

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**

**IN THE ABUJA JUDICIAL DIVISION**

**HOLDEN AT MAITAMA**

**BEFORE HIS LORDSHIP : HON. JUSTICE Y. HALILU**

**COURT CLERKS : JANET O. ODAH & ORS**

**COURT NUMBER : HIGH COURT NO. 14**

**CASE NUMBER : SUIT NO: CV/17/2019**

**DATE: :WEDNESDAY 8<sup>TH</sup> NOVEMBER, 2023**

**BETWEEN:**

**OSE GEORGE GLOBAL CONCEPTS LTD....CLAIMANT**

**AND**

**1. JOHN FLOKAS**

**2. WASSIM SUFON**

**DEFENDANTS**

## **JUDGMENT**

The Claimant commenced this action vide Writ of Summons and Amended Statement of claim dated 1<sup>st</sup> July, 2020 and filed on the same day wherein the Claimant claims the following:-

1. Damages to the tune of N93,576,000.00 (Ninety Three Million Five Hundred and Seventy Six Thousand Naira) being the market value of total sum of 1.115 cartons of wines (13,368) belonging to the Claimant but illegally withheld by the Defendants.
2. The sum of N1,700,000.00 (One Million, Seven Hundred Thousand Naira) being the amount the Claimant expended in obtaining National Agency for Food and Drug Administration and Control (NAFDAC) license based on the

assurances from the Defendants (as shown in the pleadings) which later turned out to be false.

3. The sum of **N50,000,000.00 (Fifty Million Naira)** being general damages for the loss of the business opportunity arising from the frustration by the Defendants of the proposed wine importation business.
4. Interest of 15% per annum on the entire Judgment sum until final liquidation.

Upon service of the Writ on the Defendants and after pleadings were exchanged, the suit was set down for hearing. The case of the Claimant as distilled from the Statement of Claim and Witness Statement on Oath of the Claimant is;

That sometime in the year 2015 the 1<sup>st</sup> Defendant met with the Claimant (through its Managing

Director) in Abuja, and the 1<sup>st</sup> Defendant invited the Claimant into a business proposal that involved the importation of wine from the Republic of Greece on the information and promise from 1<sup>st</sup> Defendant to Claimant that there is a high demand for Greek Wines among Europeans living in Nigeria, especially for their personal consumption and for use at their frequently organized official diplomatic ceremonies, but short supply due to lack of sufficient importers of Greek Wines, and he (1<sup>st</sup> Defendant) then promised that he would use his contacts in the European Diplomatic Community in Nigeria to Market and sell the wines for Claimant.

That in the course, place and time of the above, the 2<sup>nd</sup> Defendant equally assured the Claimant of the lucrative nature of the Greek Wine importation business and thereon offered to provide his

warehouse situate at **No. 17 Arochukwu Street by old FERMA Garki 2 Abuja** for the storage of the wines from where he (2<sup>nd</sup> Defendant) promised to also use his experience in the Restaurant/Bar business to help Claimant create further market for the said wines.

That based on the foregoing information and promises the Claimant then decided to go into the business as proposed by the Defendants, consequent upon which the 1<sup>st</sup> Defendant took Claimant on a trip to Greece (at Claimant's expense) to visit to the wine making factory in Greece whereupon, (because that particular brand of Greek Wine was yet to be imported into Nigeria at the time), the Claimant was given exclusive marketing rights and Power of Attorney by the said Wine Manufacturer. A copy of this Power of Attorney shall be relied upon at trial.

That in view of the above, there was a need to obtain license from the National Agency for Food and Drug Administration and Control (NAFDAC), before embarking on the sale of the product in Nigeria.

That as part of securing the above National Agency for Food and Drug Administration and Control (NAFDAC) license, there was need to import certain quantity of the said wines for purpose of being used as samples for National Agency for Food and Drug Administration and Control (NAFDAC) and then to be subsequently sold at a profit upon National Agency for Food and Drug Administration and Control (NAFDAC) approval and, the proceeds therefrom will then be re-invested into the business.

That consequently, Claimant then imported a total of 1,128 cartons of wines comprising of three different brands as follows:

- i. Maistrali Semi Sweet Wines – (264 Cartons)
- ii. Iris Semi Sweet Wines – (264 Cartons), and
- iii. Rodinos Semi Sweet Wines – (600 Cartoons)

The Claimant shall rely on the importation document of the above mentioned wines at trial.

After the Claimant cleared the above goods (wines) from customs, and based on the assurances of the 2<sup>nd</sup> Defendant as shown above, the Claimant (acting through its Managing Director/CEO) on 6<sup>th</sup> March, 2016 delivered the said goods to the 2<sup>nd</sup> Defendant at his above mentioned Warehouse in Garki, Abuja. Pictures of the wines taken by the Claimant's

Managing Director with his camera phone as they were being offloaded from the truck on that 6<sup>th</sup> March, 2016 shall be relied upon at trial.

That the understanding reached by all the parties at the time of the Claimant delivering the said wines to the 2<sup>nd</sup> Defendant was that the wines would be made available and released to the Claimant by the 2<sup>nd</sup> Defendant anytime Claimant demand for the wines.

That pursuant to the above, on two separate occasions the Claimant usually retrieved a total of 14 cartoons (out of the 1,128 cartoons) for purpose of National Agency for Food and Drug Administration and Control (NAFDAC) inspection and marketing samples. On each of those occasions, the Claimant's Managing Director met with the 2<sup>nd</sup> Defendant's

warehouse Manager in person of Solomon who released the said wines to Claimant.

