

IN THE HIGH COURT OF JUSTICE
FEDERAL CAPITAL TERRITORY OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT APO – ABUJA
ON, 19TH DAY OF SEPTEMBER, 2022.
BEFORE HIS LORDSHIP:- HON. JUSTICE A. O. OTALUKA.

SUIT NO.: -FCT/HC/CV/2729/16

BETWEEN:

HYBRIDGE TECHNICAL COMPANY LIMITED:...CLAIMANT

AND

1. METANOYA GNI NIGERIA LIMITED }
2. ABUBAKAR AHMED MUSA :.....**DEFENDANTS**

Tobi Victoria Olorundare for the Claimant.
Defendants unrepresented.

JUDGMENT.

The Claimant commenced this action against the Defendant in 2016 vide a Writ of Summons dated and filed the 13th day of October, 2016.

The case originally commenced in the court of V.B. Ashi, J. (deceased). Subsequently, the case was transferred to this Court on the 5th day of December, 2019.

In the interval, the Claimant's witness who deposed to the Witness Statement on Oath and testified before the former Court, also became deceased, thus necessitating the Claimant to apply by motion, for the substitution of its witness and the filing of a fresh witness statement on oath.

Following the grant of the Claimant's application by this Court, the Claimant filed a fresh statement of claim dated and filed the 15th day of September, 2021, wherein it claimed against the Defendants as follows:

- (a) The sum of N17,300,000 (Seventeen Million, Three Hundred Thousand Naira) only.
- (b) 21% interest per annum on the sum of N17,300,000 (Seventeen Million, Three Hundred Thousand Naira) only, from 19th May, 2016 until judgment is entered in this suit.
- (c) 10% interest per annum on the judgment sum from the date of judgment until full liquidation.
- (d) Cost of this action in the sum of N2,000,000 (Two Million Naira) only.

From the records, services of notices were properly effected on the Defendants.

The case of the Claimant as per its statement of claim, is that sometime in July, 2012, the 1st Defendant, through the 2nd Defendant who is its alter ego and Chief Executive Officer, approached the Claimant for the purchase of Four Nos. vehicles comprising of 2 Nos Toyota Corolla 1.8 GLI valued at the cost of N4.5Million each, (that is N9Million for the two Toyota Corolla vehicles), and 2 Nos. Toyota Hilux 4 WD/Double Cabin, valued at N5,450,000 each (that is N10,900,000 for the two Toyota Hilux 4WD/Double cabin vehicles).

The Claimant averred that it accepted the offer and supplied the Defendants the said vehicles in perfect conditions on 25th July, 2012 at the total cost of N19,900,000 (Nineteen Million, Nine Hundred Thousand Naira) only.

The Claimant stated that in the course of supplying the said vehicles to the Defendant, it obtained credit facility from Microfinance Bank to facilitate the purchase and delivery of the vehicles to the Defendants and that interest on the said credit facility has accrued to the tune of N2,400,000.

That upon the receipt of the vehicles, the Defendants made two paltry instalmental payments totalling the sum of N5million, which the Claimant reluctantly agreed to accept as part payment, with the outstanding balance to be paid by the Defendants within a month of the delivery of the vehicles.

The Claimant averred that as at 19th May, 2016, the sum of N17,300,000 (seventeen Million, Three Hundred Thousand Naira) is outstanding and unpaid by the Defendants to the Claimant, which sum, the Defendants have failed, refused and neglected to settle in spite of repeated demands.

At the hearing of the case, one of the Directors of the Claimant, Ugochukwulkennalbeh, gave evidence for the Claimant. He adopted his witness statement on oath wherein he affirmed the averments in the statement of claim. He also tendered the following documents in evidence in proof of the Claimant's case:

1. Credit Sales Invoice and Delivery Notes – Exh PW1A-A4.
2. Letter of Demand – Exhibit PW1B.

From the records, the Defendants who participated in the proceedings before the previous Court, failed to put up any appearance upon the transfer of the suit to this Court. Consequently, their right to defend the suit was foreclosed on the Claimants' application.

