

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA
BEFORE HIS LORDSHIP: HON JUSTICE ASMAU AKANBI – YUSUF
DELIVERED ON THE 30TH NOVEMBER, 2023
SUIT NO. FCT/HC/CV/3193/2020

BETWEEN

JAWAD KASIM MOHAMMED CLAIMANT

AND

1. ENGR. BABAGANA ABBA DALORI
2. GALAXY TRANSPORTATION &
CONSTRUCTION SERVICES LTD DEFENDANTS

JUDGMENT

The claimant averred and led evidence in the instant suit, that he invested the sum of #5,000,000.00 in the defendant's business; that it was agreed that the sum of #7,000,000.00 would be paid to him as profit on the investment with the defendants and in the event the claimant decides to withdraw his money from the investment, the claimant shall give the defendants three months' notice. Furthermore, the claimant testified that in August, 2018, he invested the sum of #12,000,000.00 for commercial purposes under a Joint business between him and the defendants; that the defendants agreed to pay the principal sum of #12,000,000.00 and the profit of #6,720,000.00 within 12 months; that the defendants were required to pay #1,000,000.00 per month from the Principal sum and the sum of #560,000.00 as profit per month and this was for the period of 12 months starting from the month of August, 2019. He continued that that the defendants paid the sum of #1,560,000.00 for a period of three months. i.e August, September and October, 2018; that the defendants are in default of #14,040,000 for the remaining nine months; that other investors

reported the defendants to the EFCC for failure to honour the agreement, hence this action. He testified that he paid his lawyers #500,000.00 to institute this action. The claimant opened his case on 22/11/2021. He adopted his witness statement on oath of 17/11/2020 and tendered the following documents in support of the pleaded facts. The documents are;

1. Sales Purchase Business Agreements between the Galaxy Transportation & Construction Services Ltd (2nd party) and Jawad Kasim Mohammed (1st party) entered into on Monday, July 16 2018 and Wednesday July 18, 2018 marked exhibits A1 & A2 respectively;
2. Investment Transfer of Foods to other Banks Transfer Receipt (GTB) dated the 13/7/2018 and 18/7/2018 marked exhibits B1 & B2 respectively;
3. The claimant's Jaiz statement of account (003765526) for the period of 1/8/2018 to 01/12/2018 marked exhibit C;
4. Cash receipt issued on the 12/11/2021 with receipt number 0561 marked exhibit D.

The claimant claims against the defendants as follows:

- a. AN ORDER of Court compelling the Defendants jointly or the 1st Defendant to refund the total sum of N5,000,000 (Five Million Naira) only being the money collected by the Defendants from the Plaintiff as investment into the business of the Defendants of selling sharp sand and gravels.
- b. AN ORDER of Court compelling the Defendants to pay the Plaintiffs the sum of N7,000,000 (Seven Million Naira) only being the profit the Defendants agreed to pay the Plaintiff on the investment from August 2018 to April, 2019.
- c. AN ORDER of Court compelling the Defendants jointly or the 1st Defendant to refund the total sum of N14,040,000 (Fourteen Million Forty Thousand Naira) only being the outstanding amount due to the Plaintiff for the months of November 2018 to July, 2019 out of the N12,000,000 monthly investment of commercial tipper/truck business and the profit thereof.
- d. #500,000 Cost of the suit.

Pursuant to the Order of the Hon. Court, the defendants were served with the originating processes and all other processes in respect to this matter vide substituted served, they however, failed and neglected to respond to the processes. Thus, the evidence before the Hon. Court is only that of the claimant. He gave evidence thus;