After a series of delays and expenses, the Claimant eventually succeeded in securing the National Agency for Food and Drug Administration and Control (NAFDAC) license for the importation of the wines. The process of obtaining the National Agency for Food and Drug Administration and Control (NAFDAC) approval was very demanding as it entails several visits to and fro and in total it cost the Claimant the sum of N1,700,000.00 (One Million, Seven Hundred Thousand Naira) N1,042,000.00 (One Million, Forty-Two Thousand Naira) receipted and the balance is out of pocket expenses, public relations management, logistics and incidentals the National Agency for Food and Drug Administration and Control (NAFDAC) approval,

National Agency for Food and Drug Administration and Control (NAFDAC) receipts and other supporting documents shall be relied upon at trial.

The Claimant also incurred additional expenses and effort to procure trade mark registration for the said wines. The trade mark documents shall be relied upon at trial.

That after the above approval of National Agency for Food and Drug Administration and Control (NAFDAC) and trademarks, the Claimant then approached the 2<sup>nd</sup> Defendant for the release of the wines for marketing purposes but the Claimant was surprised when he was informed by the 2<sup>nd</sup> Defendant's above named warehouse Manager that the 2<sup>nd</sup> Defendant had given them standing

instructions not to release any more wines to the Claimant.

That on one particular occasion, Claimant had an Order for the supply of 1,500 cartons of the said wine in issue and was hoping to meet that demand with the stock in possession of the Defendants and then make up the balance from elsewhere, but the Defendants conduct of withholding the wine frustrated Claimant's ability to meet the said supply order.

That all the Claimant's efforts to reach the Defendants on phone have proved abortive as they no longer pick or return his calls and SMS.

That as a result of the above, the Claimant decided to send a letter via DHL courier to the 2<sup>nd</sup> Defendant demanding for the release of the goods. The said

letter and the DHL receipts and proof of delivery shall be relied upon at trial Notice to produce is hereby issued to the 2<sup>nd</sup> Defendant.

That the Defendants have refused to release the Claimant's goods to him despite his demand.

That the Claimant believes that the Defendants are selling off his above mentioned wines and keeping the proceeds to themselves to the detriment of the Claimant.

That each carton of the grade of wine in issue contains 12 bottles of wine and a bottle of the grade of wine in issue is sold at bars, clubs and restaurants (such as the above mentioned New York Restaurant) for the sum of N7,000.00 (Seven Thousand Naira) per bottle.

That total number of cartons of the Claimant's wines withheld by the Defendants is 1,114 (One Thousand, One Hundred and Fourteen Cartons).

That 1,114 cartons by 12 bottles comes to 13,368 bottles of wine, and that amount by the sum of N7,000 per bottle comes to the tune of N93,576,000.00 (Ninety-Three Million, Five Hundred and Seventy-Six Thousand Naira).

That due to the Defendants conduct of withholding the Claimant's goods, Claimant have lost all the market avenues he has created for the sale of the wines as Claimant was not able to supply when demands were made to him to supply the wines.

That the above National Agency for Food and Drug Administration and Control (NAFDAC) license and trademarks are now of no use to the Claimant as it

was obtained by Claimant on the strength of the promises from the Defendant to assist with the selling of the wine among the European Diplomatic Community but which promise is no longer feasible in the light of the Defendants' conduct complained of herein.

PW1 (Emmanuel Oseghale Ilenikhena) tendered the following documents in evidence:-

1. Power of Attorney
2. Customs Importation Documents
3. Three (3) Photographs accompanied with certificate of computer generated documents.
4. National Agency for Food and Drug Administration and Control (NAFDAC)

Notification of Professional Registration dated 14<sup>th</sup> March, 2018

5. Federal Ministry of Trade and Investment Trade-Mark Registration
6. Claimant's Letter to the 2<sup>nd</sup> Defendant dated 11<sup>th</sup> January, 2019.

All marked Exhibits "1", "2", "3", "4", "5" and "6" respectively.

The Plaintiff closed its case to pave way for defence.

The case of the Defendants can be distilled from the Joint Statement of Defense and witness statement on oath of DW1 (Anthony Osawaru, lawyer to the 1<sup>st</sup> Defendant).

Apart from the general traverse, Defendants specifically denied the averment contained in

paragraph 4 of the Statement of Claim and further state that it was Emmanuel Oseghale Ilenikhena who approached the 1<sup>st</sup> Defendant, the 1<sup>st</sup> Defendant/Counter Claimant proposed the importation of wine from his Country (Greece).

He further stated that the business proposed to Emmanuel Oseghale Ilenikhena by the 1<sup>st</sup> Defendant/Counter Claimant was to be carried out as a partnership between the 1<sup>st</sup> Defendant and Emmanuel Oseghale Ilenikhena. In two chats in 2016, Emmanuel Oseghale Ilenikhena, while updating the 1<sup>st</sup> Claimant/Counter Claimant on what was happening with the partnership's activities with the Nigeria Customs Service and National Agency for Food and Drug Administration and Control (NAFDAC), revealed the truth about the ownership of the business when he said the custom man called

him today that he is through with our custom duty fee... “and customs refused our application...”. The said chats are pleaded.

In further response to the averment in paragraph 4 of the Claimant’s Statement of Claim, the Defendants/Counter Claimants state that the 1<sup>st</sup> Defendant/Counter Claimant made all the contacts in Greece for the partnership dealing directly with Emmanuel Oseghale Ilenikhena and not the Claimant herein.

The Defendants/Counter Claimants state, in defence, that none of them gave any assurance of the lucrative nature of the business to the Claimant or its Emmanuel Oseghale Ilenikhena. All businesses have their inherent prospects, challenges and setbacks.

