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/2309/2015

DATE: : WEDNESDAY 5TH MARCH, 2025

BETWEEN:

BASIC BLACK LIMITED ..... CLAIMANT/APPLICANT

AND

1. EFAB PETROLEUM LIMITED } **DEFENDANTS/**

2.ZAKHEEM CONSTRUCTION NIG. LTD. } **RESPONDENTS**

JUDGMENT

The Claimant approached this Honorable Court vide a Writ of Summons dated 2nd July, 2015 and further amended statement of claims dated 11th April, 2023 and filed on the 22nd May, 2023.

The Claimant claims against the Defendants as follows:-

1. The sum of **N304,556,000.00 (Three Hundred and Four Million, Five Hundred and Fifty-Six Thousand Naira)** being special and general damages for breach of the Subcontract Agreement between the Claimant and the 1st Defendant in that the 1st Defendant has failed, neglected and or refused to pay for the job executed by the Claimant for the Defendant at the Defendant's request and other expenses incurred by the Claimant under and by virtue of the said Subcontract Agreement.

2. General damages of **N300,000,000.00 (Three Hundred Million Naira)** for losses and damages suffered by the Claimant as a result of the breach of contract committed by the Defendant aforesaid.

3. The sum of N30,000,000.00 (Thirty Million Naira) against the 1st Defendant as punitive and exemplary damages for breach of contract.

4. The sum of N600,000,000.00 (Six Hundred Million Naira) being estimated loss of future earnings as a result of Defendants breaches and withholding of the Claimant's capital.

5. The Claimant also claims interest on the above total sums at 21% interest per annum before judgment and 10% interest per annum after Judgment.

6. An Order of this Honourable Court compelling the 2nd Defendant to pay to the Claimant all monies due from the 1st Defendant to offset the monies which the 1st Defendant owes the Claimant.

7. An Order of this Honourable Court declaring the purported award of the remaining portion of the 10km contract for pipe welding and laying, the 1st Defendant had already awarded to the Claimant via the contract award letter of 10th June, 2014 and under the extant Subcontract Agreement subsisting between the Claimant and the 1st Defendant to EBIWALEX NIGERIA LTD. as a null and void.

8. An Order of Perpetual Injunction restraining the 1st Defendant, either by itself, its agents, servants and privies from committing further act of breach of the said Contract by re-awarding the remaining portion of the said job under the said Contract to any other Subcontractor or doing anything inconsistent with the Claimant's interest under the said Contract.

Upon service of the Writ on the 1st and 2nd 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 PW1 (Anthony Anyadike) is, that the 2ndDefendant was awarded contract for the construction and laying of pipelines for the transportation of oil and gas via pipelines by the Nigerian National Petroleum Corporation (NNPC). The contract award letter was herein pleaded and relied upon at the trial.

PW1 avers that in order to be able to carry out its obligations under the said contract with the Nigerian National Petroleum Corporation, the 2nd Defendant awarded part of the Pipeline Construction Contract to the 1st Defendant.

That the 1st Defendant entered into a contract with the 2nd Defendant, in which contract the 2nd Defendant assigned the alignment sheet of KP97+700 to KP102+700 to the 1st Defendant, which was billed to be executed to the satisfaction of the 2nd Defendant and the Nigerian National Petroleum Corporation (NNPC).

That via contract award letters dated 10thJune, 2014, 17th July, 2014, December, 2014 issued by the 1st Defendant to the Claimant and a subsequent Subcontract Agreement (hereinafter referred to as "The Agreement") executed between the 1st Defendant and the Claimant, the 1st Defendant subcontracted the Claimant to carryout part of its job under its contract with the 2nd Defendant. The Claimant relied on the said contract award letters, dated 10th June, 2014, 17th July, 2014, December, 2014 issued by the 1st Defendant to the Claimant and the Agreement at the trial of this Suit.

That pursuant to the contract award letters and the subsequent agreement, the Claimant swung into action and mobilized its men and materials to the site with a view to completing its job under the said Subcontract within the stipulated period.

That on getting to site, to the Claimant's utter dismay and amazement, its workers and agents were violently confronted by irate youths who were armed with all sorts of dangerous weapons and further states that its said men and materials were put under serious danger by the said youths of the community where the said job is to be carried out.

That Claimant took the timely intervention of the Security Agents to save the situation from getting out of hand and further states that the Claimant was constrained to make un-budgeted expenses in order to calm the said irate youths. The Claimant relied on the records of expenses made during the trial of this Suit.

That Claimant subsequently appraised the 1st Defendant of this ugly and embarrassing development by its letter to the 1st Defendant and further states that the Claimant's financial and material loss and work stoppage were fully communicated to the 1st Defendant. The Claimant relied on the said letter during the trial of this suit.

PW1 stated that under the said Subcontract Agreement, it is the responsibility of the 1st Defendant to settle Community issues and other related matters, which issues the 1st Defendant was

expected to have taken care of before the arrival of the Claimant's workmen and other Agents to the job site and further states that the Claimant mobilized its men and materials to Site under the reasonable assumption that the 1st Defendant has duly taken care of these issues as agreed by the parties and equally contained in the Subcontract Agreement.

