

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY, ABUJA  
IN THE ABUJA JUDICIAL DIVISION  
HOLDEN AT ABUJA

BEFORE HON. JUSTICE J. ENOBIE OBANOR  
ON THIS 10TH DAY OF OCTOBER, 2024

SUIT NO.: FCT/HC/GAR/CV/3161/2022

BETWEEN:

THE ST. STEPHEN'S SCHOOL CORPORATION ..... CLAIMANT

AND

1. MR. OMAR ADO-IBRAHIM } ..... DEFENDANTS  
2. MRS. NABILA ADO-IBRAHIM }

### **JUDGMENT**

#### **DELIVERED BY HON. JUSTICE J. ENOBIE OBANOR**

The Claimant instituted this suit on the 22<sup>nd</sup> day of September, 2022 by filing a Writ of Summons and all other accompanying processes under the Undefended List Procedure and claimed against the Defendants jointly and severally as follows:

- a. An order that the Defendants pay the sum of €48,516.44 (Forty-Eight Thousand, Five Hundred and Sixteen Euros, Forty-Four Cents) being the outstanding debt owed by the Defendants jointly and severally to the Claimant comprising tuition, sundry fees and late payment charges in respect of their daughter, Dahlia Ado-Ibrahim who was enrolled as a student at the Claimant's school in 2020/2021 and 2021/2022 sessions.*
- b. An order that the Defendants pay interest on the unpaid sum at the rate of 0.5% per month from 1st June 2022 for late payment charges till judgment is given.*

- c. *Interest on the judgment sum at the rate of 10% per annum from the date of judgment till the sum is fully liquidated.*
- d. *An order for payment of the costs associated with these proceedings, including professional fees and disbursements in the sum of €15,054.93 (Fifteen Thousand and Fifty-four Euros, Ninety-three Cents).*

Upon the receipt of the Writ of Summons and all other accompanying processes, the Defendants filed their Memorandum of Conditional Appearance on the 23rd day of November, 2023 and a Notice of Intention to Defend, prompting this Honourable Court to transfer the case from the Undefended List to the General Cause List.

In compliance with the Court's order, the Claimant filed a Statement of Claim on 26<sup>th</sup> September, 2023 seeking the following reliefs:

- a. A declaration that the Defendants are indebted to the Claimant in the sum of €48,516.44 (Forty-Eight Thousand, Five Hundred and Sixteen Euros, Forty-Four Cents) being the outstanding admitted debt owed by the Defendants jointly and severally to the Claimant comprising tuition, sundry fees, and late payment charges in respect of their daughter, Dahlia Ado-Ibrahim who was enrolled as a student at the Claimant's School in 2020/2021 and 2021/2022 academic sessions.
- b. An order that the Defendants pay to the Claimant the sum of €48,516.44 (FortyEight Thousand, Five Hundred and Sixteen Euros, Forty-Four Cents) being the outstanding admitted debt owed by the Defendants jointly and severally to the Claimant comprising tuition, sundry fees, and late payment charges in respect of their daughter, Dahlia Ado-Ibrahim who was enrolled

as a student at the Claimant's School in 2020/2021 and 2021/2022 sessions.

- c. An order that the Defendants pay interest on the unpaid sum at the rate of 0.5% per month from 1st June 2022 for late payment charges till judgment is given.
- d. Interest on the judgment sum at the rate of 10% per annum from the date of judgment till the sum is fully liquidated.
- e. An order for payment of the costs associated with these proceedings, including professional fees and disbursements in the sum of €15,054.93 (Fifteen Thousand and Fifty-four Euros, Ninety-three Cents).

The Defendants in response on 7<sup>th</sup> February, 2024 filed their Statement of Defence.

Hearing commenced on the 28th day of November, 2023 when the Claimant opened its case and called its first witness (CW1), Mrs. Jill Swisher, who was examined-in-chief and 19 documents tendered and duly admitted by the Court as Exhibits A — S:

CW1 gave evidence that the Claimant is an accredited school in Italy and in August 2020, the Defendants enrolled their daughter, Ms. Dahlia Ado-Ibrahim, at the school. In connection with this enrolment, the Defendants signed a Student Boarding Contract, agreeing to pay their daughter's tuition and related fees promptly. The Defendants were also given the Fee Schedule and Financial Information for the 2020-2021 and 2021-2022 academic years, as referenced in the Student Boarding Contract. These documents outlined the fee structure, late payment penalties, and academic calendar for their daughter.

