

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

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT ZUBA, ABUJA

ON FRIDAY THE 28TH DAY OF APRIL, 2023

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

JUDGE

SUIT NO.: FCT/HC/CV/11/2021

BETWEEN:

MRS. CHIAMAKA EZEUGO ----- CLAIMANT

AND

FAMZHI INTERBIZ LIMITED ----- DEFENDANT

JUDGMENT

On the 12th January, 2021 the Claimant – Mrs Chiamaka Ezeugo filed this action against the Defendant – Famzhi Interbiz Limited claiming the following Reliefs:

- a. A Declaration that the Defendant’s refusal to release the Claimant’s investment capital and profit thereof, which investment has been with the Defendant for twelve months now (one year) is a breach of contract between the Claimant and the Defendant.

- b. An Order of Court mandating the Defendant to pay the Claimant the sum of One Hundred Thousand Naira (₦100, 000.00) being the capital sum the Claimant invested with the Defendant.
- c. An Order of the Court mandating the Defendant to pay the Claimant the sum of Two Hundred and Eighty Four Thousand, Seven Hundred and Seventy Six Naira (₦284, 776.00) as profits due to the Claimant investment on January 13th, 2021 using the Defendant's criteria of 10%, 15% and 20% respectively.
- d. An Order of Court mandating the Defendant to pay of Three Hundred and Eighty Four Thousand, Seven Hundred and Seventy Six Naira (₦384, 776.00) per month to the Claimant starting from January 14th, 2021 till this Honourable Court give Judgment in this Suit on rollover basis as explained in paragraph 6 of the Statement of Claim.
- e. An Order of Court mandating the Defendant to pay the Claimant 15% of the total sum accruable to the Claimant at the end of this Suit, between the time the Suit ends and the time of enforcing the Judgment.
- f. The sum of Ten Million Naira (₦10, 000,000.00) only being general damages.

g. Cost of the Suit.

The Defendant was served. Upon receipt of the Writ the Defendant/Defendant Counsel filed a Motion for Court to set aside the Suit and Statement of Defence later on 12th March, 2022. He had filed several other applications. The Court had on its Bench Ruling delivered its decision on the Motion to set aside the Proceeding of 18th January, 2022. It is imperative to state that the Defendant Counsel was served Hearing Notice for the sitting of 18th January, 2022. He was also served Hearing Notice for 7th October, 2021 as well as 8th December, 2021. He did not file any Statement of Defence then but had filed several applications which were heard and dismissed because they were without substance.

Note:

The Statement of Defence was eventually filed on the 12th of March, 2022.

The Defendant Counsel entered appearance on the 22nd March, 2021. On the 18th January, 2022 about 1 year after the Claimant instituted the action the Claimant opened its case and tendered 5 documents the PW1. The matter was adjourned to 23rd February, 2022. The Defendant/Defendant Counsel was served Hearing Notice. The Defendant/Defendant Counsel was not in Court. Meanwhile, the matter was for Cross-examination

of the PW1 by the Defendant Counsel. The Defendant Counsel did not come to Court. He did not state why he was absent as statutorily required. The Court foreclosed the Defendant Counsel from Cross-examining the PW1. The Court adjourned for Defence. Meanwhile, the Defendant never filed any Defence or Counter-Claim to the Suit. Matter was adjourned to 9th March, 2022. The Court ensured that the Defendant/Defendant Counsel was served Hearing Notice. Before that day the Defendant Counsel filed a Motion to set aside Proceeding. The Claimant/Claimant Counsel responded and filed a Counter Affidavit. The Defendant Counsel stated on 9th March, 2022 that he needed time to respond to the Counter Affidavit; the Court obliged him adjournment and adjourned the case to 16th March, 2022. That day the Defendant Counsel was in Court. He moved his Motion. The Claimant Counsel responded. The Court, in a well considered Ruling, *dismissed* the Motion too for lacking in merit. The said Bench Ruling of 16th March, 2022 refers. The Defendant Counsel also moved the 2nd application on transfer of the Suit out of this Court; the Court *dismissed* that Motion also for lacking in merit. See the Bench Ruling of that day the 16th day of March, 2022. Even as at that day the Defendant/Defendant Counsel had filed Statement of Defence on 12th March, 2022 but was not ready to open Defence. The Court adjourned the matter for Defence notwithstanding that fact. Adjournment was for 13th April, 2022.