The Claimant subsequently filed a final written address which was adopted on the 20th day of June, 2022. Therein, the Claimant raised a sole issue for determination, to wit;

“Whether the Claimant has proved his (sic) case by preponderance of evidence to be entitled to judgment in this suit?”

Proffering arguments on the issue so raised, learned Claimant's counsel, Abimbola Kayode, Esq, posited that it is settled that parties to a contract are deemed to have voluntarily entered into the terms of the contract and are bound by it, and that where the contract is in writing, the contract document constitutes the guide for the interpretation of the contract between the parties, and no extraneous term will be allowed to be read into the contract.

He referred to **Baba v. Nigerian Civil Aviation Training Centre Zaria & Anor (1991) 5 NWLR (Pt.192) 388 at 436.**

He contended that the Defendants are bound by exhibits PW1A-A4, which are the evidence that the vehicles were indeed supplied and delivered to the Defendants. – **Osun State Government v. Dalami (Nig) Ltd (2007) All FWLR (Pt. 365) 439-468.**

He argued that on the Claimant's pleadings and evidence adduced at trial, it is glaring that the Claimant supplied the said vehicles and the Defendants took delivery of the vehicles from the Claimant, and that the Defendants paid N5million and there is outstanding balance of N14,900,000 to be paid by the Defendants to the Claimant.

Placing reliance on **Ajikawov. Ansaldo (Nig) Ltd (1991) 2 NWLR (Pt.173) 359 at 375** and **Ogunyade v. Oshinkeye (2007) 15 NWLR (Pt.1057) 218 at 246,** learned counsel contended that the failure of the Defendants to give evidence in support of the Statement of Defence earlier filed in this suit before this matter was re-assigned to this Court, or to file a new Statement of Defence after the matter was re-assigned to this Court, is fatal to the defence, having regards to the evidence proffered at the trial by the Claimant.

He posited to the effect that the Claimant's claims in the circumstances, are deemed admitted as the evidence adduced by the Claimant remained uncontended, uncontroverted and unchallenged. He referred to **R.C.O. & S Ltd v. Rainbow Net Ltd (2014) 5 NWLR (Pt.1401) 516 at 542; John Holt PLC v. Allen (2014) 17 NWLR (Pt. 1437) 443 at 463.**

He urged the Court to hold that the minimum of evidence which has been adduced by the Claimant has tilted the scale in favour of the Claimant, as there is nothing put on the Defendants' side of the imaginary scale of justice.

On the Claimant's entitlement to its claim for 21% interest, learned counsel argued that the Claimant's averments in its pleadings to that effect were never specifically denied nor controverted by the Defendants as the Defendants did not lead any evidence in respect of this case.

He posited that the purpose of interest is to compensate the Claimant whose depositions in paragraph 7 of the Statement of Claim and evidence at trial that it obtained loan to the knowledge of the Defendant to finance the supply of the vehicles and that interest had accrued on the said loan, were never challenged nor controverted at the trial by the Defendants despite having the opportunity to do so.

He referred to **UBA PLC v. Lawal (2008) 7 NWLR (Pt.1087) 613 at 632.**

Relying on **R.E.A.N. Ltd v. AswaniTestile Ind. (1992) 2 NWLR (Pt.176) 637 at 670,** he submitted that in awarding interest to a successful party, the Court is enjoined to take cognizance of the prevailing economic situation vis-à-vis the facts of the case.

He urged the Court to hold that this claim not having been controverted by the Defendants, the Claimant is entitled to 21% interest per annum on the outstanding sum of N17,300,000.

On the claim for 10% interest per annum on the judgment sum, learned counsel contended that this head of claim is grantable by this Court in line with Order 39 Rule 4 of the Rules of this Court. He urged the Court to grant the said claim.

In respect of the claim for N2m as cost of this action, learned counsel argued that the refusal of the Defendants to settle their outstanding debt to the Claimant in spite of repeated demands, led to this action thereby causing the Claimant to incur additional expenses as solicitor's fees, and that the Claimant is therefore, entitled to its claims.