That in spite of these constraints and strictures on its way towards the due execution of the said subcontract, the Claimant was still able to complete substantial portion of the contract job satisfactorily consequent upon which the 1st Defendant subsequently extended the length of the job. The Claimant relied on the 1st Defendant's letter increasing the Claimant's job from 5km to 7.5km and thereafter to 10km.

That under and by virtue of a further agreement between the Claimant and the 1stDefendant it was mutually and expressly agreed between the Claimant and the 1st Defendant that all monies due to the Claimant under the said Subcontract shall be paid directly by the 2nd Defendant to the Claimant without any intermediary including the 1st Defendant. The Claimant relied on the said agreement at the trial of this suit. The 1st Defendant is

hereby given notice to produce the original of the said Agreement at the trial of this suit.

That consequent upon the Agreement referred to, the 2nd Defendant is bound to honour the said Agreement and pay what is due from the 1st Defendant to the Claimant directly. And where the said money had been paid to the 1st Defendant, the 1st Defendant is obliged to remit same to the Claimant.

That it was also mutually agreed between the Claimant and the 1st Defendant that the Claimant shall be paid a minimum of 75% of the value of the work it has done at every stage.

That 1st Defendant also covenanted to compensate the Claimant for Inconveniences and cost incurred as a result of the interference with the job subcontracted to the Claimant by the Defendant. The Claimant shall relied on the said Agreement at the trial of this suit.

That consequent upon the aforesaid contract award letters and subsequent agreement, the Claimant has submitted the Bill it sent to the 1st Defendant for payment to the 2nd Defendant for payment. The Claimant relied on the said letter to the 2nd Defendant at the trial of this suit.

That payment under the said contract were to be made in milestones and consequently, the Claimant was already entitled to payments which the 1st Defendant has failed, neglected and or refused to pay despite repeated demands on it to do so even though payments was made by the 2nd Defendant to the 1st Defendant for the work that the Claimant did for the Defendants but the 1st Defendant refused to pay the Claimant.

The Claimant relied on the various bank statements of the parties evidencing payments at the trial of this suit. The Defendants were herein put on Notice to produce the Original Copy of their bank statements (of First Bank Account Number 2017072474 of 1st Defendant; of Union Bank account Number 0010045326 of 2nd Defendant; of Union Bank Account Number 0010045254 of 2nd Defendant and other bank statements of the parties) for the period of January 2014 to December, 2018 at the trial of this suit.

That when Plaintiff demanded for payment for work done, the 1st Defendant maintained that the 2nd Defendant has not paid them, and the 1st Defendant started being hostile and threaten to the Claimant, The Claimant caused a police investigation into the matter, the Police investigated the matter and found out that the 1st Defendant lied to the Claimant and that the 1st Defendant has

been paid some monies, the police issued Police investigation report and had documents with evidence of payments of the 1st Defendant by the 2nd Defendant. The Claimant relied on Police Investigation reports and accompany documents during the trial of this suit.

That when the Claimant confronted the 1st Defendant with evidence that the 2nd Defendant had made some payments to the 1st Defendant for work done by the Claimant, the 1st Defendant colluded with the 2nd Defendant to start making payments to another company's account linked to the 1st Defendant (Ozone Nigeria Limited, Zenith Bank account Number1010039947), so that the Claimant will not know of the payments to the 1st Defendant by the 2nd Defendant for work done by the Claimant. The Claimant relied on the bank statement of the said Ozone Nigeria Limited evidencing payments and documents and evidence showing the links to the 1st Defendant at the trial of this suit.

That Claimant raised loans and facilities from family, friends and BDCs at high interest rates to execute the job, for which the 1st Defendant is now unwilling to pay for as aforesaid, which facts the Claimant has made known to the Defendants.

That without any reference or notice of revocation of any sort, the 1st Defendant has purportedly re-awarded the remaining portion of the 10km contract for pipe welding and laying the 1st Defendant had already awarded to the Claimant via contract award letter of 10th June, 2014 and under the extant Subcontract Agreement subsisting between the Claimant and the 1st Defendant to Ebiwalex Nigeria Limited.

That the 1st Defendant acting by itself and its agent Ebiwalex Nigeria Limited forcefully ejected the Claimant from the projects site and confiscated the Claimant's materials thereby frustrating the Claimant from completing the awarded contract although it had completed substantial part of the job.

That 1st Defendant acting by itself and through its agent Ebiwalex Nigeria Limited without its consent and authorization deployed its men and materials to complete the remaining portion of the 10km contract for pipe welding and laying which the 1st Defendant frustrated the Claimant from completing.

That the Claimant was ready, willing and equipped to successfully complete the entire contract awarded to it by the 1st Defendant before its men and materials were forcefully and illegally

confiscated by the 1st Defendant and its agent Ebiwalex Nigeria Limited.

That the Defendants' action as aforesaid has occasioned loss and damages to the Claimant.