The Defendants/Counter Claimants state that the 1<sup>st</sup> Defendant/Counter Claimant took the Claimant’s

Emmanuel Oseghale Ilenikhena to Greece for an on-the-spot assessment of the factory producing the brands of wine the partnership (John Flokas + Emmanuel Oseghale Ilenikhena) was to trade on.

He further stated that upon visiting the factory in Greece, it dawned on him that the Claimant's alter ego (Emmanuel Oseghale Ilenikhena) had no money to embark on the business contrary to the impression earlier given to the 1<sup>st</sup> Defendant/Counter Claimant (who was the person he had a business relationship with) that the investment would be joint with each of the Partners contributing equally (50:50) to the start-up capital.

That the 1<sup>st</sup> Defendant/Counter gave the Claimant, Emmanuel Oseghale Ilenikhena money for the purpose of securing the National Agency for Food

and Drug Administration and Control (NAFDAC) number which the Claimant has severally alluded to. That the 1<sup>st</sup> Defendant/Counter Claimant gave the Claimant Emmanuel Oseghale Ilenikhena the sum of €7,000.00 (Seven Thousand Euros); 50% of €14,000.00 (Fourteen Thousand Euros), towards obtaining the National Agency for Food and Drug Administration and Control (NAFDAC) Number. There was no sincerity in pursuing the National Agency for Food and Drug Administration and Control (NAFDAC) Number which was a condition precedent to the importation of the wine into Nigeria, and that it was only in 2018 that the Claimant Emmanuel Oseghale Ilenikhena presented to him a yet to be verified document from National Agency for Food and Drug Administration and Control (NAFDAC), and that all efforts made to

verify the authenticity of the purported National Agency for Food and Drug Administration and Control (NAFDAC) Number proved abortive as National Agency for Food and Drug Administration and Control (NAFDAC) will not respond to any electronic mail sent to it by the 1<sup>st</sup> Defendant/Counter Claimant herein. Select emails sent to National Agency for Food and Drug Administration and Control (NAFDAC) by the 1<sup>st</sup> Defendant/Counter Claimant are hereby pleaded. It should be noted that the dates on the emails are written in Greek.

He stated also that the total sum needed to be paid to winery in Greece (his country) was €26,000.00 (Twenty Six Thousand Euros) out of which he and the Claimant Emmanuel Oseghale Ilenikhena were

to each raise the sum of €13,000.00 (Thirteen Thousand Euros) as their contributions.

The 1<sup>st</sup> Defendant/Counter Claimant avers that the Claimant Emmanuel Oseghale Ilenikhena surreptitiously returned the same €7,000.00 (Seven Thousand Euros) given to him for National Agency for Food and Drug Administration and Control (NAFDAC) Registration to the 1<sup>st</sup> Defendant/Counter Claimant as part of his €13,000.00 (Thirteen Thousand Euros) contribution. This now made a total of €20,000.00 (Twenty Thousand Euros) out of the needed €26,000.00 (Twenty Six Thousand Euros) for the wine.

It is similarly the averments of the 1<sup>st</sup> Defendant/Counter Claimant avers that in Order to raise the balance of €6,000.00 (Six Thousand Euros) needed

to make up the €26,000.00 (Twenty Six Thousand Euros), he raised an additional €2,000.00 (Two Thousand Euros) and urged the Claimant Emmanuel Oseghale Ilenikhena to raise €4,000.00 (Four Thousand Euros) out of his own outstanding contribution of €6,000.00 (Six Thousand Euros), and that what was paid to the Winery in Greece was €26,000.00 (Twenty Six Thousand Euros) out of which Claimant Emmanuel Oseghale Ilenikhena was to refund 50% €13,000.00 (Thirteen Thousand Euros) to him. Only the sum of €7,000.00 (Seven Thousand Euros) has been refunded to the 1<sup>st</sup> Defendant by Emmanuel Oseghale Ilenikhena.

That 1<sup>st</sup> Defendant/Counter Claimant avers he had to make up and pay the entire €26,000.00 (Twenty Six Thousand Euros) since the Claimant Emmanuel Oseghale Ilenikhena was not forthcoming with the

€4,000.00 (Four Thousand Euros). The 1<sup>st</sup> Defendant/Counter Claimant states that he was in Greece where he made the payment and took delivery of the original associated document (Certificate of Analysis and Power of Attorney). The originals are still in his lawful custody. This action was communicated to Emmanuel Oseghale Ilenikhena via a chat the said chat is hereby pleaded.

The 1<sup>st</sup> Defendant/Counter Claimant states that Emmanuel Oseghale Ilenikhena claimed he couldn't raise the €4,000.00 (Four Thousand Euros) he was meant to because it was "end of the year" and because of his mother's burial ceremony. There was a chat between the 1<sup>st</sup> Defendant/Counter Claimant and Emmanuel Oseghale Ilenikhena on the need for the €4,000.00 (Four thousand Euros) at that point. The said chat is hereby pleaded.

The 1<sup>st</sup> Defendant/Counter Claimant states that he was the one calling and making appeals to Emmanuel Oseghale Ilenikhena to bring his own portion of the money so they will not suffer any consequence of a breach of their contract with the Winery in Greece. This is also captured in their chats. The chat touching on this is hereby pleaded.

The 1<sup>st</sup> Defendant/Counter Clamant states that Emmanuel Oseghale Ilenikhena, at a point, said to him “...as partners we should learn to understand each other to make the business easy, I ask u to help me give the €4,000.00 (Four Thousand Euros) balance to the Winery cos we are partners which I will return back to u wen.”

The 1<sup>st</sup> Defendant/Counter Claimant states after paying up the balance of the money for the wine, he

arranged for the freighting of the wine in Nigeria through the Apapa Port in Lagos as advised by Emmanuel Oseghale Ilenikhena who equally advised that his personal and company names be used. The chat of 22<sup>nd</sup> December, 2015 evincing this development is hereby pleaded.

