

**IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT MAITAMA – ABUJA**

BEFORE HIS LORDSHIP: HON. JUSTICE .H. MU’AZU

SUIT NO: FCT/HC/CV/1802/2022

DELIVERED ON THE 23/09/2024

BETWEEN:

ALI DUSSAH ZUBAIRU ESQ.....CLAIMANT

(Carrying on Business in the Name and
Style of Ali Zubairu & Associates)

AND

1. ISHAYA MADI

2. MADVAN GLOBAL SERVICES LTD

3. SALLY DRAMBS NIGERIA LTD

}DEFENDANTS

JUDGMENT

The Claimant on the 27th May, 2022 filed a Writ of Summons against the Defendants and an application for Summary Judgment with Motion No. **M/7137/2022** brought pursuant to the provision of Order 11 Rule 1 of the Rules of this Honourable Court praying the Court for the following reliefs:-

- 1. An Order entering Judgment in favour of the Claimant in the sum of **₦25,000,000.00** (Twenty Five Million Naira) only being unpaid professional fees for Legal Services rendered to the Defendants between 2017 to 2020, as itemized in the Bill of charges dated*

7th January, 2021 less item five (5) paid on 2nd February, 2021.

- 2. An Order entering summary Judgment in favour of the Claimant in terms of the reliefs sought in the suit.*
- 3. And for such further or other Orders as this Honourable Court may deem fit to make in the circumstances of the case.*

Reacting to the application, the Defendants filed their Notice of Intention to defend the action and counter affidavit to the Claimant's Application for summary Judgment. This Honourable Court on the 16th December, 2022 delivered its ruling and parties were ordered to exchange pleadings.

At the conclusion of exchange of pleadings, the suit proceeded into hearing. The Claimant opened its case on the 21st February, 2023.

The case of the Claimant as distilled from the Witness Statement on oath of PW1 is that;

The Claimant who is a legal Practitioner carrying on business in the Name and Style of Ali Zubairu & Associates was retained by the Defendants to act as their Legal representative where he rendered various legal services to the 1st and 2nd Defendants in that respect until the year 2021 when he gave Notice to the 1st and 2nd Defendant of his intention to terminate the retainership agreement.

It is the averment of the Claimant that the 1st and 2nd Defendants have failed to pay his two (2) years retainership fees **₦4,000,000.00** (Four Million Naira) only. The Claimant also performed other legal services for the 1st and 2nd Defendants in various capacities and at various cost but they have failed to pay for those services.

The Claimant stated further that the 3rd Defendant vide a memorandum of understanding dated 3rd May, 2017 engaged his services to draft a Joint Venture Property Development Agreement between the 3rd Defendant and Avastone Global Services and other Functions. That it was agreed in the Memorandum of Understanding that he will be entitled to **2.5%** of the total value of the Land which is **₦700,000,000.00** (Seven Hundred Million Naira) as his professional fees, which is **₦17,000,000.00** (Seventeen Million Naira) only. And that only **₦500,000.00** (Five Hundred Thousand Naira) only was paid by the 3rd Defendant to the Claimant.

PW1 tendered the following documents in evidence to-wit;

1. Memorandum of Understanding between Sally Drambs Nigeria Limited and Ali Dussah Zubairu
2. Joint Venture Property Development Agreement between the 3rd Defendant and Avastone Global Services Limited.
3. The Amendment to the Joint Venture Property Development Agreement

4. Retainership Agreement
5. Letter of Instruction
6. Writ of Summons and Statement of Claims in Suit No. **FHC/ABJ/CS/12/2020**
7. Payment receipt dated 2nd February, 2021
8. Letter of Termination of Retainership Agreement
9. Letter of Instruction dated 22nd November, 2020
10. Writ of Summons and Statement of Claim in Suit No. **FHC/ABJ/CV/3287/2022**
11. Letter of Demand
12. Bill of Charges dated 7th January, 2021
13. Pictures of the Various Development made by Avastone.

All the above-mentioned documents were admitted in evidence and marked as Exhibits “**P1**” to “**P13**” in that Order.

PW1 was cross examined on the 14th February, 2024. The Claimant closed its case to give way for defence.

The Defendants opened their case on the 19th March, 2024.

The case of the Defendants as distilled from the Witness Statement on oath of DW1 (1st Defendant) is that, 3rd Defendant executed a Memorandum of Understanding with the Claimant to perform the obligations contain

therein and he was entitled to be paid **2.5%** of the total value of the land that is **₦17,500,000.00** (Seventeen Million, Five Hundred Thousand Naira) with a proviso that the Claimant is only entitled to the said sum of money on completion and delivery of the project executed between the 3rd Defendant and a third party, Avastone Global Services Limited.