PARTICULARS OF SPECIAL DAMAGE

		Price	Total
(a)	6.2 kilometers of fitting and welding completed	N30,000,000.00 (per KM)	N186,000,000.00
(b)	Provision of Securities on Site (claims)	N2,000,000.00	N2,000,000.00
(c)	Outstanding claims	N21,000,000.00	N21,000,000.00
(d)	Barging in on Site claims	N6,000,000.00	N6,000,000.00
(e)	Mob and demob claims	N3,556,000.00	N3,556,000.00
(f)	Minus payment received from Efab	N28,000,000.00	N28,000,000.00
(g)	3.8 kilometers of fitting and welding balance awarded to the Plaintiff completed with the Plaintiff's materials	N30,000,000.00 (per km)	N114,000,000.00
TOTAL			**N304,556,000.00**

That Claimant earned this **N304,556,000.00 (Three Hundred and Four Million, Five Hundred and Fifty-Six Thousand Naira)** at a time when 1USD was equivalent to 183 Naira, however as at the time of this amendment of this suit, 1USD equivalent to 386 Naira, this means that the Claimant had lost more than half the value of the money.

That the 1st Defendant willfully failed, refused and neglected to pay the Claimant the said **N304,556,000.00 (Three Hundred and Four Million, Five Hundred and Fifty-Six Thousand Naira)** being its business capital thereby foreclosing the Claimant from using the said capital to make its regular earnings for over six (6) years.

That instead of paying the Claimant the agreed money, the 1st Defendant having received the payment from the 2nd Defendant chose to redeploy the said money to its personal businesses to the detriment of the Claimant who had taken loan to execute the job.

PW1 tendered the following documents and admitted in evidence;

1. Sub-contract Agreement
2. Letter from 1st Defendant

3. Letter from Claimant dated 18/8/14

4. Letter from Claimant to Chairman EFAB group dated 20/2/15

5. Letter from 1st Defendant to Claimant

6. Contract for Haulage to Claimant by 1st Defendant

7. Agreement between Claimant and 1st defendant

8. Sub-contract Agreement between 1st Defendant and Ebiwalex Nig. Ltd

9. Letter from 1st Defendant to Claimant dated the 27th September, 2014

10. Letter from Claimant's solicitor to the 1st Defendant dated 12th June, 2015

11. Email printout with Certificate of compliance made on the 18th November, 2020

12. Police report dated 18th August, 2015.

All marked Exhibits "1", "2", "3", "4", "5", "6", "7", "8", "9", "10", "11" and "12" respectively.

PW1 was cross-examined and subsequently discharged.

The 1st Defendant opened their defence and called (Edward Orisakwe) as DW1. The case of the 1stDefendant as distilled from the Statement of Defence and Witness statement on Oath of DW1 is, that 1st Defendant denies paragraphs 10, 11, 12, 14, 15, 18, 20, 21, 22 and 23 of the Statement of Claim.

That 1st Defendant was awarded a contract of laying of 25 kilometers 36" gas pipe line by Zakhem Construction Nigeria Limited and that it sub-contracted five (5) kilometers of welding, weld repair, tie-in welding and repairs of the gas pipeline contract to the Claimant and the terms and conditions are stated in the Contract Agreement executed by the Claimant and 1st Defendant.

That the Claimant delayed in mobilizing to site and used the issue of disturbance by irate youths in the community to justify the delay in mobilizing to site and no irate youths threatened or disturbed the Claimant from mobilizing to site.

That it settled all community issues in respect of the 25 kilometers pipeline laying contract before the Claimant and other sub-contractors mobilized to site.

That it was not due to the Claimant's completion of substantial portion of the contract job that the Claimant's contract was extended to 10 kilometers but that the Claimant approached the

1st Defendant for additional 5 kilometers of pipeline welding contract and due to the need to ensure it mobilizes back to site, the 1st Defendant awarded additional 5 kilometers on the condition that the Claimant shall mobilize back to its existing site latest 24th December, 2014 which it failed to do and the contract for the additional 5 kilometers was terminated.

That the contract of pipe haulage is a separate and independent contract that the Claimant executed and it has been fully paid for by the 1st Defendant.

That the Claimant made false allegation of unlawfully obtaining the sum of **N167,556,000** and theft of materials valued at the cost of N4,400,000 against it and its staff Maurice Okoro consequent on which the police detained Maurice Okoro at Benin Police Station for 7 days and it was while he was at the police detention that the Claimant in connivance with the Nigerian police compelled him to execute the purported agreement.

DW1 further gave evidence that the purported agreement is not binding on it, as its staff Maurice Okoro signed his column under duress in the police station and no other staff or director of the company executed the other signature column.

That the police and the Claimant having achieved their unlawful intention of coercing Maurice Okoro to sign the purported agreement released him on bail and to justify the illegal detention charged him and the 1st Defendant to court which they later discontinued.

That the Claimant has no privity of contract with the 2nd Defendant and at no time did it instruct the 2nd Defendant to pay the Claimant directly in respect of the contract the 1st Defendant awarded the Claimant.

That by the terms of the agreement for the award of the 5 kilometers pipeline welding contract, the Claimant is only entitled to payment when the work completion certificate has being issued by Zakhem Construction Nig. Ltd. and Nigerian National Petroleum Corporation and this certificate has not been issued as their welding work has not been satisfactorily completed.

That it never agreed with the Claimant that it should raise facilities from the bank and its not supposed to know the Claimant's source of funding the contract.

That it awarded part of its 25 kilometers pipeline contract to Ebiwalex Nigeria Ltd., but the area awarded to it did not encroach on the 5 kilometers line awarded the Claimant.