The 1<sup>st</sup> Defendant/Counter Claimant states that when the wine which he sent from Greece arrived Nigeria and was due for customs clearing, Emmanuel Oseghale Ilenikhena (the Claimant's Managing Director) asked him for the sum of N60,000.00 (Sixty Thousand Naira) for the purpose of preparing what is called Form M in clearing and forwarding parlance. Emmanuel Oseghale Ilenikhena sent the Custom Agent's name and banking details (Aliyu Mohammed – 1011181983 – Sky Bank) to the 1<sup>st</sup> Defendant/Counter Claimant through a chat.

The 1<sup>st</sup> Defendant/Counter Claimant states that Emmanuel Oseghale Ilenikhena sent his brother to collect cash from him in Abuja since he didn't have a Nigerian Naira (NGN) account through which he could make a transfer to the Agent in Lagos. The chat of January 2016 evincing within the communication is hereby pleaded.

That after releasing the money for Form M as requested by Emmanuel Oseghale Ilenikhena, he kept inquiring about the Form number, but Emmanuel Oseghale Ilenikhena will come with one excuse or the other. In a chat on the 16<sup>th</sup> January, 2016, the 1<sup>st</sup> Defendant asked “*Any news for the firm (sic) m number?*” The response from Emmanuel Oseghale Ilenikhena was “*no Monday cos they need to generate it.*” The chat is hereby pleaded.

The 1<sup>st</sup> Defendant/Counter Claimant states that in one occasion, he appealed to Emmanuel Oseghale Ilenikhena to take the wine business seriously and not to be a disappointment because he (Emmanuel Oseghale Ilenikhena) and his family stood better chances of benefiting from the business. Here was the response from Emmanuel Oseghale Ilenikhena to this appeal:

***“I will not cos u are my friend and my brother I promise u won’t regret it cos I so much appreciate u efforts so far.”***

A related chat is hereby pleaded.

The 1<sup>st</sup> Defendant/Counter Claimant states that when the wine, which he paid for (with Emmanuel Oseghale Ilenikhena contributing only €7,000.00 out of €26,000.00), eventually arrived Nigeria and the

2<sup>nd</sup> Defendant offered to provide free storage accommodation, Emmanuel Oseghale Ilenikhena wanted the 2<sup>nd</sup> Defendant (a friend to the 1<sup>st</sup> Defendant); a 3<sup>rd</sup> party to the transaction, to pay for the offloading of the wine. The 1<sup>st</sup> Defendant/Counter Claimant resisted this.

That 1<sup>st</sup> Defendant/Counter Claimant states that after resisting the attempt by Emmanuel Oseghale Ilenikhena to make the 2<sup>nd</sup> Defendant pay for offloading, Emmanuel Oseghale Ilenikhena requested for money to balance the driver who transported the drinks from Lagos to Abuja. A related chat is hereby pleaded.

The 2<sup>nd</sup> Defendant states that his company (NY 24/7 International Limited) referred to in paragraph 3 of the Claimant's Statement of Claim was registered

only in June, 2018 after the importation of the wine under reference by the 1<sup>st</sup> Defendant/Counter Claimant and Emmanuel Oseghale Ilenikhena. None of the species of wine in contention is on his restaurant's menu. The certificate of incorporation of NY 24/7 International Limited and the restaurant's menu are hereby pleaded.

The 1<sup>st</sup> Defendant/Counter Claimant states that there is no formal written agreement between himself and Emmanuel Oseghale Ilenikhena, but everything between them is borne out in the mails exchanged by them. Select emails exchanged between the 1<sup>st</sup> Defendant and Emmanuel Oseghale Ilenikhena (four pages) are hereby pleaded.

The Claimant Emmanuel Oseghale Ilenikhena, by his conduct and actions, made the 1<sup>st</sup> Defendant to

doubt everything about him. In a certain chat he alleged he was in a bank trying to raise €3,000.00 (Three Thousand Euros) to give to the 1<sup>st</sup> Defendant and the 1<sup>st</sup> Defendant's response was very revealing. A printout of the said chat is hereby pleaded.

The 1<sup>st</sup> Defendant states that because of the doubt the Claimant Emmanuel Oseghale Ilenikhena created in his name, he (the 1<sup>st</sup> Defendant) insisted that all cash from the sale of their wine be kept with him at the Greece Embassy in Abuja where he worked while in Nigeria. This was not opposed by the Claimant Emmanuel Oseghale Ilenikhena. A related chat/communication is hereby pleaded.

The 1<sup>st</sup> Defendant/Counter Claimant states that he had to counsel/caution the Claimant Emmanuel Oseghale Ilenikhena at a point on the need not to

abuse opportunities that come his way. In the same chat, the 1<sup>st</sup> Defendant/Counter Claimant urged the Claimant Emmanuel Oseghale Ilenikhena not to disappoint him. The response was “...and never will u regret ur decision cos are a good man.” The related chat is hereby pleaded.

The GSM number with which the Claimant Emmanuel Oseghale Ilenikhena communicated and chatted with the 1<sup>st</sup> Defendant is +2348098479184.

This Honourable Court is urged, respectfully, to discountenance the phantom claims of the Claimant and its Emmanuel Oseghale Ilenikhena, dismiss same for being mischievous and fortune-seeking, and award heavy punitive cost against the duo.

The 1<sup>st</sup> Defendant/Counter Claimant adopts all the above averments.