On that 13th April, 2022 the Defendant had Counsel representation in Court holding the brief of S.O. Abang Esq. for the Defendant. The name of that Counsel is Veronica N. Bisau. She stated that the Defendant Counsel/Defendant is not yet ready to open Defence. That they have another Motion which they were yet to serve the Claimant Counsel. The Court ordered the Defendant Counsel to serve the Claimant Counsel with the Motion and Statement of Defence before the next adjourned date since the Defendant Counsel that she has only one (1) copy of the document then. The Court then adjourned the case again to 7th July, 2022 at the instance of the Defendant/Defendant Counsel. Meanwhile, on the 7th July, 2022 the Defendant/Defendant Counsel was absent. No reason given. The Claimant Counsel had stated on record that they have responded to the Motion. Since it was obvious that the Defendant/Defendant Counsel were aware of the Hearing of 7th July, 2022; their Counsel having been in Court on the last adjourned date when it was so adjourned, the Court, based on the application of the Claimant Counsel and the provision of Order 32 of the High Court Rules, struck out the Motion since it was obvious that the Defendant/Defendant Counsel had abandoned same, having not appeared in Court or given any reason for their absent. Since the Court could not wait for the Defendant/Defendant Counsel in perpetuity the Court granted the application to foreclose the Defendant from opening and closing its Defence. The Court adjourned for Final Written

Addresses and ordered the Claimant/Claimant Counsel to ensure that they serve the Defendant/Defendant Counsel with their Final Written Address, and they did same as ordered. The evidence of service is referred to. Matter was adjourned to 22nd November, 2022 for Adoption of Final Written Addresses. The Defendant Counsel was served Hearing Notice to that effect. But he did not come to Court and never filed any Final Written Address. The Defendant Counsel/Defendant acknowledged receipt of the Final Written Address of the Claimant. The matter was further adjourned to 12th December, 2022 for Adoption of Final Written Address. The Court ensured that the Defendant/Defendant Counsel was served Hearing Notice as usual. That Order was carried out. On the 12th December, 2022 the Claimant Counsel adopted its Final Written Address. The Defendant Counsel was absent and usual, Hearing Notice was served. After that the Court adjourned for Judgment which is today being delivered. The Defendant Counsel was equally served Hearing Notice as usual.

The Defendant/Defendant Counsel had filed Statement of Defence on the 12th March, 2022. They filed a Witness Statement on Oath of Bashiru Suleiman Adomuha – Manager of the Defendant. Though the said Bashiru Suleiman Adomuha was never called as a Witness since the Defendant never opened or closed its Defence. Having abandoned their Defence, the Court foreclosed them and they never applied for Court to vacate the foreclosure

Order. This Court in exercise of its discretionary powers will analyze the Statement of Defence/ Witness Statement on Oath of the Bashiru Suleiman Adomuha in the interest of justice and fair hearing, since it has a power and a right to look into every document filed before it.

In both the Statement of Defence and the Witness Statement on Oath of Bashiru Suleiman Adomuha, the Defendant stated that it never informed the Claimant that it gives 5%, 10%, 15% and 20% or any fixed percentage on investment in the Defendant. That the Defendant never had any WhatsApp/Phone communication with the Claimant and denied the printed and frontloaded documents as the Defendant never had any communication with either the Claimant or her agent. That the Claimant failed to disclose the Form it signed with the Defendant and that the Agreement did not disclose any percentage. Meanwhile, the Claimant did not attach the document either or photocopy of same. That all the documents purportedly frontloaded by the Claimant are not from the Defendant. That the Claimant's entitlement to profit on investment is subject to fluctuating profits and losses that may be made by the Defendant in that whenever there is losses the Claimant's investment will suffer such setbacks. That it also informed the Claimant that any investment in the Defendant is non-refundable. That the Claimant is only entitled to profits and losses incurred by the Defendant.

The Defendant did not attach any document – copy of the Agreement or their Operational License.

The Claimant testified as PW1 and tendered eleven (11) documents. The Court adopts the Final Written Address of the Claimant as if it set hereunder seriatim.

In their Written Address the Claimant Counsel raised a sole Issue for determination which is”

“Whether the Claimant has been able to establish its case to warrant Judgment given in its favour considering her pleading and evidence led by the Claimant in this case.”

He submitted that the Claimant had proved its case with her testimony and document tendered in support and as such she is entitled to Judgment being entered in her favour.