He urged the Court in conclusion, to enter judgment in favour of the Claimant as per the claim, the Claimant having proved its case by preponderance of evidence.

In the determination of this case, this Court will consider the issue of **whether the Claimant has established his claims on the preponderance of evidence as to be entitled to the reliefs sought?**

It is the settled position of the law, that the burden of establishing an assertion lies on the party who asserts, since it is that party who would lose if, on the completion of the case, no evidence is led in discharge of the burden of proof. See **Ukpabio v. N.F.V.C.B. (2008) 9 NWLR (Pt.1092)219 at 240-241.**

Although it is the position of the law that the absence of defence to a Claimant's case naturally entitles the Claimant to judgment, the Claimant in such situation, must however, as a matter of law, lead evidence in minimal proof of his claims

before he can be entitled to the judgment of the Court. What this means is that the absence of defence does not absolve a Claimant from the legal burden to prove his claim on a preponderance of evidence or balance of probabilities.

The Court must be satisfied by the evidence adduced before it by the Claimant, for such Claimant to be granted the reliefs sought. See **Oyenayin v. Akinkugbe (2001) 1 NWLR (Pt.693)49.**

In the instant case, by the evidence adduced before this Court vide Exhibits PW1A-A4, as well as the oral testimony of PW1, the Claimant established that it delivered vehicles worth N19,900,000.00 to the Defendants.

It is also the testimony of the Claimant that upon delivery of the said vehicles to the Defendants, the Defendants made payments in two instalments amounting to a total sum of N5,000,000.00 out of the total indebtedness of N19,900,000.00, which therefore, leaves a balance of N14,900,000.00 unpaid.

The Claimant is however, claiming for the sum of N17,300,000.00 as the outstanding balance of the Defendants' debt on the basis that it obtained credit facility from a Microfinance bank to facilitate the purchase and delivery of the vehicles and that interest on the said credit facility has accrued to the tune of N2,400,000.00.

There is however, no evidence before this Court, beyond the ipse dixit of the PW1, to prove that the Claimant indeed obtained the alleged credit facility in respect of the transaction, and that an agreement exists between the parties that the Defendants would bear the burden of paying the interest on the credit facility. To this extent therefore, the additional sum of N2,400,000.00 being claimed by the Claimant, is not proved.

In the circumstances therefore, it is my finding and I so hold, that the Claimant has only succeeded in proving the sum of N14,900,000.00 as the total amount of the Defendants' indebtedness to it. The Claimant will thus be entitled to the said lesser amount which it has proved, as against the sum of N17,300,000.000 claimed.

With respect to the claim for 21% pre-judgment interest, the Court of Appeal, in **Adebiyi (Trading under the style of Delock Association) &Ors v. National Institute of Public Information &Ors (2013) LPELR-22628(CA)** held per Abiru, J.C.A. that:

“... a Plaintiff in order to succeed in a claim for prejudgment interest, must show how the entitlement to such interest arise, that is whether by law, by contract or agreement or he must plead facts showing that the claim is part of the loss or special damages which the defendant's wrong imposed on him. It is not enough to merely say that the Plaintiff is claiming interest.”

The Claimant in this case, failed to show the basis of its claim for pre-judgment interest in respect of the transaction, subject matter of this suit.

The said claim is therefore, not proved.

Post-judgment interest as well as cost of action claimed by the Claimant, are however, grantable as a matter of law. See Orders 39 Rule 4 and 56 Rule 6 of the High Court of the Federal Capital Territory Civil Procedure Rules, 2018.

On the whole, the Claimant's case succeeds partly, and fails in part.

Judgment is therefore, entered for the Claimant as follows:

- (a) The Defendants are ordered to pay to the Claimant, the sum of N14,900,000.00 (Fourteen Million, Nine Hundred Thousand Naira) only.
- (b) Relief (b) fails for want of proof and is hereby dismissed.
- (c) 10% interest per annum on the judgment sum, from the date of judgment until full liquidation.
- (d) Cost of this action in the sum of N2,000,000.00 awarded against the Defendants.

HON. JUSTICE A.O. OTALUKA
19/09/2022