Wherefore the 1<sup>st</sup> Defendant/Counter Claimant claims against the Claimant/Defendant to the Counter Claim as follows:-

1. A Declaration that the 1<sup>st</sup> Defendant/Counter Claimant is entitled to all the money he injected into the joint venture with Emmanuel Oseghale Ilenikhena to which the Claimant/ Defendant to Counter Claim is now laying claim to.
2. A Declaration that parties are bound by their agreements (whether written or unwritten).
3. The sum of €6,000.00 (Six Thousand Euros) only being the balance of the equity contribution of the Claimant/Defendant to Counter Claim's Emmanuel Oseghale Ilenikhena to the joint venture between the 1<sup>st</sup> Defendant/Counter Claimant and Emmanuel Oseghale Ilenikhena.

4. The sum of €7,000.00 (Seven Thousand Euros) only being money given to the Claimant/Defendant to Counter Claim's Emmanuel Oseghale Ilenikhena to obtain a National Agency for Food and Drug Administration and Control (NAFDAC) number which has remained unverified.
5. The sum of N60,000.00 (Sixty Thousand Naira) only being money given to the Claimant/Defendant to Counter Claim's Emmanuel Oseghale Ilenikhena's brother in relation to the clearing of the wine with the Nigerian Customs Service.
6. The sum of N10,000,000.00 (Ten Million Naira) as general damages against the Claimant/

Defendant to Counter claim and its Emmanuel OseghaleIlenikhena.

7. The cost of defending this suit and prosecuting the Counter Claim.

DW1 (Anthony Osawaru) tendered the following in evidence;

1. Whatsapp and email messages
2. Certificate of Incorporation

All marked as Exhibits 'D1' and 'D2' respectively.

DW1 was cross examined and subsequently discharged.

On their part, Claimant filed reply and defence to 1<sup>st</sup> Defendant's Counter-Claim. It is the deposition of the Claimant, that the wine importation business in issue was never intended to be carried out as a

partnership with the Defendants. The Claimant (whether by itself or any of its proxy) denies authorship of any act/communication with the Defendants claiming to be purported proof of the existence of any partnership with the Defendants, and that it is not true that the Defendant made monetary contribution towards the wine importation business in issue. On the contrary, it is the Claimant who solely funded the business in its entirety and at no time was it agreed that the wine business was going to be on a 50:50 basis with the Defendants.

That to the best of his recollections the issue of payments of the workers for offloading the wines was brought up by him on behalf of the Claimant only because it was not clear to him at that time if the workers were the regular staff of the 2<sup>nd</sup> Defendant whom he periodically pay salaries or if

they were contracted for the specific purpose of doing the offloading and so needed to be paid, and it is not correct for the Claimant to now use that as evidence of partnership, and that it is also not correct to state or suggest that the wines in issue belong to any union of Him and the 1<sup>st</sup> Defendant, because no such union exists. The wines are the property of the Claimant and neither he nor the Claimant is indebted to the Defendants in any manner whatsoever and they (Defendants) have no justification to withhold the said wines as currently done by them.

That it is not true to say that he set out from the onset to take advantage of the 1<sup>st</sup> Defendant, rather it is the Defendants who have taken advantage of him and the Claimant. That he does not refer to any of the Defendants as “Boss” and neither he nor the Claimant are author to any chat or communication

suggestion the existence of a fiduciary relationship between the 1<sup>st</sup> Defendant and him, to warrant the 1<sup>st</sup> Defendant having to admonish him on any subject whatsoever.

That there was never any time he chatted with the 1<sup>st</sup> Defendant from a bank or anywhere else for that matter about the issue of raising €3,000.00 (Three Thousand Euros) or any other sum for that matter, to give to the 1<sup>st</sup> Defendant and he is not author to any chat or correspondence tending to suggest otherwise.

That he did not at any time discuss putting the proceeds of the sales of the wines at the Greece Embassy where 1<sup>st</sup> Defendant worked and to the best of my (as well as Claimant's) knowledge, the 1<sup>st</sup> Defendant was not in charge of the Greece Embassy safe or vault throughout the period he worked for the

Embassy and any he is not a party to any chat/communication in that supports such discussions regarding putting the proceeds of the sales in any safe or vault.

That the 1<sup>st</sup> Defendant Counter-Claimant did not at any time counsel/caution him or the Claimant and any chat referred in that regard by the Defendants, to has no bearing with the instant transaction and at best are a ‘cut and paste’/edited versions of previous and extraneous communications of the parties.

That neither he nor the Claimant have any recollection of authorship of this disjointed bundle of emails, whatsapp and other messages front loaded in the Defendants’ Joint pleadings in this instant suit and except as expressly admitted by the Claimant and him, we hereby deny authorship of them and

state that they are nothing but the product of the Defendant imaginations and fabrications, and he no recollection of any fact to the effect that any of the said disjointed bundle of emails, whatsapp and other messages credited to Claimant emanated from any electronic device belonging to or under the control of either him or the Claimant or any of Claimant's other employees or proxies.

That this Honourable Court should enter Judgment in favour of the Claimant according to the reliefs in the Statement of Claim and to also dismiss the 1<sup>st</sup> Defendant's Counter-Claim with cost.

In line with procedure, Defendants filed written address wherein sole issue was formulated for determination to-wit;

***“Whether the Claimant has established its case by credible evidence so as to entitle it to Judgment?”***

It is the submission of learned counsel, that the deposition of Anthony Osawaru as evinced in paragraph 33 of his witness depositions is very instructive and informative. What must have been the reason why the Claimant and its alter ego will make sales from their own exclusive business’ then take the cash/proceeds of sales to the 1<sup>st</sup> Defendant/Counter Claimant at the Greece Embassy in Abuja.