That there is a contract between the Claimant and the Defendant going by the documents showing transfer of money – **One Hundred Thousand Naira (₦100, 000.00)** from the Claimant to the Defendant’ Account in Access Bank. Also transfer of **Ten Thousand Naira (₦10, 000.00)** to Claimant’s Account in Stanbic IBTC Bank by the Defendant on the 19th February, 2020. That the contract is a binding contract too as there was Offer and Acceptance. They cited the case of:

**El-Hanan Ventures V. R.Ms Limited
(2021) 10 NWLR (PT. 1784) 214**

That the Claimant had adduced evidence in support of its case against the Defendant and that the evidence is not rebutted by the Defendant. Hence the Claimant's case is established. They referred to the cases of:

Usman V. Yerima

(1997) 7 NWLR (PT. 511) 27 @ 41 - 42

Momkom V. Odili

(2010) 2 NWLR (PT. 1179) 419 @ 442

Zubairu V. State

(2015) 16 NWLR (PT. 1486) 504 @ 527

That the Defendant breached the Contract Agreement. That the Defendant also failed to refund the investment fund as shown in the Letters of Demand attached and oral plea of the Claimant. That the Defendant is bound by the said terms of the Contract Agreement. They referred to the cases of:

SPDC Nigeria Limited V. Emehuru

(2007) 5 NWLR (PT. 1027) 347

Fagge V. Tukur

(2007) All FWLR (PT. 387) 880

That the Defendant is obligated to honour the said Agreement as it cannot benefit from its wrong. They referred to the case of:

Vinz International Nigeria Limited V. Olakunle

(2009) 11 NWLR (PT. 1153) 569

That the Claimant had suffered so much damages/losses because of the breach of the contract by the Defendant. Hence the claim of Ten Million Naira (N10, 000,000.00) as damages against the Defendant. They referred to the case of:

**Stabilini Visioni Limited V. Metalum Limited
(2008) 9 NWLR (PT. 1092) 416**

That since the evidence of the Claimant and testimony too and the documents tendered had established its case and proved same and same has not been controverted by the Defendant, that the Court should so hold and enter Judgment in the Claimant's favour.

COURT

This Court, having summarized the evidence of the Claimant and the Statement of Defence of the Defendant which it never come to move in this case and never called any Witness and never attached any document to challenge the case of the Claimant or in support of its Defence against the case of the Claimant, can it be said that the Claimant has established its case with the documents it has tendered and the testimony of her sole Witness? Can it be said that the case of the Claimant is unchallenged and therefore the Claimant is entitled to Judgment in this case? Is there merit in the case of the Claimant and is the Claimant therefore entitled to the Judgment of this Court in her favour? Was the Defendant in breach of the Contract

Agreement and was there actually any binding contract between the Claimant and the Defendant in this case?

Not answering the question seriatim, it is the humble view of this Court that the Claimant has established and proved her case with her testimony and the eleven (11) documents she tendered in support. The case of the Claimant is unchallenged and the facts unrebutted too. He who asserts must prove. The Claimant has proved her assertion in this case. The Defendant did not challenge as it were those facts, though they filed a Statement of Defence, they never came to Court to open its Defence and call any evidence. Besides, they did not attach any document in support of the said Statement of Defence it filed. The said Statement of Defence was even filed out of time. The Defendant never moved any Motion or made an oral application to regularize their Processes. But they filed several other Motions challenging the Suit in one way or the other and this Court struck out or dismissed them all.

There is no doubt that there was a binding and subsisting contract between the Claimant and the Defendant. There is evidence of Offer and Acceptance. There was consideration too. The documents tendered especially the money transaction as shown in the Bank Statement – EXH 1 speaks volume and confirmed that fact. Again, the Defendant confirmed that in its Statement of Defence filed in this case. So also payment of interest on investment as shown in the **Ten Thousand Naira (N10, 000.00)** paid by the Defendant to the Claimant in EXH 2 also further confirmed that fact. That payment was made into the

Claimant's Account at Stanbic IBTC Bank from the Defendant on the 18th March, 2020. The Defendant did not deny making the said payment. They did not deny receiving the investment sum either. The WhatsApp chat and SMS also confirmed the transaction. The chat of 21st February, 2020 showed that the Defendant, after the payment of interest on the 18th March, 2020 to the Claimant, rolled over the investment sum. In the chat of 21st February, 2020 it stated thus:

“Your request has been approved and your Account status has been rolled over for Three (3) months.”