That the Claimant in breach of the subcontract agreement started communicating directly to Zakhem Construction Nig. Ltd. apparently to blackmail and give Zakhem Construction Nig. Ltd. the impression that the 1st Defendant is incompetent and to encourage it to terminate the contract and re-award it to the Claimant.

That the execution of work and disbursement of execution funds are clearly spelt out in the Subcontract Agreement and the Claimant have not achieved the milestones which is subject to issuance of certificate of completion by Zakhem Construction Nig. Ltd. and NNPC to be entitled to further payment.

That the Claimant never made any demand for payment of work as it has not satisfactorily completed the contract awarded to it.

That the Claimant deliberately joined the 2nd Defendant in this suit to achieve its plan of ensuring that the 1st Defendant's contract is terminated and it be blacklisted for subcontracting the contract awarded it by Zakhem Construction Nig. Ltd. The Zakhem Construction Nigeria Ltd. letter dated 15th day of September, 2015 was pleaded and relied on at trial.

1st Defendant contended at the trial that the suit is frivolous, vexatious, gold digging and should be dismissed with substantial cost.

DW1 was cross-examined and subsequently discharged.

On their part, 2ndDefendant filed Amended Statement of Defence.

2nd Defendant denies paragraphs 1, 2 and 4 of the Amended Statement of Claim and puts the Claimant to the strictest proof of the averments set out therein.

The 2nd Defendant denies the facts set out in paragraphs 8, 9, 10, 11, 12, 13, 14, 15, 18, 20,21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33 and 34 of the Amended Statement of Claim and puts the Claimant to the strictest proof of the averments set out therein and states that it is not privy in any manner whatsoever to the said facts and transactions referred to in these paragraphs.

That 2nd Defendant vehemently denies the facts set out in paragraph 7 of the Amended Statement of Claim and in response thereof states that it is not aware of the existence of any contract between the Claimant and 1st Defendant nor the fact that contract was to be executed to the satisfaction of the 2nd Defendant and Nigerian National Petroleum Corporation, who were not parties to

the said contract nor approved same. The 2nd Defendant was never, at any material times in the action, notified or informed of the existence of any Contract or any agreement whatsoever between the Claimant and 1st Defendant in respect of the Subcontract Agreement between the Defendants herein.

The 2nd Defendant affirms that it has no contractual relationship with the Claimant and the Claimant is not a party to the said Subcontract Agreement under reference.

That 2nd Defendant denies the facts set out in paragraphs 8 and 9 of the Amended Statement of Claim and states further that the execution of the obligations and other responsibilities of the 1st Defendant under the Subcontract Agreement between Defendants herein for the construction, installation and testing of 36" pipeline segment from KI 97+700 to KP 122 + 700 for the expansion of Ecravos - Lagos Gas Pipeline Project for the Nigerian National Petroleum Corporation (NNPC) is in no way or manner extended of hinged upon the Agreement between the Claimant and 1st Defendant.

That the terms and conditions of the Subcontract Agreement between Defendants herein expressly restricted and prohibited the 1st Defendant from assigning any of its obligations or duties

under the Subcontract Agreement to third parties without the express permission and approval of the 2nd Defendant and the Nigerian National Petroleum Corporation.

That the 2nd Defendant denies facts set out in paragraphs 16, 17, 18, 19, 22, 23, 28, 29 and 30 of the Amended Statement of Claim and further states that it is neither a party nor privy to the Agreement or any agreement whatsoever between the Plaintiff and 1st Defendant, and thus not under any obligation whatsoever to honor the Agreement or any agreement between the Plaintiff and 1st Defendant, nor does it have any obligation to effect payment of the Plaintiff's Bill on behalf of the 1st Defendant.

That 2nd Defendant denies paragraph 25 of the statement of Claim and further states that it is not liable for the reliefs sought by the Claimant, with particular reference to the relief contained in paragraph 25 (c) of the statement of Claim.

That 2nd Defendant shall at the trial of this suit raise a preliminary objection as the entire constitution of the Claimant's claim does not disclose any cause of action whatsoever against the 2nd Defendant and shall urge the court to strike out and/or dismiss the suit against the 2nd Defendant accordingly.

That the case made by and claims of the Claimant, as it touches and borders on the 2nd Defendant herein, are overly gold-digging, ludicrous, vexatious, and lacking in merit and should be dismissed with substantial cost.

Parties closed their respective cases to pave way for filing and adoption of final written address.

Learned counsel for the 1st Defendant filed their final written address wherein sole issue was formulated for determination to-wit;

> ***"Whether from the pleadings and evidence adduced by parties, the Claimant has proved its case to be entitled to the reliefs in its Statement of Claim."***

Arguing on the above issue, learned counsel submits that the Claimant never complied with the condition stated in Exhibit "5", to mobilize to the existing site before 24th December, 2014. The PW1 evidence elicited under cross examination, that the Claimant never demobilized to site to warrant mobilizing back to site, is contrary to the clear provisions of **Section 132(2) Evidence Act, 2011.**

Learned counsel contends, that the evidence of PW1 in the instant suit and the evidence of PW1 in Exhibit D1 are contradictory while PW1 herein led evidence that the Claimant never demobilized from site to warrant mobilizing back to site, the Evidence of PW1 in Exhibit "D1" was that they mobilized back to site but have no document in Court in proof of the fact. The effect of the contradictory evidence is to render the whole evidence incapable of belief. Counsel cited ***ALHAJI ISIYAKU YAKUBU VS. ALHAJI USMAN YAUROYEL & ORS (2014) LPELR-22732 (SC)***.

