentioned that he declared his desire to have the agreement reduced into writing but was informed by the Defendant that it would result in a waste of time and delaying the supply of the items.

The Claimant expressed that he proceeded with the agreement, carrying out steps to ensure the timeous supply relying heavily on the assurances of the Defendant and did so in line with the terms of the Agreement through Saleh Yusuf Ashafa.

That the items upon delivery were received by the store officer of the Defendant, one Mohammed Amin Khadi through Saleh Yusuf Ashafa who effected the supply. The Claimant also stated that Defendant assured him that she had instructed the Store officer to raise a memo for payment of the supplied items and proceeded to provide a copy of the said items to the Claimant.

In the same vein, the plaintiff also mentioned that upon the Instructions of the Defendant, Muhammad Amin Hadi raised a voucher for the payment of the supplied items and said voucher was raised in the Claimant's name.

Having briefly pointed out the case of the Claimant, it is trite law that the burden of proof lies on the party who asserts. To put it differently, he who asserts must prove with credible and admissible evidence. This position of law is encapsulated in section 131 (1) of the Evidence Act. Which provides thus:-

Section 131 (1)

1. ***Whoever desire any Court to give Judgment as to any legal right or obviously defendant on the existence of facts which he asserts must prove that those facts exist.***

See also the case **of OKEKE VS OKEKE (2019) 17 NWLR (PT. 1701) at P 288 PARAS B-E PER UMAR J. C. A** where it was held thus:-

> ***"Under Section 131 of the Evidence Act 2011 (as amended), the burden of proof lies on the party whose claim will fail if no evidence is adduced. In essence in civil actions, the initial burden of proof lies on the party against whom would be given Judgment if evidence was not produced on either side."***

Similarly it was held in the case of **NSEFIK VS MUNA (2007) 10 NWLR (PT. 10) 502 at 514, *PARAS D-F that:-***

> ***"The burden of proof rests with the party who asserts the positive and not on one who affirms the negative. The maxim he who asserts must prove operates thus: That a man cannot be expected to prove a negative assertion. The latin saying sums up the matter as follows;-incumbit probation qui dicit non quinegat cum per rerumnaturam factum negantis probation nulle sit, which means the proof lies upon him who affirms not him who denies. Since, by the nature of things, he who denies a fact cannot produce any proof."***

It is also noteworthy to pointout that where one of the parties in a suit refuses or fails to adduce evidence in proof any of the issues that were raised in the pleadings filed in a suit, the trial Court is bound to resolve that issue or issues against such defaulting party, unless there exists some legal reasons dictating the contrary. On this point kindly see **NIGERIAN ARMY COUNCIL & ANOR V ERHABOR (2018) LPERL- 44958 (CA); EGBOR & ANOR V OGBEBOR (2015) LPELR – 24902 (CA).**

In the instant suit, Claimant has led evidence which throughout course of trial remained unchallenged and uncontroverted, the effect of which amounts to an admission by the Defendant of the Claimant's Claims as endorsed on the Writ of Summons.

Therefore, the Court is at liberty to accept the Claimant's evidence as the truth of the matter. See **OKE & ORS AIYEDUN (Supra)** on this point.

The Claimant in his Claim avers that the Defendant made an oral offer for purchase and supply of Two Hundred bags of Guinea Corn, Two Hundred and Seventy bags of Millet and One Hundred bags of Sugar at the agreed sum of Six Million and Seven Hundred and Fifty Thousand **(₦6,750,000.00)** Naira only.

I Equally refer to Exhibit B1 Which is a letter of Demand for payment caption & "Supply of Guinea Corn, Millet and Sugar in the sum of Six Million and Seven Hundred and Fifty Thousand Naira" dated 28th day of November, 2016.

Now, after having carefully analyzed the evidence led by the Claimant including the documentary evidence in establishing the existence of an agreement between the Claimant and the Defendant Albeitan oral one, the Defendant has refused to respond to the demand, hence the Claims of the Claimant.

Therefore, in effect the Plaintiff in the case has clearly made out a case against the Defendant since the Claimant's evidence is unchallenged and uncontroverted; and is therefore deemed admitted. It was held by the Court of Appeal in **UGO & ORS V MAHA & ORS (2015) LPELR-25930 (CA) PER BADA JCAat (PG PARAS D-E thus:-**

> ***"It is settled law that unchallenged or uncontroverted Affidavit evidence is deemed admitted by the adverse party and the Court will normally admit it."***

I am therefore satisfied from the evidence adduced that the plaintiff is entitled to the 1st relief sought, a declaration that a valid contract in accordance to the terms and conditions for the supply of the items exists between the plaintiff and the Defendant. I so hold.