It is the Defence of the Defendants, that the contract between the parties has broken down to the knowledge of the Claimant and therefore, he is not entitled to anything.

The Defendants further stated that, the suit instituted by the Claimant on behalf of the Defendants are still pending and subsisting before the various Court.

The Defendants stated that the Claimants case is baseless and therefore, same should be dismissed.

DW1 was cross-examined and subsequently discharged.

Parties closed their respective case to give way for filing and adoption of final written addresses.

Learned counsel for the Defendants in it written address formulated two (2) issues for determination to-wit;

1. Whether from the peculiar circumstances of this case, the Claimant has presented a prima facie case and evidence adduced based on scaled of probability enough to warrant the grant of the reliefs endorsed on the Writ of Summons.

2. Whether on the strength of facts pleaded and evidence placed before the Court in support, whether or not the Claimant has discharged the evidential burden of proof of the Defendant's refusal to pay the Claimant's professional fees and claim for cost of litigation to be entitled to the grant of the reliefs sought.

Learned counsel for the Defendants argued the above issues succinctly in urging the Court to dismiss the case of the Claimant in the interest of justice.

On his part, learned counsel for the Claimant equally formulated two (2) issues for determination to-wit;

1. Whether the Claimant has fulfilled the conditions outlined in Section 16 of the Legal Practitioner's Act for the Recovery of his Professional Fees against the Defendants.

2. Whether from the state of pleadings and the evidence adduced, the Claimant has proved his case to be entitled to Judgment.

Learned counsel for the Claimant while arguing on the above, submits that the Claimant has led credible and reliable evidence in support of his case and therefore, Court should grant all the reliefs sought.

I have gone through the case of the Claimant and the reaction of the Defendants by way of defence, I shall be

brief but succinct in resolving the issues at stake in the interest of justice.

Indeed, it is elementary law that where parties have entered into a contract or an agreement, they are bound by the provisions of the Contract or Agreement. This is because party cannot ordinarily resile from a Contract or Agreement just because he later found the conditions of the contract or agreement not favourable to him. This is the whole essence of the doctrine of sanctity of contract or agreement.

The Court is bound by the terms of the contract or agreement and the terms only in the event of an action arising therefrom. See *ARJA VS. A.M.S LTD. (2003) 7 NWLR (Pt. 820) 577*.

It is instructive to state here that contract is a legally binding agreement between two or more persons by which rights are agreed by a party in return for acts or forbearance on the part of the other. It is a bilateral affair which requires the ad-idem of the parties. See *ASHAKA VS. NWACHUKWU (2013) LPELR 20272 (CA)*.

Indeed, just as a worker is worthy of his wages, a legal practitioner is entitled to his fees for professional services rendered and unless the fees were secured by fraud, duress or an illegality played on a client, any amount agreed upon between the parties is sacrosanct.

The law is trite that, pursuant to Section 16(1) of the Legal Practitioners Act, Cap 207, Laws of the Federation 1990, a

Legal Practitioner who satisfies the Trinitarian preconditions, could commence an action to recover his fees upon a bill of charges, first, he must prepare a bill of charges or a bill for the charges which should duly particularize the principal items of his claim; secondly, he must serve the client with the bill, and thirdly he must allow a period of one month to elapse from the date the bill was served. See ***REBOLD INDUSTRIES LTD. VS. MAGREOLA (2015)8 NWLR (Pt. 1461) (Page 210 at 239) Paragraphs E.G***

In line with the above conditions, the Claimant served the Defendants letter of Demand dated 7th January, 2021 and Bill of Charges dated 7th January, 2021 which both were admitted as Exhibit “P11” and “P12” respectively.

In a bid to prove his case on the balance of probability as provided by law with respect to civil cases, the Claimant tendered (13) documents which were all tendered and admitted in evidence as Exhibits “P1” to “P13” respectively. It is considered view that this document hold the key the resolution of the issues at hand.

I shall therefore, evaluate the documents to ascertain whether, the Claimant is entitled to the reliefs sought in his statement of claim.

As stated in the preceding part of this Judgment, where parties have entered into contract or an agreement voluntarily and there is nothing to show same was obtained by fraud, mistake, deception or misrepresentation, they are

bound by the provision or terms of the contract or agreement. More over a Court of law must respect the sanctity of agreement reached by parties, where they are in consensus ad-idem as regards the terms and conditions freely and voluntarily in written form. See ***ATTIOGBEY VS. UBA PLC. & ORS (2013) LPELR 20326 (CA)***.