It is further the contention of the learned counsel that he who asserts must prove. The Claimant never placed any material before this Court to prove that it complied with the condition stated in Sections 131(1) and 133(1) Evidence Act, 2011. The PW1 in Exhibit "D1" said the Claimant had a document to prove that it complied with the condition stated in Exhibit "5" but he did not have it in Court then. The Claimant had the second bite of the cherry when the matter started de-novo due to the demise of Justice Valentine Ashi and still failed to produce the document. The presumption is that it is either the document does not exist or if it does, it is unfavorable to the Claimant. Counsel cited **Section 167(d) Evidence Act, 2011.**

Learned counsel submits that the Claimant's Exhibits "8" and "12" (particularly the Claimant's Petition to the Office of the Assistant Inspector General of Police dated 5th March, 2015) are all in respect of the 5 Kilometers awarded to it by virtue of Exhibit "1". Both exhibits are subsequent to Exhibits "1" and "5" so an admission that the Claimant never complied with the terms of Exhibit "5". The non-compliance with Exhibit "5" gave the 1stDefendant the leeway to take over the additional 5 kilometers and re-award it to Ebiwalex Nigeria Limited by virtue of Exhibit "8".

The Claimant having failed to comply with the material term of Exhibit "5", the 1st Defendant was right to withdraw the additional 5 kilometers and award same to Ebiwalex Nigeria Limited vide Exhibit "8". The case of ***BEST (NIG) LTD & ORS V. BLACKWOOD HODGE (NIG) LTD (2011) LPELR-776 (SC)*** was cited.

Learned counsel submits that parties are bound by the terms agreed to in a contract and it is not the duty or function of a Court to make a contract for Parties or to rewrite the one, which they have made. Counsel cited ***FIRST CITY MONUMENT BANK PLC VS. BENBOK LIMITED (2014) LPELR-23505 (CA)***.

Learned counsel made reference to some material terms of Exhibit "1";

Contract Sum

Disbursement of Execution Funds

Reporting and Documentation

Learned counsel further argues that from Exhibit "1", payment for any segment done is independent on the Claimant submitting to the 1st Defendant's work completion certificate duly signed by the 2nd Defendant and Nigeria National Petroleum Corporation (NNPC). This procedure for payment was stated by the 2nd Defendant in the bundle of document marked as Exhibit "12". The Claimant never led oral or documentary evidence of submission of duly signed work completion certificate as evidence of work done to be entitled to payment. It also never tendered or led evidence of submission of comprehensive folder to the 1st Defendant for the 5kilometers done. Its evidence of completion of 6.2 kilometers is red herring, as it never completed any segment of the work. The case of ***SAIDU VS. AHMED & ORS VS. CENTRAL BANK OF NIGERIA (2012) LPELR-9341 (SC), (2013) NWLR, (Pt. 1339) Page 524*** was cited.

Learned counsel also submits, that Exhibits"3" and "9" have no probative value. As regards to Exhibit "3" no evidence of approval to expend the purported amounted and PW1 admitted that under cross examination while Exhibit "9" is spent and worthless by virtue of Exhibit "5".

Learned counsel contends, that assuming without conceding that the Claimant did not breach Exhibit "1", counsel submits further that the claims of the Claimant being in the specie of special damages are not grantable. The Law enjoins it to plead specifically and prove strictly the special damages. What is required is that the Claimant should establish its entitlement to the special damages by credible evidence of such a character as would suggest that it indeed is entitled to an award under that head. Counsel cited ***NNPC VS CLIFCO NIG. LTD (2011) 10 NWLR, (Pt.1255) Page 209*** was cited.

On the claims of N6,000,000 (Six Million Naira Only) predicated on the Claimant's Exhibit "7", learned counsel submits that the Exhibit is not binding on the 1st Defendant as its staff signed his column in the Police Station under duress and no other staff of Director of the 1st Defendant signed the second column and its seal was not affixed on the Exhibit.

Learned counsel further submits that under this head of claim for specific performance that the Claimant admitted vide Exhibit "8" that the additional 5 kilometers had been awarded to Ebiwalex Nigeria Limited. In paragraph 29(g) of Amended Statement of Claim, it claimed thus: "3.8 Kilometers of fitting and welding balance awarded to the Claimant completed with the Claimant's men and materials". Though no pleading or evidence of the type and cost of materials and its men purportedly used. Paragraph 29(g) of the Amended Statement of Claim is clearly an admission that Exhibit "8" had been executed. Its staff also admitted that much in Exhibit "12" particularly the Police Investigation Report paragraphs 3.6 -3.12. Specific performance is not a remedy when the contract is impossible to perform. The Supreme Court stated the Law. The case of ***INTERNATIONAL TEXTILE INDUSTRIES NIG. LTD V. DR. ADEMOLA OYEKA (1999) LPELR-1527 (SC), (1999) 8 NWLR, PART 614, P. 268*** was cited.

