

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

**IN THE ABUJA JUDICIAL DIVISION**

**HOLDEN AT ZUBA, ABUJA**

**ON FRIDAY THE 5<sup>TH</sup> DAY OF JULY, 2024**

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

**SUIT NO.: FCT/HC/CV/132/2021**

**BETWEEN:**

**ONIETAN OLUTIMEHIN WOLE        ----        CLAIMANT**

**AND**

**1. KANG JOONGHWA  
2. HANA CONSOLIDATED SERVICES LIMITED } DEFENDANTS**

## **JUDGMENT**

On the 19<sup>th</sup> of January, 2022 the Claimant – Mr. Onietan Olutimehin Wole filed this action against the Defendant – Kang Joonghwa, a Chinese citizen and Hana Consolidated Services Limited claiming the following:

- (1) A Declaration that he is entitled to recover the sum of ₦6, 650,000.00 (Six Million, Six Hundred and Fifty Thousand Naira) paid to Defendants after the failure of the proposed contract.**
- (2) An Order mandating the Defendants to pay to the Claimant the sum of ₦6, 650,000.00 (Six**

**Million, Six Hundred and Fifty Thousand Naira) being the outstanding balance from the ₦7, 000,000.00 (Seven Million Naira) earlier sent to the Defendants for the failed partnership business.**

**(3) An Order for the Defendants to pay the Claimant ₦500, 000.00 (Five Hundred Thousand Naira) as cost of the Suit.**

Sometime in 2021, according to the Claimant, the parties agreed that the Claimant fund the business in a partnership agreement which is for the production of Nylon products. They agreed that the 1<sup>st</sup> Defendant will provide the skills and expertise as his contribution to the partnership business. They got a factory space for lease at Suleja in Niger State but the 1<sup>st</sup> Defendant eventually got a place at Kaduna and the Claimant arranged for CCTV Camera installation expert based on the 1<sup>st</sup> Defendant's advice. That they could not install the cameras because terms were still been discussed with the factory owners.

The 1<sup>st</sup> Defendant gave the Claimant an Account No.: **4520003078** of Hana Consolidated Services Nigeria Limited – 2<sup>nd</sup> Defendant. The Account is domiciled in Fidelity Bank PLC. The purpose is for the money to be paid into the Account for the rent of the factory and servicing of the machines before production commences.

That he had before then placed order for the purchase of 10 feet large format Printing Machine with Darul Amanah Global Enterprise which was later cancelled. That he

instructed the company – Darul Amanah Global Enterprise to transfer the said **₦7, 000,000.00 (Seven Million Naira)** paid for the machine into the Account of the 2<sup>nd</sup> Defendant based on the instruction of the 1<sup>st</sup> Defendant. The transaction was by Bank transfer. He pleaded the receipt as Exhibit.

That there was undue delay in preparation of the lease and terms of the Lease Agreement. Then he got into financial difficulty/distress and he demanded for the sum of **₦350, 000.00 (Three Hundred and Fifty Thousand Naira)** from the **₦7, 000,000.00 (Seven Million Naira)** leaving a balance of **₦6, 650,000.00 (Six Million, Six Hundred and Fifty Thousand Naira)** on the understanding that once the terms are finally agreed upon he will make up the **₦350, 000.00 (Three Hundred and Fifty Thousand Naira)**. That because of the delay in the agreement of the Lease and the business take off, he got fed up and decided to opt out of the business entirely and made several oral demands for refund of the outstanding balance he had invested in the business – **₦6, 650,000.00 (Six Million, Six Hundred and Fifty Thousand Naira)**. That the 1<sup>st</sup> Defendant told him that he had made use of the money for the purchase of a bottle water production machine as against the Nylon product they had both agreed on. That the Claimant informed his lawyer to write to the Defendants and demand formally for the amount in issue. The lawyer did and gave 7 days Pre-Action Notice. That it was by WhatsApp Number **08067370649** and the 1<sup>st</sup> Defendant responded. He attached copy of the Response as acknowledgment by the 1<sup>st</sup> Defendant. He subsequently sent a hardcopy via courier

service. But the copy was returned unclaimed as the courier service said that there is no one with that name. He pleaded copy of the evidence of courier to the 1<sup>st</sup> Defendant.

That the Defendants failed to pay as demanded and he paid his lawyer **₦500, 000.00 (Five Hundred Thousand Naira)** to file the present action against the 1<sup>st</sup> & 2<sup>nd</sup> Defendants to recover the money from the Defendants. That the Defendants repeatedly pleaded for time. That on the 15<sup>th</sup> of December, 2021 the 1<sup>st</sup> Defendant also pleaded for time so that he can pay by 15<sup>th</sup> of January, 2022. That he gave the 1<sup>st</sup> Defendant up to 27<sup>th</sup> of December, 2021 to pay but he failed.