The Clamant stated in paragraphs 4, 5, 6, 7 and 8 of the Statement of Claims that he is claiming against the Defendants the sum of **₦17,000,000.00** (Seventeen Million Naira) only in this regard, the Claimant tendered the following documents.

1. Memorandum of Understanding between Sally Drambs Nigeria Limited and Ali Dussah Zubairu dated 3rd May, 2012 (Exhibit “P1”)
2. Joint Venture Property Development Agreement between the 3rd Defendant and Avastone Global Services Limited dated 17th March, 2017 (Exhibit “P2”)
3. The Amendment to the Joint Venture Property Development Agreement dated 7th November, 2017 (Exhibit “P3”).

The law is settled that when the words of a documents, legislation or constitution is clear, there is no need to give them any other meaning than their ordinary meaning unless that would lead to absurdity or inconsistency. See ***ATTIOGBEY VS. UBA PLC & ORS (Supra)***.

I shall for the purpose of clarity reproduce the relevant paragraphs of Exhibit “P1” (Memorandum of Understanding between the Claimant and 3rd Defendant for ease of reference).

Paragraph 6 under the heading “Now it is hereby agreed as follows”

Paragraph 6(3) “the Legal Practitioner shall ensure on behalf of the client that the Joint Venture Property Development Agreement between the Client and Avastone Global Services Limited is implemented to the later, and this shall entail routine visits to the site and constant monitoring.

Paragraph 6(6) “The Legal Practitioner shall prepare title transferring documents such as Deed of Assignment, Deed of Sub-lease or any such legal instrument either between the Client and Avastone Global Service Limited or any other person that the Client shall request of the Legal Practitioner.”

Paragraph 6(9) “That the duration of the services to be rendered by the Legal Practitioner to the Client shall be from the commencement of the execution of the Joint Venture Property Development Agreement between the Client and Avastone Global Services Limited until the completion and delivery of the Project.”

Remuneration

That in view of the services rendered by the Legal Practitioner to the Client as itemized above, it is hereby agreed as follows:-

2. That 2.5% of ₦700,000,000.00 (Seven Hundred Million Naira) only is the sum of ₦17,500,000.00 (Seventeen Million, Five Hundred Thousand Naira) only.

From the above, it is clear that the Legal Practitioner is entitle to the above money only if all the conditions itemized above have been carried out by him.

The question is: has the project between Avastone Global Services Limited and the 3rd Defendant been completed to entitle the Claimant to his money?

If the above answer is yes, where is the evidence of transferring document prepared by the Claimant such as Deed of Assignment, Deed of Sub-lease or any such legal instrument either between the 3rd Defendant and Avastone Global Services Limited or any other person as agreed in paragraph 6 of Exhibit “P1”?

It is also worthy to note that in paragraph (5) of Exhibit “P1”, the 3rd Defendant upon completion of the project above, shall be entitled to sixteen (16) Units of 3-Bedroom Terrace Duplexes and Nine (9) Units of 4-Bedroom Terrace Duplexes.

Where is the evidence that the 3rd defendant was handed over the above property?

Indeed, it is a settled law that a person seeking to enforce a contract must show that all the conditions precedent has been fulfilled and that he has performed or that he is ready and willing to perform all the terms which ought to have been performed by him. See *MRS. FLORENCE COKER VS. GABRIEL AJEWOLE (1976) 1 NWLR 178 at 183.F.B.D FINANCIAL SERVICES LTD. VS. ADESOLA (2000) 8 NWLR (Pt. 668) 170 at 182.*

The Claimant again in an attempt to proof his case amended his Writ and tendered Exhibit “P13” (Pictures photograph on the site).

I must state here that, this piece of evidence (Exhibit “P13”) rather work against him, this is so because, the provision of paragraph 9 reproduced earlier is obvious that, the Claimant is only entitle to **2.5%** of the contract sum after the full execution and conclusion of the project.

Indeed, the Claimant has woefully failed to establish this arm of claim that he is entitled to **2.5%** of **₦17,000,000.00** (Seventeen Million Naira) I so hold.

I shall now turn to other claims by the Claimant.