Learned counsel further argues that the only logical conclusion is that it was Maurice Okoro is late to deceive this Court, it is the learned counsel's submission that the Claimant and its witnesses act of doctoring and procuring documents, go to show that they have no credibility and ought not to be believed. The case of

CLEMENT OBRI VS. THE STATE (1997) LPELR-2194(SC), (1997) 7 NWLR (Part 513) P. 352 was cited.

In conclusion, counsel urges this Honorable Court to dismiss this suit with substantial cost.

On his part, learned counsel for the 2nd Defendant filed his final written address wherein two (2) issues were formulated for determination to-wit;

a. Whether the Claimant's case as set out in its pleadings and evidence also adduced herein discloses any cause of action against the 2nd Defendant?

b. Whether there is privity of contract between Claimant and 2nd Defendant in respect of the Subcontract Agreement (Exhibit "1") and/or Agreement dated 5th May 2015 (Exhibit "7") which entitles the Claimant to make any claim whatsoever against the 2nd Defendant in this matter?

It is the submission of the learned counsel that it is trite elementary law that where there is a right, there is a remedy, a principle of law expressed in the Latin maxim "Ubi jus ibi remedium". Counsel also contends that for the Claimant herein to

be entitled to any remedy or relief against the 2nd Defendant, there must be a corresponding right, a breach of which entitles the Clamant to maintain an action and/or seek relief(s) against the 2nd Defendant. Counsel cited ***DANTATA VS. MOHAMMED (2000) FWLR (Pt. 21) 889 at PAGE 923.***

Counsel contends that in order to determine whether the Claimant disclosed a cause of action against 2nd Defendant, the Honourable Court is admonished to review the Claimant's pleadings and evidence adduced. The case of ***RINCO CONSTRUCTION COMPANY LTD V. VEEPEE INDUSTRIES LTD (Supra) at page 825*** was cited.

Learned counsel argues that it is not in dispute from the Claimant's case and the evidence adduced before this court that the graveman and facts grounding the reliefs/prayers sought by the Claimant herein stems from subcontract Agreement between the Claimant and 1st Defendant. The 2nd Defendant is not a party to that contract. The Claimant did not issue any invoice to the 2nd Defendant in respect to the said contract, as a matter of fact, the 2nd Defendant is a stranger to the entire transaction and contract.

Learned counsel further contends that the question that naturally arises for determination and begs for answer by this Court in this

matter is "what is the wrongful act of the 2nd Defendant which gives the Claimant the cause of complaint in this matter to be entitled to seek any relief against the 2nd Defendant herein? Learned counsel therefore submits that there is no factual basis whatsoever that gives the Claimant herein the right to sue and join the 2nd Defendant as a party in this matter.

It further the contention of the learned counsel that in the absence of any cause of action disclosed against the 2nd Defendant from the Claimant's case as stated in its pleadings and evidence for which no amendment can be made to cure this defect, the only order the court can make in the circumstances is a dismissal of the claim and matter. The case of ***HOLEC PROJECTS (NIG) LTD VS DAFESON INT'L LTD (1996) 6 NWLR (PT. 607) 490 AT 499*** was cited.

Learned counsel urge the Court to resolve this issue by finding that the Claimant's case as expressly set out in its pleadings and the undisputed evidence adduced at the trial does not disclose any cause of action whatsoever against the 2nd Defendant and dismiss the Claimant's case and claims, as presently constituted against the 2nd Defendant, for non-disclosure of a cause of action against the 2nd Defendant.

Learned counsel urge the Court to resolve this issue in favour of the 2nd Defendant against the Claimant herein.

On issue 2;

> ***Whether there is privity of contract between Claimant and 2nd Defendant in respect of the Subcontract Agreement (Exhibit "1") and/or Agreement dated 5th May 2015 (Exhibit "7") which entitles the Claimant to make any claim whatsoever against the 2nd Defendant in this matter?***

Arguing on the above issue, learned counsel contends in response that 2nd Defendant does not have any contractual dealings with Claimant whatsoever in respect of the Subcontract Agreement and thus is not indebted to the Claimant on the said contract.

It is further the arguments of the learned counsel that there is no formal contractual documents between the Claimant and 2nd Defendant herein to support the existence of any contractual relationship between the duo nor any shred of evidence linking the Claimant and the 2nd Defendant in this matter.

It is the contention of learned counsel, that the question that naturally arises for determination and begs for answer by this

Court in this matter is "what is the basis for which the Claimant sued the 2nd Defendant and makes a claim for payment of the sum of N1,234,456,000 (One Billion Two Hundred and Thirty-Four Million Four Hundred and Fifty-Six Thousand Naira) arising from the alleged breaches of the Subcontract Agreement (Exhibit "1").

Learned counsel further contends that they are constrained to state that there is no basis, whatsoever either in law or logic, for case and claim made by the Claimant against the 2nd Defendant. It is apposite to state that the contract awarded by Nigerian National Petroleum Corporation to 2nd Defendant and the Subcontract between 1st and 2nd Defendants herein averred in paragraphs 5, 6, and 7 of the amended statement of claim are not in issue before the Court as those are subject matters which Claimant is not privy to.