That his Counsel, because of the promise of the 1<sup>st</sup> Defendant, prepared a Memorandum of Understanding on how the money should be paid by the end of January 2022. He pleaded the said Memorandum of Understanding. But the Defendants failed to live up to their promise. That he came to Court to seek redress against the Defendants in order to recover his money.

The Defendants were served. They entered appearance and filed a Statement of Defence and Oath. They did not attach any document in defence of the Suit.

On the 1<sup>st</sup> day of November, 2022 the Defendants were represented by Clifford Oba who appeared in Court with O. Peters. He told Court that they would like to resolve the matter out of Court so that on the next adjourned date they will adopt the Terms of Settlement. Court adjourned to 6<sup>th</sup>

December, 2022. That day Cyril Otuhue came, holding the brief of Clifford Oba Esq. He told Court that parties have almost finalized settlement. Court adjourned to 17<sup>th</sup> January, 2023 as agreed by the parties. That day Clifford Oba Esq. came with O. Peters for the Defendants. The Claimant Counsel had emergency and was absent. The Defendants Counsel asked for adjournment to report settlement. Court adjourned to 1<sup>st</sup> of March, 2023. There was further adjournment to 22<sup>nd</sup> of March, 2023. That day the Defendants Counsel did not come to Court and the Claimant Counsel told Court that settlement had failed. The Court Bailiff ensured that the Defendants Counsel was notified about the date. No reason was given for their absence. The Court adjourned to 20<sup>th</sup> of April, 2023 for Definite Hearing since the Defendants Counsel was not in Court as the plan to settle has failed.

On the 20<sup>th</sup> of April, 2023 the Defendant who were well aware of the day were absent with no reason given. The Court, having adjourned the matter for Definite Hearing, allowed the Claimant Counsel to open the case of the Claimant. The Claimant's Witness who is the Claimant in this Suit testified in chief and tendered 5 documents. The matter was adjourned to 3<sup>rd</sup> of May, 2023 for Cross-examination of the PW1 and Court ordered the Bailiff to notify the Defendants/Defendants Counsel. He did.

On the 3<sup>rd</sup> of May, 2023 the Defendants/Defendants Counsel were absent and no reason given. The Court granted application for foreclosure and discharged the PW1. The matter was adjourned for Defence. The

Defendants were notified that the matter will come up for Defence on the 7<sup>th</sup> of July, 2023. That day the Defendants were absent and no reason given. Court in exercise of its discretion adjourned the matter to 14<sup>th</sup> of September, 2023.

On 14<sup>th</sup> September 2023 the Defendants were not in Court. The Claimant Counsel notified Court that the Defendants surfaced and said that they want to settle out of Court. This Court adjourned the matter for Report of Settlement or Defence if settlement fails. The Court adjourned to 28<sup>th</sup> day of February, 2024. The Defendants did not come to Court, so settlement was not reported. The Claimant Counsel applied for the foreclosure of the Defendants from opening and closing their Defence, having failed to do so since 3<sup>rd</sup> of May, 2023. The Court granted it and adjourned the matter for Final Written Addresses to be adopted on 27<sup>th</sup> of April, 2024. The Defendants/Defendants Counsel were duly notified.

On the 27<sup>th</sup> of April, 2024 the Defendants were not in Court and did not file any Final Written Address but the Claimant Counsel filed and served the Defendants theirs but they did file any Reply. The Court gave them another benefit of doubt and adjourned the case to 26<sup>th</sup> day of June, 2024. The Defendants were notified but they failed to be in Court. the Court adjourned the matter for Judgment which is been delivered today.

It is the law and has been held in plethora of cases that where a party fails to respond to Processes served on it, it means that such party have accepted and admitted the facts, allegation and charges against it as the case may be.

The Court will hold it so because if such party has any defence as in this case it would have put it up. Again, where a party responded to such Process as in this case, filed their Defence but failed to be in Court to adopt their Process – Oath etc; the Court will hold that they have abandoned their Defence and have admitted the case of the Claimant as true. In that case the Court will do the needful as the circumstance of the case requires.

This Court had given the synopsis of what happened in this case. The Court will now take a quick summary of the Joint Statement of Defence and the abandoned Statement on Oath of the 1<sup>st</sup> Defendant before going further.

