

**IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION**

HOLDEN AT HIGH COURT MAITAMA –ABUJA

BEFORE: HIS LORDSHIP HON. JUSTICE S.U. BATURE

COURT CLERKS: JAMILA OMEKE & ORS

COURT NUMBER: HIGH COURT NO. 24

CASE NUMBER: SUIT NO. FCT/HC/CV/

MOTION NUMBER: SUIT NO. FCT/HC/M/0040/2022

DATE:

BETWEEN:

COLLEGE OF EDUCATION KATSINA ALACLAIMANT

AND

1. CYMMY ASSOCIATES ULTIMATE SYNERGY LIMITED

2. DR. EMMANUEL OGAHDEFENDANTS/RESPONDENTS

APPEARANCE:

G. T. Shata Esq with C. K. James holding brief for Douglas Najime Esq.

Defendants absent and unrepresented.

RULING

By a Motion on Notice brought pursuant to order 43 Rule 1 and order 11 of the FCT High Court (Civil Procedure) Rules 2018 and under the inherent jurisdiction of this Honourable Court. The Claimant herein Claims against the Defendant as follows:-

1. AN ORDER for the immediate payment of the sum of ₦5,000,000.00 (Five Million Naira only) by the Defendants to the Claimant being the

amount advanced by the Claimant to the Defendants on account of a partnership for the establishment of a modern bakery and water production plant by the Defendants pursuant to a Memorandum of Understanding between the parties herein.

2. Cost of this suit at ₦800,000.00 (Eight Hundred Thousand Naira only).
3. General damages of ₦10,000,000.00 (Ten Million Naira only) for breach of contract.

The Motion was supported by a 28 paragraph Affidavit deposed to by one Tsav-wua J. A. Gborigo, the Provost/Chief Executive Officer of the Claimant and a written address dated the 22nd day of August, 2022.

In conformity with the Rules of this Honourable Court on Application for summary Judgment, the Claimant/Applicant equally filed a writ of Summons, statement of Claim deposed to by one Tsav-wua, J. A Gborigo, the Provost/Chief Executive officer of the Claimant. Counsel further filed a list of witness to be called upon and list of documents to be relied upon all dated the 22nd of August, 2022.

Furthermore, the Claimant/Applicant's Originating processes were accompanied by annexures marked as "**Exhibits A, B, C1, C2, C3, D, E, F & G**" respectively as well as a written statement on Oath deposed to by Tsav-wua J. A. Gborigo, the Provost/Chief officer of the Claimants, dated 22nd August, 2022, and a certificate of pre-action counseling prepared by Douglas Najime Esq Counsel to the Claimant.

From the record of this Honourable Court, the Defendant was served with the Motion and other accompanying processes in this suit on the 5th of October, 2022.

Upon being served, the Defendant filed a Memorandum of appearance on the 11th of October, 2022.

Addressing the Court on the 17th of November, 2022 Counsel to the Claimant, Douglas Najime Esq urged the Court to enter Judgment in favour of the Claimant as per the claims as endorsed on the Motion.

However, Counsel to the Defendants made an application for settlement out of Court in the interest of justice and asked for a date for report of settlement. The Application was granted and the case was adjourned to the 6th of February 2023 for report of settlement.

On the 6th of February, 2023, Counsel to the Claimant stated that efforts were made in order for the Defendants to comply with their earlier arrangement but to no avail. He also stated that the Defendant no longer picks their calls and due to the circumstances, the summary judgment application was ripe for hearing.

On the other hand, Counsel to the Defendant stated that it was quite unfortunate that all efforts to settle failed and had no cause to prevent the claimant, from moving their Application. Thus stated that they therefore rely on the wisdom of this Honourable Court.

In the written address filed by the Claimant, the Learned Counsel to the Claimant/Applicant formulated a sole issue for determination to wit:-

Whether the Applicant is entitled to summary judgment as prayed in its Application before this Honourable Court.

In arguing the issue, Counsel to the Claimant/Applicant stated that by virtue of order 11 Rules 1-7 of the Rules of this Honourable Court, the Claimant/Applicant is entitled to summary Judgment. This is due to the failure of the Defendants to perform their part of the agreement as agreed to in the Memorandum of Understanding they signed. He further stated that the Defendants took no steps nor performed any obligations despite repeated appeals by the Claimant's provost to the 2nd Defendant.

Consequently, the Counsel to the Claimant/Applicant stated that the Claimant has suffered and continue to suffer financial loss as the value of the outstanding debt has depreciated due to inflation and the bearish condition of the Naira.

Relying on Order 11 Rule 1 of the Rules of this Honourable Court, Counsel to the Claimant/Applicant submitted that where an Applicant approaches the Court on the belief that the Respondent has no defence to his Claim and files an application for summary Judgment along with an Affidavit stating grounds for his belief with his originating processes and written brief, the Court is entitled to enter judgment in favour of such Applicant. In this respect, Counsel referred the Court to the dictum of his lordship Saulawa JCA in the case of **NNABUDE V G. N. G (W/A) LTD (2010) 15 NWLR (PT. 1216) 365 @ 379** where he stated thus:-

"The term summary Judgment denotes a judgment usually granted by Court on a Claim (or defence) about which there is no genuine issue of material fact, and upon which the Claimant is entitled to prevail as a matter of law. Primarily, the Court takes into consideration the pleadings, the

Motions, and where necessary additional evidence adduced by the parties to determine whether or not there is a genuine issue of material fact, rather than one of law. The Primary object of summary judgment procedure is to allow speedy disposition of a controversy without the need for trial.”