Counsel also contends that the Claimant's case and reliefs sought against the Defendant as presently constituted, cannot stand, and is bound fail, in view of the undisputed fact that the 2nd Defendant did not enter into or execute the Subcontract Agreement (Exhibit "1") and/or Agreement dated 5th May, 2015 (Exhibit 7) with the Claimant. It is trite and elementary law that

only parties to a contract can enforce the contract and/or sue in respect of the contract.

Learned counsel urge the Court to resolve this issue in favour of 2nd Defendant and dismiss the claims and matter with substantial cost awarded against the Claimant.

In conclusion, learned counsel contends that the Claimant, having failed woefully to adduce any tangible and cogent evidence to support its case and any of the claim, such claims and averments are unfounded and deemed abandoned and the Court has no business considering the case and claims made herein and further submits that the Claimant's case does not hold water and cannot stand in the face of the avalanche of evidence adduced in this matter.

Learned counsel also urge the Court to discountenance the facts pleaded in the amended statement of claim and evidence, including documentary, adduced supporting the averments by the Claimant as same having failed to establish the issue of whether the Claimant is entitled to be paid the monies set out in the amended statement of claim.

Based on the above submissions, counsel posits that the 2nd Defendant's case/defence must succeed and the case/claims made by Claimant is bound to and must definitely fail.

Learned counsel finally urge this Court to dismiss Claimant's case and claims made by against the 2nd Defendant set out in further amended statement of claim dated 18th November, 2020.

On their part, learned counsel for the Claimant filed his final written address wherein sole issue was formulated for determination to-wit;

> ***"Whether from the pleadings and evidence adduced by the parties, the Claimant has established its case on preponderance of evidence to be entitled to the reliefs in its statement of claim?"***

It is the submission of learned counsel that the Claimant from the state of pleadings and the evidence adduced by the parties thereon that the Claimant has established its case preponderance of evidence. Counsel further submits on this issue that the Claimant's claim is within the realm of special damage which must be proved with utmost particularity, that in satisfying this legal requirement and evidential burden on it, the Claimant broke down

its claim under different heads of claim and reduced same to arithmetic calculation as endorsed in his final written address.

Learned counsel further submits, that proof of special damage is not extraordinary proof or proof beyond reasonable doubt like criminal allegation in civil action. It is nothing beyond proof on balance of probabilities or preponderance of evidence. On this, the case of ***ATTORNEY GENERAL OF ANAMBRA STATE V.C.N. ONUSELOGU ENTE. LTD [1987] ALL N.L.R. (Reprint) Page 579 Particularly at age 592*** was cited.

Learned counsel submits that by its pleadings and evidence as quoted above and the judicial authorities they have cited above, the Claimant has availed the Defendants with sufficient particulars of its claim to enable them meet it on its claims. Counsel humbly urges this Court to so hold.

Learned counsel argues that the Claimant has fully complied with the conditions stipulated in Exhibit "5" by mobilizing to site. This is because the contract in Exhibit "5" is an extension of the existing contract. Consequently, after concluding the main contract, the Claimant mobilized its men and materials for the execution of the extended contract in Exhibit "5" as a result the Claimant concluded a total of 6.2 kilometers before the

1st Defendant in flagrant and total breach of the contract in Exhibit "5" forcefully took over the site and starting using the materials the Claimant mobilized for the execution of the extended contract. On this, counsel refer this Honourable Court to the Police Report Exhibit "12".

Learned counsel submits that failure by a party to tender receipts in proof of special damage is not fatal to its case as long as the said case are particularized as the Claimant has done in the case. Counsel cited the case of ***DATOEGOEM DAKAT VS. MUSA DASHIE (1997) 12 N.W.L.R. Part 531 Page 46*** at **Page 54**.

It is further the submission of the learned counsel that the Claimant has proved its assertion that the 1st Defendant did not pay it for the job it duly carried out for the 1st Defendant on the request of the 1st Defendant. For instance, in Exhibit "4", the Claimant lamentably protested to the 1st Defendant on the non-payment for the job it duly carried out for the 1st Defendant. The Defendant did not rebut, challenge or reject the complaints and demands made in that protest letter, Exhibit "4" which action or conduct constitutes admission in law. Counsel cited ***RAMATON SERVICE LTD VS. NEM IK INSURANCE PLC (2020) 14 N.W.L.R. Part 1744 Page 281 at Page 298***.

Learned counsel submits that Claimant is entitled to claim on loss of futile earnings or profit occasioned by the breach of the subsisting contract between the 1st Defendant and the Claimant especially by its failure to pay for the said job and consequently withholding the Claimant's capital. Counsel cited ***ADEL BOSHALI VS. ALLIED COMMERCIAL EXPORTERS LTD (1961) ALL N.L.R. (Reprint) Page 946 Particularly at Page 950***.

On the strength of the above law and facts, the court is urge to resolve this sole issue in the Claimant's favour and against the Defendants and grant all the relief the Claimant is seeking in this case.

On their part, Claimant filed reply to the Argument in the 1st Defendant's Final Address.

In reply to the argument in paragraph 4.1 of the 1st Defendant's final written address, counsel submits that the said argument is misconceived.