The Defendants denied any partnership agreement to produce Nylon products – **paragraph 4** of the Joint Statement of Defence. They claimed that the 1<sup>st</sup> Defendant was employed to render service for establishment of Nylon Processing Factory for the Claimant. That the Claimant chose the location at Zaria, Kaduna State. That the 1<sup>st</sup> Defendant never advised the Claimant on CCTV Camera installation or mobilization of the expert from Abuja as the factory has no location in Kaduna State. That the Account details of Hana Consolidated Services Nigeria Limited was given for purchase of machines to be used in the factory, not for Rent. That the Claimant did not give him money to Rent factory space for him. That he was not aware of the purchase of a 10ft Large format Printing Machine by the Claimant and that he did not inform the Claimant to stop Darul Amanah Global Enterprise from purchasing the 10ft Large format Printing Machine.



That the Claimant transferred **₦7, 000,000.00 (Seven Million Naira)** to Darul Amanah Global Enterprise for the purpose of machine not for payment of factory rent. He agreed that out of **₦7, 000,000.00 (Seven Million Naira)** the Claimant collected **₦350, 000.00 (Three Hundred and Fifty Thousand Naira)** leaving the balance of **₦6, 650,000.00 (Six Million, Six Hundred and Fifty Thousand Naira)**. That the Claimant informed him that he is no longer interested in the business and asked for the refund of the balance – **₦6, 650,000.00 (Six Million, Six Hundred and Fifty Thousand Naira)**. That he informed the Claimant that the money was used for the purchase of Nylon producing machine.

That the Defendants were never served any letter through courier service. And that the 1<sup>st</sup> Defendant never pleaded for time to refund the Claimant the said outstanding balance.

The 1<sup>st</sup> Defendant did not deny receiving the letter sent via WhatsApp. The 1<sup>st</sup> Defendant did not attach any picture of the Nylon Producing Machine or even receipt of purchase of the Nylon Producing Machine. The Defendants did not file any Final Written Address.

The Claimant in its Final Written Address filed on the 27<sup>th</sup> of May, 2024; in it they raised an Issue for determination which is:

**“Whether the Claimant is entitled to the Judgment of this Court based on the evidence presented before this Court.”**



The Claimant Counsel answered the question on behalf of the Claimant in the positive, that the Claimant is entitled to the Judgment of this Court through the oral testimony and the documentary evidence – the 5 documents he tendered which were not challenged. That those facts were never controverted by the Defendants and are therefore deemed admitted. He referred to **S. 123 of the Evidence Act 2023** and the cases of:

**CBN V. Okoye**

**(2015) EJSC (Vol. 26) 1 @ 8**

**Okorochoa V. PDP**

**(2015) 1 EJSC 1 @ 44**

That in this case the Claimant is not relying on the weakness of the Defence but on the strong evidence laid by the Claimant in this Court. That the Claimant tendered even an Undertaking to Pay signed by the 1<sup>st</sup> Defendant. That by the evidence before the Court the Claimant has proven his case and he is therefore entitled to the Reliefs sought haven not been challenged by the Defendants who were availed every opportunity to defend the Suit but failed to do so. He urged the Court to grant their Reliefs as sought.

## **COURT**

The Court had summarized the stance of the Claimant and the abandoned Joint Statement of Defence and Oath of the Defendants. Can it be said that the Claimant is entitled to the Reliefs sought and that he has established his case through the testimony of the PW1 and the 5 unchallenged

documents he placed before this Court, bearing in mind that the Defendants filed a Statement of Defence but never came to Court to open and adopt their Defence in this Suit or to Cross-examine the PW1, even as I deliver this Judgment and also bearing in mind that unchallenged facts are deemed admitted especially where every judicial leverage was given to the Defendants but they slept on their right and failed to come to Court?

It is the very humbly considered view of this Court that the Claimant has established its case against the Defendants by the testimony of the PW1 and through the 5 documents he tendered before this Court. He deserves the grant of all his Reliefs in this case as sought, his case having not been challenged and facts therein having not been controverted or rebutted.

It is clear that there was Agreement to do contract between the parties and the said Agreement made orally as can be deciphered from the conduct and relationship as well as correspondence between the parties. By the Memorandum of Understanding – **EXH 5** the business failed. The amount being owed in this case is not in doubt. Both parties acknowledged and confirmed the outstanding balance of **₦6, 650,000.00 (Six Million, Six Hundred and Fifty Thousand Naira)** after **₦350, 000.00 (Three Hundred and Fifty Thousand Naira)** was returned to the Claimant when he had financial challenge.

It is not in doubt that the sum of **₦7, 000,000.00 (Seven Million Naira)** was transferred into the Account of Hana Consolidated Services Nigeria Limited on 6<sup>th</sup> of August,

2021 by Darul Amanah Global Enterprise. The Defendants did not deny that fact. They confirmed so. That evidence of payment was exhibited as **EXH 1**.