Learned counsel submits, that the entirety of the Claimant’s case before this Court is vague, woolly, improbable and lacking in truth. Truth is a scarce commodity but the Courts have laid down

parameters on how to ascertain the true. *OBENTA VS. NZERIBE (1999)4 NWLR (Pt. 599) 348 at 357* was cited.

Counsel concludes that the Claimant woefully failed to make out a credible and probable case;

The Claimant failed to situate the 2<sup>nd</sup> Defendant within the boundaries of its Emmanuel Oseghale Ilenikhena's dealings with the 1<sup>st</sup> Defendant/Counter Claimant. There is plausible evidence that the 2<sup>nd</sup> Defendant's restaurant came into being long after the transaction between the Claimant's Emmanuel Oseghale Ilenikhena and the 1<sup>st</sup> Defendant/Counter Claimant;

Emmanuel Oseghale Ilenikhena simply played on the intelligence of the 1<sup>st</sup> Defendant/Counter

Claimant by surreptitiously bringing the Claimant into the picture;

The 1<sup>st</sup> Defendant/Counter Claimant has elected to put everything behind him and move on the abandoning his Counter Claim.

A fervent consideration of the reliefs claimed by the Claimant against the background of the sole issue for determination distilled by the Defendants, only points to the direction/conclusion, to-wit: the Claimant is not entitled to Judgment as it failed to establish its case by credible evidence.

On their part, Plaintiff filed written address in line with procedure, wherein six (6) issues was formulated for determination to-wit;

1. *Whether the testimonies of DW1 bordering on the agreed terms of the transaction between the litigants does not amount to hearsay evidence?*
2. *Whether the testimonies of DW1 bordering on the agreed terms of the transaction between the litigants is admissible?*
3. *Whether the Defendants successfully established the existence of a partnership between Emmanuel Oseghale Ilenikhena (PW1) and the 1<sup>st</sup> Defendant as alleged by them in respect of the wine business in issue?*
4. *Whether the Claimant successfully established its case as the sole importer and owner of the wines in issue?*

5. *Whether the conduct of the Defendants (particularly that of the 2<sup>nd</sup> Defendant) does not amount to detinue?*
6. *Whether the Claimant is in the circumstance entitled to damages and if yes what is the quantum of such damages?*

**On issue 1**, learned counsel submits, that it is irresistible and inescapable that the evidence of DW1 to the effect that the agreement reached by the PW1 with the Defendant at the 2015 meeting was that the wine business was to be carried out as a partnership between the 1<sup>st</sup> Defendant and Emmanuel Oseghale Ilenikhena (PW1) equally on a 50:50 basis, is hearsay evidence because the DW1 who gave that evidence, was not present at the meeting in 2015 when that discussion occurred and

so did not personally witness (see and/or hear) the PW1 when he purportedly reached that 50:50 partnership agreement with the 1<sup>st</sup> Defendant, rather the DW1 is relying on what the Defendants told him happened at the meeting and this position is further fortified by the very fact that the object of the DW1 evidence is to establish the truth of what is contained in the statement i.e., that a 50:50 partnership was agreed upon by the parties at that meeting.

**On issue 2**, learned counsel submits, that the case of the Defendants does not fall within any of the exceptions contemplated in Section 38 of the Evidence Act, the case of the Defendants is not one of affidavit where hearsay may be admissible provided that the source of information is disclosed.

***ADEBAYO VS. BROWN (1990)6 SCNJ 1*** was cited.

Learned counsel further submits, that the case of the Claimant was initiated by Writ of Summons, and so what the Defendant is required to file as their defence is a statement of defence supported by written Statement on oath of their witness, not an affidavit.

It is the submission of learned counsel, that the testimony contained in the Witness Statement on Oath under the front-loading system does not get converted from evidence in examination in-chief into an affidavit, merely because it is written.

**On issue 3**, learned counsel submits, that there is no logical nexus between the establishment/proof of the existence of a 50:50 partnership between PW1 and the 1<sup>st</sup> Defendant and a purported whatsapp message whose only content is the following nebulous and

imprecise statement: *the custom man called me today that he is through with our custom duty fee...*  
*“and” Customs refused our application.*

It is the submission of learned counsel, that it is clear that apart from the fact that the so called whatsapp messages are also caught by the hearsay rule and so inadmissible, they are in fact so incoherent that no weight or value whatsoever ought to be ascribed to them.

**On issue 4**, learned counsel submits, that under cross-examination, the DW1 tried to deny the obvious fact that all the documents relating to the wine business were in the name of the Claimant, but when prodded to show the Court which of the documents relating to the wines in issues is not in the name of the Claimant, the PW1 later recanted

and admitted that all the documents relating to payments and importation of the wine are in the name of the Claimant.

It is the submission of learned counsel, that the only document from the Defendants before the Court with which they seek to establish the existence of a 50:50 partnership between PW1 and the 1<sup>st</sup> Defendant is the purported whatsapp chat saying that: “the custom man called me today that he is through with our Custom duty fee... “and” Customs refused our application.

Counsel submits, that there is nothing in the above whatsapp chat that proves the existence of a 50:50 partnership as alleged by the Defendants.

**On issue 5**, learned counsel submits, that the person claiming in detinue, must first prove that he has

immediate rights to the possession of the goods against the person who is in actual possession of them.

It is the submission of learned counsel, that the 2<sup>nd</sup> Defendant never for once laid any claim to the wines in issue, its consistent position which he maintained throughout the trial and for which all the parties are in agreement is that he (2<sup>nd</sup> Defendant) voluntarily offered his warehouse free of charge for the storage of the wines.