With respect to reliefs two (2) and (3), it becomes evident after careful review of the contents of the orders sort that the two reliefs are cognate and analogous, following which granting any one would satisfy the other. As a result of this I shall discard relief 2 and address Relief 3 which is an order that the Plaintiff is entitled to the total sum of Seven Million and Fifty thousand Naira (7,050,000) only, being the total money expended in the purchase and transportation of said items.

Now, it is a well canvassed fact that where one of the parties in a suit fails or refuses to adduce evidence in proof of any of the issue(s) the trial Court is bound to resolve such against the defaulting party, unless there are some legal reasons dictating the contrary. See the case of **OSHAFUNMI & ANOR v. ADEPOJU & ANOR (2014) LPELR – 23073(CA)**.

I shall also refer to Exhibit 'C' which is a CTC of a store memo by store officer Admin Department, Abaji Area Council, dated 15/06/2015. As well as Exhibit C1 which is a CTC of payment voucher with minutes attached.

In this case, after having carefully analysed the evidence led by the Plaintiff and also the evidence adduced in support of these claims both oral and documentary. It is clear from the above that the Plaintiff has managed to establish his claim.

To this end, the law is settled that the standard of proof in civil cases is on the balance of probability. In that regard, see the case of **NNADI & ANOR v. ODIKA & ORS (2017) LPELR-43448 (CA) PER OGUNWUMI JCA at Page 20-21 Paras E-F** where the Court held: -

> ***"...it is no doubt that the standard of proof in civil case is on the preponderance of evidence or balance of probability. After parties to an action have presented their case to the Court, it is the duty of the of the Court to place such process of evidence on either side on the imaginary scale and see which side the balance tilts..."***

In this case, on the strength of the Claimant's evidence I am satisfied that the Claimant has proved his case on the preponderance of evidence to be entitled to the reliefs sought.

On the whole and without necessarily repeating myself. It is my considered opinion that the Claimant has proved his case as required by law. I so Hold

Now with respect to relief 4, which is a claim for damages for breach of Contract the law has made very clear and in-depth provisions concerning this. Firstly, a breach of Contract has been defined in **DAAR COMMUNICATIONS PLC v MCKEE (2022) LPELR-57848(CA)** thus:

"It has been held that a breach of contract connotes that the party in breach acted contrary to the terms of the contract either by non-performance, or by performing the contract not in accordance with terms or by a wrongful repudiation of the contract"

See also the case of **BIMBA AGRO LIVESTOCK CO. LTD v. LANDMARK UNIVERSITY (2020) 15 NWLR (pt. 1748) 465 (P. 498, Paras. A-C).**

Where a breach of contract exists, the consequence is award of damages. Damages in this regard are meant as a compensation to the plaintiff for the damage, loss or injury suffered through that damage. Here the Plaintiff has been able to show that he had engaged the services of people to enable the transportation and movement of these goods from the point of purchase to on this point see **NATIONELE COMPUTER SERVICES LIMITED v. OYO STATE GOVERNMENT & ORS (2019) LCN/13569(CA).**

Consequent upon this, relief 4 which is the sum of Two Million (2,000,000) Naira only being damages for breach of contract is granted by the Court, and awarded accordingly.

Moreso, the Claimant has successfully pleaded this in his pleadings and writ.The Court has also taken judicial notice of the fact that he had incurred expenses in acquiring the services of a Legal practitioner to prosecute his matter and it is established law that a successful party is entitled to be indemnified for cost of litigation where same is pleaded and proven. See the caser of **KLM ROYAL DUTCH AIRLINE v. Idehen (2017) lpelr-43575(CA)** and also **LONE STAR DRILLING NIG LTD v. NEW GENESIS EXECUTIVE SECURITY LIMITED (2011) LPELR-4437 (CA).** The Court hereby grants the sum of (N500, 000) assessed and awarded as the cost of instituting this action.

I hereby award 10% interest on the outstanding judgment sum per annum from today till the judgment sum is fully liquidated.

Signed:

Hon. Justice S. U. Bature
25/05/2023.