1. That I am the Plaintiff in this case and by virtue of which I am conversant with the facts of this case.
2. That the first Defendant is the Managing Director and the alter ego of the 2nd Defendant.
3. That the 2nd Defendant is a corporate liability company duly registered in Nigeria to carry on business in Nigeria.
4. That sometimes in July 2018 the 1st Defendant through the 2nd Defendant allured me to invest in their businesses of sharp sand and gravels.
5. That I agreed to invest in the said Defendants businesses and based on that a Business/Contract Agreement between me and the 2nd Defendant was executed. The said Business/Contract Agreement is attached as Annexure
6. That under the Business/Contract Agreement I invested the sum of N5,000,000 (Five Million Naira) only, the said money was paid to the Defendants through bank deposit. The deposit slip will be relied upon at the trial and a copy is attached as Annexure B.
7. That as part of the Agreement the Defendants are to pay the Sun of N1,000,000 (Seven Million Naira) only per annum, also where I want to Withdraw the money from the investment I can do so by giving 3 months notice to the Defendants.
8. That I also invested the sum of N12,000,000 (Twelve Million Naira) only to the transport business in August, 2018 for the purchase of Tipper/Truck at the cost of N12,000,000 (Twelve Million Naira) for

Commercial purposes under a joint business between the parties.

9. That further to paragraph 8 above under the transport business the Defendants agreed to pay me the principal sum of the N12,000,000 and the profit of N6,720,000 within 12 months. That in every month the Defendants will pay N1,000,000 (One Million Naira) from the Principal sum and the sum of N560,000 (Five Hundred and Sixty Thousand Naira) from the profit of N6,720,000 making the total sum of N1,560,000 (One Million Five Hundred and Sixty Thousand Naira) per month for the period of 12 months starting from the month of August 2019.
10. That the Defendants paid the said sum N1,560,000 for a period of 3 months that is for the months of August, September and October, 2018 thereafter he stopped the monthly payment of N1,560,000. Evidence of payment will be relied upon and attached as annexure C.
11. That the monthly payment for the remaining 9 months amounting to N14,040,000 remains unpaid by the Defendants despite several demands.
12. That other investors have already reported the Defendants to EFCC for failure to honour the agreement and that prompted us to institute this action to recover the money.
12. That I have paid my lawyers N500,000 to institute this action as professional fees, attached is a copy of the receipt as annexure D.

Having given the defendants adequate opportunity to cross examine the Pw1 as well as defend the matter. see hearing notices of 15/2/21, 22/11/21, 15/2/22, 25/10/22 and 7/2/23; their rights were foreclosed at different times. I am quick to state that the fact that the failure of the defendants to file a statement of defence or enter appearance does not mean an automatic

victory to the claimant. The onus still rests on the claimant to prove his assertions with credible and cogent evidence. See s. 131 Evidence Act.

The claimant has a bounden duty to prove his assertions with cogent and credible evidence. In *MTN NIGERIA COMMUNICATIONS LIMITED v. MUNDRA VENTURES NIGERIA LIMITED* (2016) LPELR- 40343(CA)"...the law is that evidence that is unchallenged or uncontradicted by the adverse party is good to be acted upon by the Court unless it is either irrelevant or palpably false or worthless by itself. Therefore, the mere fact that evidence is unchallenged is not tantamount to proof as such unchallenged evidence must also be credible and relevant in relation to the facts it seeks to establish. See *CAMEROON AIRLINES V. MIKE OTUTUIZU* (2005) 9 NWLR (PT. 929) 202. SEE ALSO *ISHOLA LAWSON V. AFANI CONTINENTAL CO NIG LTD* (2002) 2 NWLR (PT. 752) 585; *OMOREGBE V. LAWAN* (1981) 3 SC 108; *ODUOLA V. COKER* (1981) 5 SC 197."

At the close of the claimant's evidence and based on the fact that the defendants failed to appear in court, the matter was adjourned for adoption of final written addresses. On 24/3/2023, counsel to the claimant filed a written address on behalf of the claimant, wherein two issues were formulated for determination, to wit;

1. Whether the defendants are in breach of the Business/contract agreement with the claimants;
2. Whether from the totality of the evidence before the court, the claimant is entitled to the reliefs' claimed against the defendants.