Basing his argument on the above stated dictum of the Court of Appeal, Counsel to the Applicant further submitted that the whole essence of the summary judgment procedure is to save the time of the Court and parties, and prevent a Defendant from frustrating a Claimant from recovering his Claim where a clear case is made out by a Claimant entitling him to the relief(s) sought. Counsel relied upon the cases of **S. G. B (NIG) LTD V PANATRADE LTD (1994) 6 NWLR (PT. 353) 720; MACAULAY VS NAL MACHANT BANK LTD (1990) 4 NWLR (PT. 144); FEDERAL MILITARY GOVERNMENT VS SANI (1990) 4 NWLR (PT. 147) 688.** Counsel to the Claimant/Applicant stated that the Defendant failed to take any steps towards fulfilling their end of the agreement despite the ₦5,000,000.00 (Five Million Naira) advanced by the Claimants as consideration for the execution of the project. He stated that the agreement was then terminated and the Claimant asked for a refund of the advanced sum which the Defendants undertook to do but failed to do so. Consequently, Counsel submitted that the Claimant/Applicant is entitled to summary Judgment based on the fact that the Defendant had no defence to the suit. Reference was made to the cases of **N. B. N LTD V. SAVOL W. A LTD (1994)3 NWLR (PT. 333) 435; EMUWA VS CONSOLIDATED DISCOUNTS LTD (2001)2 NWLR (PT. 679) 424;**

P.B (NIG) PLC VS OK CONTACT POINT PLC (2001)9 NWLR (PT. 717) 80

In his final submission, Counsel to the Claimant/Applicant stated that the Defendants have no defence as the Claimant/Applicant's Claim is clear and cannot be contested in any manner which was also admitted to by the defendants through their Solicitors (Golgate attorneys) in a letter marked Exhibit E.

To that extent, Counsel to the Claimant stated that the Court is imbued with the vires to award cost, and prayed the Court to award cost as an indemnity to the claimant who has suffered loss in consequence of the breach of the Contract which is the subject matter of this suit. In this respect, Counsel relied on the case of **REG. TRUSTEES OF IFELOJU V. KUKU (1991) 5 NWLR (PT. 188) 65 Ratio 13.**

Conclusively, Counsel to the Claimant urged the Court to grant their Application because the Defendants have no defence to the Claimant's Claim and that parties are bound by their agreements and it will be in the interest of justice to grant the Application as prayed.

I have carefully perused the Motion filed via the summary judgment procedure, the reliefs sought, the supporting Affidavit, the annexures attached therewith, the written address and oral submission of Counsel to the Claimant urging this Honourable Court to enter judgment in favour of the Claimant. I have also considered the oral submission of Counsel to the Defendant on the issue.

Therefore, it is my humble view that the issue for determination is thus:-

“Whether the Claimant has proved its case to be entitled to Summary Judgment?”

It is trite law that summary Judgment procedure is resorted to where it appears that the Defendant has no defence to the action and the facts of such case are straightforward and uncontested. In this respect, I refer to order 11 Rule 1 of the Rules of this Court which provides thus:-

“Where a Claimant believes that there is no defence to his Claim, he shall file with his originating process the statement of Claim, the Exhibits, the depositions of his witnesses and an Application for summary judgment which application shall be supported by an Affidavit stating the grounds for his belief and a written brief in support of the Application.”

Furthermore, I refer to the case of **UMEH V UNIQUE HOME ITEMS LTD (2019) LPELR 48099 (CA)** where it was held that:-

“The Summary Judgment procedure is usually and invariably employed to eliminate the delays occasioned to the cases that are allowed to go through the normal or routine process of hearings. In summary Judgment procedure, the evidence is adduced in form of affidavit evidence, documentary evidence annexed to the Affidavit in form of Exhibits, and final written address attached to the summary Judgment Application.”

See also the case of **UTC NIG. LTD V. PAMOTEI (1989) 2 NWLR (PT. 103) 244 AT 283.**

In the instant case, the Claimant/Applicant deposed in the supporting Affidavit particularly at paragraphs 22 and 27 which for ease of reference, I shall reproduce same hereunder.

Paragraph 22 reads thus:-

"That the Defendants have no defence to this suit as the services were not rendered as agreed by the parties."

Paragraph 27 reads thus:

"That the Defendants have not defence to the suit."

In paragraph 9 of the Claimant's/Applicant's Affidavit in support of the motion, the Claimant Applicant stated that in furtherance of the memorandum of understanding between parties, the sum of ₦5,000,000.00 (Five Million Naira) only was disbursed for the commencement of the project. This was evidenced by the annexure attached marked Exhibits "C1, C2 & C3" respectively. These Exhibits show:-

- i. The Defendant's letter of request for disbursement of project funds dated 31st March 2021, and marked Exhibit "C1".
- ii. Letter of instruction in transfer of funds by the Claimant to the 1st Defendant dated the 6th of April, 2021 and marked Exhibit "C2". and
- iii. Bank statement of account evidencing the transfer of the said ₦5,000,000 (Five Million Naira) dated 7th April 2021 and marked Exhibit C3."