By paragraphs 9 – 21 of the statement of claim, the Claimant, claims his professional fees for different services which he rendered for the Defendants and in buttressing his claims, the Claimant tendered the following documents in evidence to-wit;

1. Retainership Agreement (Exhibit “P4”)

2. Letter of Instruction (Exhibit “**P5**”)
3. Writ of Summons and Statement of Claims in Suit No. **FHC/ABJ/CS/12/2020**
4. Writ of Summons and Statement of Claim in Suit No. **FHC/ABJ/CV/3287/2020** (Exhibit “**P10**”)
5. Payment receipt (Exhibit “**P7**”)
6. Letter of Termination of Retainership (Exhibit “**P8**”)
7. Letter of Instruction (Exhibit “**P9**”)

The Claimant claim the sum of **₦4,000,000.00** (Four Million Naira) only for two (2) years Retainership fees which the 1st and 2nd Defendants failed to pay him.

The Claimant avers that he rendered various legal services to the Defendants until 7th January, 2021 when the Claimant in line with Clause 6 of the said Legal Retainership Agreement terminates same. The letter of Termination was tendered as (Exhibit “**P8**”).

The Defendants throughout the proceedings and trial of this case could not contradict the assertion of the Claimant.

I have seen the Retainership Agreement which is Exhibit “**P8**”, indeed documentary evidence is the best form of evidence.

The Defendant never placed any document to controvert the evidence of the Claimant. The law is trite that Documentary evidence is more reliable than oral evidence.

From the above therefore, the case of the Claimant on this arm succeeds with respect to the sum of **₦4,000,000.00** (Four Million Naira) only as Retainership for two (2) years which remained unpaid. However, it is in evidence that after the services of bill of charges on the defendants, the sum of One Million Naira (**₦1,000,000**) was paid to the claimant. This fact the claimant admitted in his statement of claim.

In the light of the above therefore, the claimant is entitled to the sum of three million naira only as retainership for the two years. I so hold.

With regards to the unpaid professional fees for Suit No. **FHC/ABJ/CS/12/2020** and Suit No. **FHC/ABJ/CV/3287/2020** in Exhibits **“P6”** and **“P10”**.

PW1 stated that by Letter of instruction, the Defendants instructed him to file the above cases at the agreed amount of **₦2,000,000.00** (Two Million Naira) each.

I have seen the letter of instruction as tendered by the Claimant as Exhibit **“P9”**. I have equally seen Exhibit **“P4”** which is the Retainership Agreement.

For avoidance of doubt paragraph 4 of Exhibit **“4”** is hereby reproduced;

“The firm shall act as Solicitors to the Clients in all transaction, contracts, dealings or project and in the event of litigation put a legal representation for the Clients at a minimal charge to cover for costs,

professional fees and other charges. The minimal charge at any rate shall not exceed the sum of ₦2,000,000.00 (Two Million Naira) as professional fees excluding costs.”

From the above, it is clear that the amount due to the Claimant shall cover filing and prosecution of the case of the Defendants.

A perusal of the letter of instruction will reveal that the Claimant is expected to regularly updates the Defendants on the Court sittings, and proceedings. But aside the Writ of Summons, there is no documents placed before the Court to show the progress and status of the two suits instituted by the Claimant, neither did he placed sufficient material justifying legal representation of the Defendant in Court.

It is trite principle of equity that he who comes to equity must come with clean hands and the burden of proof is on the party alleging the existence of the fact thereof to prove same. See ***HARMIE VS. D.P.M.S LTD. (2005)12 SC (Pt.1) 11.***

The Claimant has failed to tendered the record of proceeding of the Court with respect to two suits instituted, and or the Judgment of the Court.

In line with the letter of instruction, **₦200,000.00** (Two Hundred Thousand Naira) given to the Claimant covers the cost of filing as agreed by parties in their Retainership Agreement (Exhibit “P4”).

The claim of the Claimant with respect to the **₦4,000,000.00** for the institution of Exhibits “P6” and “P10” is left orphan as a result of the absence of any legally admissible evidence. Same is hereby dismissed.

On the whole therefore, the case of the Claimant succeed with respect of **₦3,000,000.00** (Three Million Naira) only with respect of Retainership as contain in Exhibit “P4” which admitted receiving One Million already.

Whereas with respect of **₦17,000,000.00** (Seventeen Million Naira) and **₦4,000,000.00** (Four Million Naira) for Institution of action on behalf of the Defendants is lacking in merit are hereby dismissed.

10% Post Judgment interest is hereby awarded on the **₦3,000,000.00** (Three Million Naira) from today till same is liquidated.

SIGNED:
HON. JUDGE
23/09/2024.

Appearance:

Victor Orih, Esq, for the Claimant

Florence Ebuga, Esq, for the Defendants