Despite enrolling their daughter, the Defendants consistently made staggered payments, breaching the terms of the Student Boarding Contract, and paid only part of the fees for the 2020-2021 academic session. They also failed to make any payments for the 2021-2022 session, leaving a total outstanding balance of €51,665(Fifty-One Thousand, Six Hundred and Sixty-Five Euros. In response to the Claimant's demand for payment, the Defendants made a partial payment of €6,000(Six Thousand Euros), which was insufficient to maintain their daughter's enrollment. Consequently, the daughter was withdrawn from the school and sent back to her parents, leaving an outstanding balance of €48,516.44(Forty-Eight Thousand, Five Hundred and Sixteen Euros, Forty-Four Cents).

The following documents were tendered through CW1 and admitted in evidence as Exhibits A to S:

On the request of the Defendants' counsel, Christiana Uwaya, the court granted an adjournment to 29<sup>th</sup> January, 2024, for the cross-examination of CW1. However, due to the Defendants' absence on the scheduled date for cross-examination, the court foreclosed them from cross-examining CW1.

On February 8, 2024, the Claimant presented its second witness (CW2), Nicola Romano, an expert in Italian law. During his examination-in-chief, two documents were tendered through him, which were duly admitted and marked as Exhibits T and U. The Defendants chose not to cross-examine CW2.

The Defendants on 20<sup>th</sup> day of May, 2024 opened their defence. DW1, Mr. Omar Ado-Ibrahim, the 1<sup>st</sup> Defendant testified as the sole

witness for the defence. He adopted his Witness Statement on Oath deposed on 7<sup>th</sup> February, 2024.

It is his testimony that he and the 2<sup>nd</sup> Defendant enrolled their daughter at St. Stephen's School in Rome, Italy in August 2020, signed a Boarding Contract and received the fee schedule and financial information related to the contract. DW1 disputed the Claimant's interpretation of the contract and rejected the claim that they owe the outstanding sum of €48,516.44.

According to the Defendants, they made payments in instalments as part of an agreed-upon payment plan, which was accepted by the school. He averred that the final payment of €6,000 (Six Thousand Euros) was for the 2021-2022 academic year. However, the Claimant abruptly ended the payment arrangement, resulting in their daughter's withdrawal from the school. The Defendants stated that their daughter was humiliated and expelled just days before her examination, causing her emotional trauma. They assert that the Claimant failed to provide the agreed services, as their daughter did not complete the term.

He further gave evidence that since their daughter was not allowed to finish the term, the services outlined in the Boarding Contract and accompanying Fee Schedule were not rendered by the Claimant. He further stated that tuition fees for the academic year were €25,145, while boarding fees amounted to €13,950. According to him, the contract stated that any tuition fee applied before withdrawal was non-refundable, but the amount due for boarding should be calculated based on the actual time spent in school (pro rata). The DW1 denied admitting to the debt and argued that his communications with the Claimant were intended to resolve the issue

amicably. In conclusion, he asserts that the amount owed is not as high as the Claimant suggests, and they reject the full liability claimed.

No document was tendered through the said DW1. He was cross-examined by the Claimant's Counsel as the conclusion of his examination in chief.

Parties on 27<sup>th</sup> September, 2024 adopted their respective Final Written Addresses. The Defendants' Final Written Address was filed on 12<sup>th</sup> July, 2024 wherein their Counsel formulated three (3) issues for determination thus:

- a. Whether it is conscionable for a party who has not enjoyed the benefits of a contract to be asked to furnish consideration of same.*
- b. Whether the contract between the parties is an unconscionable Contract of Adhesion, if yes, whether it created a valid and enforceable contract between the parties.*
- c. Whether the Claimant is entitled to recover from the Defendants the sums claimed together with interests, having regards to the evidence before this Honourable Court.*

The Claimant's Written Address was filed on 11<sup>th</sup> September, 2024. The sole issue raised by the Claimant for the determination of the Court is as follows:

*Whether the Claimant is entitled to recover from the Defendant all the sums claimed together with interests, having regards to the evidence presented before the Honourable Court.*

The Defendants on 25<sup>th</sup> September, 2024 filed a Reply on Points of Law.