The Claimant through **EXH 2** formally demanded from the 1<sup>st</sup> Defendant and invariably the 2<sup>nd</sup> Defendant too the outstanding balance. That was as seen in the letter addressed personally to the 1<sup>st</sup> Defendant on the 9<sup>th</sup> of November, 2021. The Claimant tendered the acknowledgment copy of the letter to the 1<sup>st</sup> Defendant. That letter was written by the Counsel to the Claimant – **Alex E. Edim & Co.** In it the said Claimant Counsel, on the instruction of the Claimant, gave a chronological detail of what transpired between the parties and that the business failed and he formally demanded for the refund r payment of the balance of **₦6, 650,000.00 (Six Million, Six Hundred and Fifty Thousand Naira)** within 7 days of receipt of the letter. In the said notice the Claimant Counsel informed the 1<sup>st</sup> Defendant that it is also a pre-action notice as required by law if the Defendants fail to pay within 7 days after receipt of the letter. The Defendants failed to pay.

In other to secure the refund after all promises by the Defendants to pay failed the Claimant entered into a Memorandum of Understanding with the 1<sup>st</sup> Defendant who is a South Korean. The said Memorandum of Understanding was executed/signed by both parties. The Claimant tendered the document before this Court. It was not challenged. The Defendants did not deny its existence too. It was marked as **EXH 5**.

The Defendants had confirmed that the business failed and that the Claimant demanded for refund. A closer look at the Memorandum of Understanding – **EXH 5** shows that there was a business agreement between the parties, money was paid. It confirmed all that the PW1 testified in chief and all facts in his Oath. The Defendants did not deny same. In the Memorandum of Understanding the 1<sup>st</sup> Defendant undertook to refund the sum in issue – **₦6,650,000.00 (Six Million, Six Hundred and Fifty Thousand Naira)** to the fullest. The 1<sup>st</sup> Defendant asked for time and the Claimant agreed to give the Defendants one full month and not later than the 31<sup>st</sup> of January, 2022 to refund the money. The Memorandum of Understanding was entered into in December 2021. The Defendants had also in the said Memorandum of Understanding agreed to make a substantial payment on or before 15<sup>th</sup> January, 2022. The payment was to be made into the Claimant's Account directly. In the said Memorandum of Understanding the Defendants agreed to pay damages if they fail to refund the money by 31<sup>st</sup> of January, 2022. The above is as stated in page 2 of the Memorandum of Understanding – **EXH 5**.

It is imperative to state that before the Memorandum, the Claimant had sent a letter of Demand to the Defendants via Courier service but it was returned. That document evidencing the courier service was tendered as **EXH 4**. It was sent on the 22<sup>nd</sup> of November, 2021 before the Suit was filed on the 19<sup>th</sup> of January, 2022 after all entreaties to make the Defendants pay failed.

All the above documents were not challenged by the Defendants. They did not Cross-examine the PW1 and the evidence of PW1 was not controverted. Besides, the Defendants abandoned their Joint Statement of Defence they filed and the 1<sup>st</sup> Defendant never adopted his Statement on Oath in this case.

As rightly pointed out, uncontroverted facts are deemed admitted. This applies in this case as the Defendants did not controvert the facts placed before this Court by the Claimant. See **S. 123 of the Evidence Act 2023** and the cases of:

**Pius V. State**

**(2015) 15 EJSC 41 @ 43**

**Nwaogu V. Atuma**

**(2015) 19 EJSC 128 @ 130**

**Akinyede Olaiya V. The State & 1 Or**

**(2017) SC 562 per Ejembi Eko**

where the Court held that facts not disputed need no further proof as they are in law taken as proved and/or established. See also the cases of:

**ACB V. Adiele**

**(2013) LPELR – 21164 (CA)**

**Ajibulu V. Ajayi**

**(2015) 22 EJSC 182 @ 186** where Supreme Court held that a party succeeds at the strength of its case.

In this case, the Claimant has by the oral testimony of PW1 and the 5 documents tendered, all of which were not

challenged, proved and established his case and did not anchor on the failure and weakness of the Defence.

All in all, it is the humble view of this Court that there is merit in the case of the Claimant and, having established his case, he is entitled, as required by law and as held in plethora of cases, to the Reliefs sought.

The Court hereby grants the Reliefs sought to wit:

**Prayer 1 and 2 granted as prayed.**

The 1<sup>st</sup> Defendant is to pay the Claimant the sum of ₦100,000.00 (One Hundred Thousand Naira) only as cost of the Suit.

**This is the Judgment of this Court.**

**Delivered today the \_\_\_\_ day of \_\_\_\_\_ 2024 by me.**

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**K.N. OGBONNAYA**  
HON. JUDGE

**APPEARANCE:**

**CLAIMANT COUNSEL:**

**A.M. LAFIAGI ESQ.**

**DEFENDANTS: NOT REPRESENTED**