Learned counsel further submits, that the 1<sup>st</sup> Defendant has abandoned his counter-claim and with it any purported claim to the existence of a partnership, and indeed, even regardless of the abandonment of the said counter-claim, the

Defendants have failed to furnish any credible evidence to support the existence of a partnership.

**One issue 6**, learned counsel submits, that in paragraph 27 of the Joint Statement of defence, the Defendants pleaded the menu of the Restaurant known as NY 24/7, and same was frontloaded and marked as Exhibit “L” in the frontloaded documents attached to the Defendants’ Joint Statement of Defence/1<sup>st</sup> Defendant Counter Claim filed on 16<sup>th</sup> November, 2020.

Counsel invites the Court to examine the said Menu and the Court will find the following information (inter alia), at the last page of the said menu, thus

<i>S/N</i>	<i>WINE</i>	<i>AMOUNT</i>
<i>1.</i>	<i>Antares Sauvignon Blanc (Chardonnay)</i>	<i>N15,000</i>
<i>2.</i>	<i>Carmenere Cabernet Sauvignon (Red)</i>	<i>N15,000</i>
<i>3.</i>	<i>Merlot Shiraz Rose</i>	<i>N15,000</i>
<i>4.</i>	<i>Ksara Blanc de Blanc</i>	<i>N15,000</i>
<i>5.</i>	<i>Ksara Sunset Pink</i>	<i>N15,000</i>
<i>6.</i>	<i>Ksara (reserve Du Couvent) Red</i>	<i>N15,000</i>

7.	<i>Frontera Wine Red</i>	<i>N7,000</i>
8.	<i>B &amp; G (Curve)</i>	<i>N10,000</i>
9.	<i>B &amp; G Chardonnay</i>	<i>N10,000</i>
10.	<i>Carlo Rossi Red</i>	<i>N7,000</i>
11.	<i>Carlo Rossi Wine</i>	<i>N7,000</i>
12.	<i>Carlo Rossi Pink</i>	<i>N7,000</i>
13.	<i>Nuremberg</i>	<i>N12,000</i>

The above information clearly shows that the cheapest wine in the said Restaurant is N7,000.00 (Seven Thousand Naira), there is no wine on display that is less than N7,000.00 (Seven Thousand Naira) which confirms that Claimant’s paragraph 22 of the Statement of Claim that: “...a bottle of the grade of wine in issue is sold at bars, clubs and restaurants (such as the above-mentioned New Yorker Restaurant) for the sum of N7,000.00 (Seven Thousand Naira) per bottle..”

Learned counsel submits, that apart from the fact that the Defendants did not deny the Claimants averments in the Statement of Claim that the total quantities of the wines in issue is 13,368 bottles of wines and that the price of each bottle is N7,000.00, which by itself

means it is an admission for which the Claimant need not supply any further proof, however, for the avoidance of doubt, even the document (Menu) frontloaded by the Defendants which supports that sum of N7,000.00 (Seven Thousand Naira) per bottle can be relied upon by the Court (as part of documents in the Court's file) even though it was not tendered in evidence.

Learned counsel concludes by urging this Honourable Court to enter Judgment in favour of the Claimant particularly because;

The testimonies of DW1 bordering on the agreed terms of the transaction between the litigants is tantamount to hearsay evidence and therefore inadmissible.

The conduct of the Defendant particularly that of the 2<sup>nd</sup> Defendant is tantamount to detinue.

The Claimant is entitled to damages to the tune of the value of the goods detained without justification.

The figures furnished by the Claimant in support of the value of the wines in issue were never denied or controverted by the Defendants hence they are deemed admitted and binding.

**COURT:-**

I have read and assimilated the claims of the Claimant and the Defendants' on the one hand and have equally juxtaposed the evidence led by both parties in prove of their respective cases.

The law on the primary function of contract is most elementary for all intent and purposes.

Indeed, the function of contract is governed by the making of an offer by the offeror, and the

corresponding acceptance constitutes an agreement if the two parties are ad-idem.

It is settled that offer, acceptance, consideration, mutuality of purpose and intention must be present for there to be a valid contract.

***JOHNSON WAX (NIG.) LTD. VS. SANNI (2010) 2 NWLR (Pt. 235) SC.***

An offer is a definite indication by one person to another that he is willing to conclude a contract on the terms purposed which when accepted, will create a binding legal obligation, the offer may be oral, written or even implied from the conduct of the offeror. The offeree has the option of outright rejection of the offer.

***AMANA SUITES HOTELS LTD. PDP (2007) 6 NWLR (Pt. 1031) 453 at 476 Paragraph F – H.***

Acceptance may be demonstrated by conduct of parties; by words or by documents that have passed.

It is the element of acceptance that underscores the bilateral nature of a contract.

Indeed, a party who seeks Judgment in his favour is required by law to produce evidence to support his pleadings. Thus, the court has formulated sole issue for determination to wit; ***“whether the Claimant has proved its case on the preponderance of evidence in the circumstance of this case.”***

What is contract, in law?

Legally speaking, a contract generally is an agreement between parties which creates binding obligation on the part of the contracting parties. There shall be offer, acceptance, intention to create legal relationship and the contracting parties must

have the desired capacity to enter into such a contract.

***OJO VS. ABT ASSOCIATES INCORPORATION & ANOR (2014) LPELR – 22860 (CA).***

The law is now settled beyond peradventure that where the content of a document is clear, express and unambiguous, court should interpret such literarily.

See ***JOHN VS. UNIVERSITY OF ILORIN (2012) LPELR - 9309; DAPIALONG VS. DARIYE (2007)8 NWLR (Pt. 1036) 239 at 412 Paragraph E, Pages 25 – 26.***

The fulcrum of the Plaintiff's claims from the totality of evidence led before this Court is hinged on the alleged non-completion for a business agreement that he entered into with the Defendants.