I have thoroughly considered the submissions and evidence presented by both parties and I shall make reference to the arguments of parties in their addresses in due course. This Honorable Court will address this suit by focusing on the sole issue raised by the Claimant which happens to be identical to the 3<sup>rd</sup> issue raised by the Defendants as follows:

*Whether the Claimant is entitled to recover from the Defendants all the sums claimed together with interests, having regards to the evidence presented before the Honourable Court.*

## **RESOLUTION OF THE ISSUE**

*Whether on the preponderance of evidence and balance of probabilities, the Claimant has proved his claims in this suit and is entitled to grant the reliefs sought by him.*

The Defendants in their address have argued that the contract entered Exhibit A is a standard form of contract and is a contract of adhesion which placed an oppressive and exploitative burden on the Defendants and has resulted in a significant imbalance between the rights and responsibilities of the Claimant and the Defendants as it greatly favours the Claimant as against the Defendants. He relied on several provisions of the Italian Civil Code (C.C) such as Art. 1321, 1325, 1341, 1342, 1370 and Art. 33 – 36 of the Consumer Code (Foreign Laws).

The Claimant in response argued that a party who intends to rely on foreign law in proof of his case, must expressly or specifically plead the existence of such foreign law as fact in his pleading and should

also lead evidence in support of it. He relied on the cases of OLAYIWOLA BENSON & ANOR V JOSEPH OLADIPUPO ASHIRU (1967) LPELR – 25351 (SC) and PEENOK INVESTMENTS LTD. V. HOTEL PRESIDENTIAL LTD. (1982) LPELR – 2908 (SC). This the Claimant has stated that the Defendants have failed to do.

The Defendants in their Reply on Points of Law stated that the issue of unconscionability, unfair bargain and adhesion were pleaded, though not in special form, in Paragraphs 9 to 11 of their Statement of Defence.

Scrutinizing the Statement of Defence, it is without doubt that the Defendants did not plead Foreign Law. In Nigerian jurisprudence, foreign law is considered a question of fact and must be pleaded and proved as such. This principle is evident in the case of BENSON & ANOR v. ASHIRU(1967) LPELR-25351(SC) where the Supreme Court held that foreign law must be treated as a fact, requiring explicit pleading and proof by the party relying on it.

The Defence of unconscionability, unfair bargain and adhesion equally must be specifically pleaded. It was held in TONIQUE OIL SERVICES LIMITED v. VIRGIN FOREST ENERGY LIMITED(2021) LPELR-53305(CA) Per BALKISU BELLO ALIYU, JCA (Pp. 26-27, paras. F-A) that:

*"Where a party intends to rely on the facts of past consideration and unconscionable bargain, it must plead and prove same with sufficient and credible evidence, for he who alleges has the burden to prove."*

Paragraphs 9 – 11 of the Defendants' Statement of Defence is not sufficient to meet the rule of pleading as required by law in this case.

Be that as it may, the Claimant can only succeed on the strength of its own case and not the weakness of the Defendant's case as

decided in the case of OGBUAGU & ANOR v. INEC & ORS(2023) LPELR-61620(CA).

I agree with the Claimant that parties to a contract are bound by it, however, when the Court observes that a contract would be unconscionable and unfair, the Court can refuse to act on such a contract.

The issues of unconscionability, unfair bargain, and adhesion contracts are significant in determining the fairness and enforceability of contract terms. These issues are typically associated with contracts where there is a significant imbalance in the bargaining power between the parties, often leading to one party imposing terms that are excessively favourable to themselves at the expense of the other party.

Unconscionability in contracts often involves situations where the terms are so unfair to one party that they shock the conscience of the court. This concept is rooted in the principles of equity and is aimed at preventing parties from exploiting their bargaining power to the detriment of the other party. See the case of SONNAR (NIGERIA) LTD. & ANOR v. PARTENREEDRI M. S. NORDWIND OWNERS OF THE SHIP M. V. NORDWIND & ANOR (1987) LPELR-3494(SC) Pp. 26-27, Paras. C-D.