Furthermore, in paragraph 10 of the Claimant/Applicant's Affidavit in support of the Motion, the Defendant, having a corresponding obligation to

mobilize the project site and commence the project activities failed, neglected, omitted and or refused to do so, thereby breaching the terms of the memorandum of understanding between the parties. This is further evidenced in the annexures attached and marked Exhibits "D, E and F" respectively which show:-

- i. The notice of termination of the contract dated 28th February, 2022 and marked Exhibit D and
- ii. The Defendant's Solicitors letter conceding to the termination and requesting for a 3 months period within which to make a refund of the 5 Million Naira and marked Exhibit E and.
- iii. Claimant's Solicitors letter conceding within which to make the refund to only a 7 day period dated 7th day of April 2022 and marked F.

Also, the Learned Counsel to the Defendant at the hearing of the Motion on the 20th of February, 2023 said among other things that the Defendants did not file any Counter Affidavit and that they rely on the wisdom of the Court.

IN the light of the above, I am of the considered opinion that the Claimant/Applicant has satisfied the requirements for the grant of summary Judgment. I so hold

On the Claimant's Claim of ~~N~~800,000 (Eight Hundred Thousand Naira) as cost of litigation, the Claimant pleaded same in his Claims and pleadings particularly at paragraph 18 of the Supporting Affidavit. In addition, the Claimant/Applicant Exhibited a receipt of part payment of pre-recovery fee as Exhibit G in proof of same. In light of this, see the case of **NAUDE &**

ORS V. SIMON (2013) LPELR-20491 (CA) PER AKOMOLAFE WILSON JCA at PAGE 24-28 Paragraph 4, where the Court held thus:-

"The principle of law is that a successful party is to be indemnified for cost of litigation which includes charges, incurred by the parties in the prosecution of their case. It is akin to claim for special damages. Once the solicitors fee is pleaded and the amount is not unreasonable and it is provably usually by receipts, such Claim can be maintainable in favour of the Claimant."

See also the case of **AJIBOLA V ANISERE & ANOR (2019) LPELR-48204 (CA) Per Mohammed JCA. PP 29-30 PARA C.**

In the circumstance, the Claimant having proved the Claim of ₦800,000.00 as professional fee and the amount, being reasonable in my opinion, I hereby grant the said sum of ₦800,000.00 (Eight Hundred Thousand Naira) as cost of litigation against the Defendants.

On the other hand, from the record of the Court, the Defendant has failed and/or neglected to enter defence. In that regard, the Court is left with the only option of entering judgment based on the claim of the Claimant/Applicant.

To this end, I refer to the case of **EMODI & ORS V EMODI & ORS (2013) LPELR-21221 (CA) Per Akeju JCA (P.23, PARAS B-D)**, it was held thus:-

"...Where thereof a Plaintiff files his statement of claim raising an allegation of fact against the Defendant(s) who do/does not admit the truth of the allegation must file a

defence to contradict, controvert, challenge or deny the allegation. Where no defence is filed, the Defendant is deemed to have admitted the assertion and the Court may pre emptorily enter judgment against the Defendant."

Furthermore, the law is settled that where evidence adduced before the Court is unchallenged and credible, the Court will be left with no option than to accept same. This was the position in the case of **RABE V F. R. N (2019) 4 NWLR (PT. 1662) FOR RHODE-UNOUR JSC at page 329 para A**, where the Court held:-

"Where evidence is unchallenged, the unchallenged and unrebuttable facts are to be taken as true."

See also the case of **S. P. D. C. N LTD V. ESOWE (2008) 4 NWLR (PT. 1078) Per Gumel JCA at pg. 88 para E-F** where it was held:-

"An uncontradicted or unchallenged evidence must be used against the party who ought to have challenged the evidence but failed to do so."

In light of the above and having considered the facts and circumstances of this case, it is my humble opinion that in the absence of any defence on the part of the Defendants the Claimant/Applicant has therefore proved his case as required under the summary judgment procedure. I so hold.

Consequently, and without further ado, I hereby resolve the issue for determination in favour of the Claimant/Applicant against the Defendant and hold very strongly that this Application for summary judgment has merit and is hereby granted as follows:-

1. The Defendant is hereby ordered to pay forthwith the sum of ~~₦~~5,000,000.00 (Five Million Naira only) to the Claimant being the amount adduced by the Claimant to the Defendants on account of a partnership for the establishment of a modern Bakery and water production plant by the Defendants pursuant to a memorandum of understanding between the parties herein.
2. The Defendant is hereby ordered to pay the sum of ~~₦~~800,000.00 to the Claimant as cost of this suit.
3. 2 Million Naira is awarded as general damages in favour of the Claimant to be paid by the Defendants

Signed:

Hon. Justice S. U. Bature