It is clear from the available evidence that the 1<sup>st</sup> Defendant invited the Claimant into a business proposal that involved the importation of wine from the Republic of Greece on the information and promise from 1<sup>st</sup> Defendant to Claimant that there is a high demand for Greek Wines among Europeans living in Nigeria. The 2<sup>nd</sup> Defendant equally assured the Claimant of the lucrative nature of the Greek Wine importation business and thereon offered to provide his warehouse situate at **No. 17 Arochukwu Street by old FERMA Garki 2 Abuja** for the storage of the wines from where he (2<sup>nd</sup> Defendant) promised to also use his experience in the Restaurant/Bar business to help Claimant create further market for the said wines.

Based on the foregoing information and promises the Claimant then decided to go into the business as

proposed by the Defendants, consequent upon which the 1<sup>st</sup> Defendant took Claimant on a trip to Greece (at Claimant's expense) to visit to the wine making factory in Greece whereupon, (because that particular brand of Greek Wine was yet to be imported into Nigeria at the time), the Claimant was given exclusive marketing rights and Power of Attorney by the said Wine Manufacturer.

The evidence in support and against the case of the Claimant are as reproduced on the review of evidence.

It is also clear that the case is anchored on documentary evidence. The Court would therefore be brief but succinct in dealing with the case.

I need state here that the best form of evidence is documentary evidence.

See *OLA VS. UNIVERSITY OF ILORIN (2014) LPELR – 22781 (CA)*;

*A.G RIVERS STATE VS. A.G BAYELSA STATE & ANOR (2012) LPELR 9336 (SC).*

From the evidence before this Court, it is crystal clear that both Plaintiff/Claimant and Defendants had an understanding which contractually speaking has been consummated and which subsequently went sour.

This can easily be deduced from Exhibit “D1” wherein the Claimant referred to the situation as a partnership. An excerpt of Exhibit D1 is hereby reproduced.

“...as partners we should learn to understand each other to make the business easy, I ask u to help me give the €4,000.00 (Four Thousand Euros) balance

to the Winery cos we are partners which I will return back to u wen.”

It is pertinent to observe that no evidence has been led before this Court to prove that 1<sup>st</sup> Defendant agreed that some of the wines will be sold without the Claimant discharging his financial obligations fully. No evidence as to location, time and witnesses to this particular agreement.

It is trite that he who asserts is saddled with the responsibility of proving his assertion in order to succeed in his claim. Civil suits are determined on preponderance of evidence and balance of probability. Section 131 (1) Evidence Act, 2011. ***ISEOGBEKUN VS. ADELAKUN (2013) 10 NWLR (Pt. 1363) Page 423.***

Having reproduced the significant part of the Defendants' statement and evidence in support of their defence as to the reason for withholding the wines thereby refusing the Claimant access, they have succeeded in shifting the burden placed on them by the law.

The Defendants may have been acting based on earlier agreement as to how the wines will be distributed, but he has overlooked the condition to be fulfilled before having access to the wines i.e settling his debts. Thus, it is not part of the evidence before this Court making it inconsequential.

The Defendants have been able to prove the fact that Plaintiff failed to complete the said contract as agreed.

Indeed, documents tendered before a trial court are certainly meant for scrutiny by the Court. A trial Court has the onerous duty of considering all documents placed before it in the interest of justice. It has a duty to closely examine documentary evidence placed before it in the course of its evaluation and comment or act on it. ***MOHAMMED VS. ABDULKADIR (2007) Vol. 43, 58 at 104, Line 20 – 30.***

Claimant tendered;

1. Power of Attorney
2. Customs Importation Documents
3. Three (3) Photographs accompanied with certificate of compliance generated documents.

4. National Agency for Food and Drug Administration and Control (NAFDAC) Notification of Professional Registration dated 14<sup>th</sup> March, 2018
5. Federal Ministry of Trade and Investment Trade-Mark Registration
6. Claimant's Letter to the 2<sup>nd</sup> Defendant dated 11<sup>th</sup> January, 2019.

To prove that some of the factors that contributed to him discharging the agreement, he faced them singlehandedly. However, he failed to state that the resources used to handle contents of the above mentioned exhibits were gotten from the 1<sup>st</sup> Defendant.

The case of the Plaintiff and Defendants is predicated upon all the exhibits tendered before this Court.

Where there is disagreement arising from the contractual terms entered into by parties, the only reliable evidence and legal source of information to resolve the claim is the written contract executed by parties.

I am in no difficulty arriving at the decision that the Claimant's inability to complete the contract (by discharging his financial duties) as per all the exhibits annexed, amounts to breach of contract.

In law, a breach of contract is committed when a party to a contract, without lawful excuse fails, neglects or refuses to perform an obligation he undertook in the contract or either performs the

obligation defectively or incapacitates himself from performing the contract or by wrongfully repudiating the contract.

See *KENTAS NIG. LTD. VS.FAB ANIEH NIG. LTD. (2007) ALL FWLR (Pt. 384) 320 at 342 Paras B – C CA;*

*OBAJIMI VS.ADEDIJI (2008) 3 NWLR (Pt. 1073) 1 at Pp. 16 – 17 Paras H – B.*

Consequently, all the claims and prayers on the face of the Writ of Summons and Amended statement of Claim are **hereby refused and accordingly dismissed.**

*Justice Y. Halilu*  
*Hon. Judge*  
*8<sup>th</sup> November, 2023*

## **APPEARANCES**

Godswill Mrakpor, Esq. – for the Claimant.

Max Ogar, Esq., – for the Defendants.