Contracts that are oppressive or one-sided, particularly those that are inherently unjust, can be scrutinized under the principles of unconscionability, unfair bargains, and adhesion. Courts have the discretion to declare certain contractual terms as void or unenforceable when they find them to be oppressive or unjust to one party, and this power can be exercised even without the prompting of the parties involved, suo motu. These principles are grounded in the broader equitable doctrine of fairness, which seeks to ensure that the weaker party in a contractual relationship is not unduly

exploited or subjected to onerous conditions that would violate natural justice.

In the case at hand, the Student Boarding Contract (Exhibit A) and the Fee Schedules for the 2020/2021 and 2021/2022 academic sessions (Exhibits B and C) come under scrutiny for containing terms that could be deemed unconscionable or manifestly unfair. Specifically, Section 5.3 of Exhibit A states:

*"In the event of withdrawal or removal from the dormitory, any funds that have been applied to the tuition amount for that Student shall be non-refundable and the Parent shall remain responsible to pay the remaining balance owed on any outstanding accounts related to housing."*

Moreover, Exhibits B and C further assert:

*"All fees for the academic year are due to the school even if the student withdraws or is dismissed."*

The issue arises from the fact that the Defendants' daughter did not even complete the first term of the academic session before she was asked to leave the school. Despite this, the Claimants, in their demand letter (Exhibit F), insist on full payment of the fees for the entire academic year. This demand is being made without regard to the fact that the student did not receive the full benefit of the educational services for which the fees were to be paid.

This situation, on its face, raises significant concerns about fairness and justice. The contract terms, as presented, place an overwhelming burden on the Defendants, holding them responsible for the full payment of school fees even when their daughter was unable to complete the academic session. The school's rigid enforcement of these terms, without considering the circumstances of the withdrawal, appears to disregard the principle of equity.

Contracts of this nature, particularly when drafted by one party (in this case, the school) with more bargaining power and imposed on the other party (the parents) without room for negotiation, are classic examples of adhesion contracts.

When confronted with such contracts, the Courts are empowered to examine whether the terms are manifestly unjust or oppressive. In this case, the contractual provisions could be viewed as disproportionately favouring the school by allowing it to retain or demand full payment regardless of whether the student benefited from the services. Such a contractual arrangement does not align with the equitable principles of fairness, where the benefit of the bargain should be proportionate to the performance rendered.

Further, this type of contract could be seen as violating public policy, which generally disfavors agreements that result in unjust enrichment or that operate in a way that undermines the welfare of individuals.

I hereby hold that the Claimant is entitled only to the fees corresponding to the duration of the Defendants' daughter's attendance at the school, which is limited to the first term of the 2021/22 academic session. It is noteworthy that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants paid the complete fees for the 2020/2021 academic session but as for the 2021/2022 academic session, the 1<sup>st</sup> and 2<sup>nd</sup> Defendant's daughter was not given an opportunity to sit for the 1<sup>st</sup> term examinations, did not benefit academically and as such should not be compelled by the Claimant to pay for the tuition fees. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants, however shall be liable to pay for the lunch and boarding fees for the 1<sup>st</sup> term amounting to €463.33 and €4650 respectively.

From the foregoing, I find that the case of the Claimant hereby succeeds in part. Judgment is hereby entered as follows:

- a. A hereby declare that the Defendants are indebted to the Claimant in the sum of €5113.33(Five Thousand, One Hundred and Thirteen Euros, Thirty-Three Cents) being the outstanding debt owed by the Defendants jointly and severally to the Claimant comprising lunch and boarding fees in respect of their daughter, Dahlia Ado-Ibrahim for the 1<sup>st</sup> term of the 2021/2022 academic session.
- b. Interest on the judgment sum at the rate of 10% per annum from the date of judgment till the sum is fully liquidated.

Parties shall bear their cost.

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HON. JUSTICE J. ENOBIE OBANOR

Judge

Appearances:

For the Claimant; Dr. B.A.M. Ajibade, SAN, Bolaji Gabari and David Essien, Esq.

For the Defendants; Udu Diegbe, Esq. and Lona Aako-Adekwu, Esq.