The above confirmed that there was a binding contract and that the contract is subsisting and parties had agreed as to a rollover of the investment sum as applied and approved.

The chat of 14th January, 2020 confirmed that the Claimant paid money – **One Hundred Thousand Naira (₦100, 000.00)** which is the investment sum into the Defendant's Account. The Defendant wrote to the Claimant in the chat thus:

“Your payment of One Hundred Thousand Naira (₦100, 000.00) into Famzhi Account has been confirmed.”

The Defendant gave the Claimant further instruction showing that the Claimant was to be added to the group by stating thus:

“Download and chat Mr. Twice – 08172795555 on Telegram to be ADDED to the group.”

Also in a letter dated 11th February, 2020 which was written by one Nkem Ezeugo and Associates, Solicitor to the Claimant, the Claimant formally demanded for the payment of the sum in issue from the Defendant and the accrued interest. But the Defendant refused, neglected and ignored to pay the said sum. The said letter is Letter of Demand and also Pre-Action Notice to the Defendant. In it the Claimant's Solicitor pointed out that the Claimant had suffered losses as she would have invested the money in a business but she could not because of the investment made. The Claimant also attached the Receipt of Payment of the Solicitor's Fees paid by the Claimant to her Solicitor legal service – **One Million Naira (₦1, 000,000.00)**. The letter of the Solicitor was served on the Defendant on 2nd November, 2020.

The Defendant, having abandoned its Statement of Defence and having failed to field any Witness in challenge of this case, makes the case of the Claimant unchallenged. Having not attached even a copy of the Agreement of the parties shows and proved that they have no Defence and not challenging the documents especially the Bank transaction of transfers made by the Claimant into their Account confirms the existence of a binding contract. The Defendant never attached any document to show that the contract never existed or that it has been terminated. They did not deny receipt of Letter of Demand the receipt of which the Defendant acknowledged. They did not reply to the letter which was also a Pre-action Notice to the Defendant. Hence, the Claimant is right in seeking redress

in Court to recover her investment and interest on the investment sum. The Defendant, not responding to the issues raised in the said letter further shows that the Defendant accepted all the allegation or issues therein and has no Defence on those issues.

He who alleges must prove is a common mantra chanted in litigation. The Claimant has alleged and made assertions and had proved the said allegation and assertions so made. This Court believes her and holds so. Again, this Court believes as it is glaringly clear that the Claimant has not only lost profit on investment but has also lost some interest and the continuous holding of the investment sum by the Defendant causes the Claimant more losses.

This Court finds it difficult to believe as it greatly doubted what is deposed to in the Witness Statement on Oath and the Statement of Defence that the Defendant told the Claimant that the invested sum is not refundable. That is unheard of in business transaction of this nature where Investors like the Claimant do so because of what their investment will yield for them (interest). Since the Defendant said that was their Agreement it then means that the Defendant ab ignition were out to defraud the Claimant and other Investors in the business especially given the action of the Defendant in the whole transaction. Well, the same Defendant never attached any document to support that claim that the invested sum is non-refundable. It is not in doubt that the Claimant had suffered losses.

From all indication the Claimant have established and proved its case. She is therefore entitled to the Judgment of this Court being entered in her favour and Reliefs granted too.

Again, once a party has attached receipt of evidence of payment of Solicitor's Fee, the Court may not award any fee as Solicitor's Fee but can award cost of litigation in which also the Solicitor's Fee is subsumed. Beside, breach of contract as the Defendant has done in this case requires payment of exemplary and general damages. The Claimant had sought for such damages. This Court shall grant it as it deserving to do so.

The Court enters Judgment for the Claimant against the Defendant because the Claimant's case is meritorious and established. The Court grants the Reliefs sought to wit:

Prayer a, b & c granted as prayed.

Prayer d granted in that the Defendant should pay to the Claimant 3% interest on the sum of One Hundred Thousand Naira (N100, 000.00) invested into the Defendant's company from 14th January, 2021 until date of Judgment.

The Defendant to also pay the 15% interest of the total Judgment sum from date of Judgment until final liquidation.

The Defendant to also pay the sum of Fifty Thousand Naira (N50, 000.00) as damages to the Claimant.

The Claimant should bear the cost of its Solicitor's Fees.

This is the Judgment of this Court.

**Delivered today the ___ day of _____ 2023 by
me.**

K.N. OGBONNAYA
HON. JUDGE