As rightly argued by the claimant's counsel, where there is a written contract entered into by the parties, such contract is binding on them. He referred the court to the case of *K. C & ALLIED PROJECTS LTD V U. B. A PLC* (2014) ALL FWLR PT 718 P. 985 to support his argument. In the instant case, the Pw1 presented exhibits A1, A2, B1 & B2 to support his assertions that he invested the sum of #5,000,000.00 and #12,000,000.00 at different times. The claimant equally tendered exhibit C to support his assertion that

he received the sum of #1,560,00.00 for a period of three months, that is, for the months of August, September and October 2018 and thereafter, the defendants reneged on the agreement."It is settled law that parties are bound by the contract they voluntarily entered into and cannot act outside the terms and conditions contained in the contract and neither of the parties to a contract can alter or read into a written agreement a term which is not embodied in it. See AFRICAN INTERNATIONAL BANK LTD VS INTEGRATED DIMENSIONAL SYSTEM LTD (2012) 17 NWLR (PT 1328) 1, LAGOS STATE GOVERNMENT VS TOLUWASE (2013) 1 NWLR (PT 1336) 555.

I have taken into consideration, the evidence adduced by the claimant vis a vis the reliefs sought and I do not hesitate to hold the claimant has no cause of action against the 1st defendant. There is no evidence placed before the court to buttress the assertion of the claimant, that the 1st defendant is the Managing Director of the 2nd defendant and or the alter ego of the 2nd defendant. There is equally not in evidence that the 1st defendant agreed to indemnify the claimant in case of default by the 2nd defendant. The position of the law, is clear on a party asserting the existence of a fact. See Ss. 131 Evidence Act. Gleaning through all the exhibits tendered by the claimant, particularly the exhibits A1 & A2, the business/contract agreements, it is shown that the agreement is between the claimant, Jawad Kasim Mohammed, the second party and Galaxy Transportation and Construction Services Limited, the first party. It is trite law that contracts only bind parties to it and a person who is not a party to the contract cannot be expected to carry out any obligation on the contract. See INTEGRATED FINANCE LIMITED V. NIGERIAN PORTS AUTHORITY & ANOR (2019) LPELR-49321 (CA)

Going further and upon taking into consideration the evidence adduced by the claimant, it is shown that the claimant and the 2nd defendant entered into a business agreement on 16th and 18th July, 2018. See exhibits A1 & A2. One Hajara Yusuf transferred the

sums of #12,000,000.00 and #5,000,000.00 into the account of the 2nd defendant. See exhibits B1 & B2. The claimant testified to the fact that the defendant only remitted the sum of #1, 560,000.00 for a period of three months, that is for the months of August, September and October 2018. He tendered exhibit C, his statement of account to buttress his averment and further states that the monthly payment for the remaining nine months amounts to #14,040,000. The 2nd defendant was afforded the opportunity to controvert the evidence put forward by the claimant, but failed to do so. See AKINBAJO V. OLOWOLAYEMO & ORS (2016) LPELR-41946(CA). I am therefore in complete agreement with the claimant's counsel that where evidence given by a party to any proceeding or by his witness is not challenged by the opposite side who had opportunity to do so, the court has the power to act on such unchallenged evidence before it.

Accordingly, judgment is given against the 2nd defendant in the following;

1. The 2nd Defendant is directed to refund the sum of #5,000,000 (Five Million Naira) only being the money collected by the 2nd Defendant from the Plaintiff as investment into the business of the 2nd Defendant
2. The 2nd Defendant is ordered to pay the Plaintiff the sum of #7,000,000 (Seven Million Naira) only being the profit the 2nd Defendants agreed to pay the Plaintiff on the investment from August 2018 to April, 2019.
3. The 2nd defendant is ordered to refund the sum of #14,040,000 (Fourteen Million Forty Thousand Naira) only being the outstanding amount due to the Plaintiff for the months of November 2018 to July, 2019.
4. The 2nd Defendant is directed to pay the sum of #50, 000 (Fifty Thousand Naira) to the Plaintiff as cost of this suit.

ASMAU AKANBI – YUSUF
(HON. JUDGE)

APPEARANCES;

G. M Audu Esq, for the Claimant;

Defendant absent, and not represented.