It is submitted that the evidence of the PW1 under cross examination before this court that the Claimant did not de-mobilize from the project site to warrant its re-mobilization to the project site does not offend the provisions of Section 12(1) of the Evidence Act, 2011 as contended by the 1st Defendant. The said

evidence of the PW1 is aptly supported by the combination of facts pleaded in paragraphs 9, 14 and 25 of the amended statement of claim filed by the Claimant before this Court. In paragraph 25 of the amended statement of claim the Claimant pleaded that it was after the purported re-award of the additional 5km pipeline works to Ebiwalex Nigeria Limited that the 1st Defendant forcefully ejected the Claimant from the said project site. Parties are ad idem that the purported re-award of the said sub-contract to Ebiwalex Nigeria Limited took place after the award of same to the Claimant.

The evidence of the Claimant in support of the facts pleaded in paragraphs 9, 14 and 25 of the amended statement of claim was given in paragraphs 10, 15 and 26 of the witness statement on oath of the PW1. Counsel submits that the evidence of PW1 under cross examination is credible and admissible as it only amplified his evidence on record, supported by the Claimant's pleadings. Counsel submits, that the fact pleaded by the Claimant in paragraphs 9, 14 and 25 of the amended statement of claim clearly and unequivocally showed that the Claimant was in possession of the project site before and after the additional sub-contract for latter 5km pipeline works. The 1st Defendant did not

plead facts or lead any shred of evidence to establish the contrary.

Learned counsel argues further that the 1st Defendant did not deny the specific fact that the Claimant occupied the project site until the sub-contract for the addition 5km pipeline works was purportedly re-awarded by the 1st Defendant to Ebiwalex Nigeria Limited and the Claimant was forcefully ejected. Counsel therefore submits that the failure of the 1st Defendant to deny or controvert the specific fact pleaded regarding its forceful ejection by the 1st Defendant and Ebiwalex Nigeria Limited from the said project site amounts to an admission of the said fact. It is trite that where a party to an action fails to deny any specific fact in a pleading, such party is deemed to have admitted that particular fact.

Learned counsel urge that the argument of the 1st Defendant in paragraph 4.1 of its final address, be discountenanced.

Learned counsel contends, that in reply to the argument canvassed in paragraphs 4.2-4.8 of the 1st Defendant's final address, counsel submits that the said argument is misconceived. Learned counsel submits, that the evidence given by the PW1 in Exhibit "D1 before Hon. Justice Valentine Ashi does not contradict

the evidence given by the PW1 before this Honourable Court that the Claimant mobilized for the initial 5km pipeline welding sub-contract and remained thereon even after the award of the additional 5km pipeline welding sub-contract by the 1st Defendant to the Claimant, until the Claimant's forceful ejection from the said project site by the 1st Defendant after it purportedly re-awarded same to Ebiwalex Nigeria Limited.

It is further the submission of learned counsel that the Claimant having pleaded facts and led unchallenged evidence to establish that it mobilized to the project site and remained there until it was forcefully ejected by the 1st Defendant after the sub-contract for the additional 5km pipeline welding work was purportedly re-awarded to Ebiwalex Nigeria Limited, the burden of proof shifted to the 1st Defendant to prove that the Claimant was not in possession of the said project site and was not forcefully ejected from same by the 1st Defendant. From the pleadings before this Court and the evidence led, the 1st Defendant failed to either plead any such fact in rebuttal or lead any such evidence.

Counsel urge that the argument of the 1st Defendant in paragraphs 4.2-4.7 of its final address, be discountenanced.

In further reply to paragraph 4.8-4.14 of the 1st Defendant's final written address, counsel submits that Exhibit "5" was not extinguished by any act or non-performance by the Claimant. Learned counsel submits that from the facts and evidence before this Court, it is clear that the 1st Defendant was the party who breached the sub-contract entered into between the parties. Counsel respectfully urge that the argument of the 1st Defendant, be discountenanced.

In further reply to paragraph 4.15-23 of the 1st Defendant's final address, learned counsel submits that the argument canvassed therein are misconceived and urge that same be discountenanced.

Learned counsel further contends that in further specific reply to paragraph 4.21 of the 1st Defendant's final address, it is respectfully submitted that the 1st Defendant cannot, with respect, urge this Honourable Court to take judicial notice of the exchange rate of the Naira against the US Dollars, and urge this Court to conduct an arithmetic conversion of the sum of $627, 734. 77 into Naira when the 1st Defendant has not pleaded any such fact or led any such evidence. It is trite law that address of counsel no matter how beautiful, will not take the place of

credible evidence. The case ***of UDEOZOR V. F.R.N (2007) 15 NWLR (PT. 1058) 499 AT 518 PARAS. C-D*** was cited.

Counsel urge that the argument of the 1st Defendant in paragraph 4.21 of its final address, be discountenanced.

In specific reply to paragraph 4.22-4.23 of the 1st Defendant's final address, counsel submits, that the argument canvassed therein are with respect, misconceived. The 1st Defendant has contended in the said paragraphs that the Claimant tendered "doctored documents before Honourable Justice Valentine Ashi (now deceased). However, the 1st Defendant did not at the trial of this instant suit produce or tender in any evidence any proceeding or decision of that court presided over by Honourable Justice Valentine Ashi wherein it was found that any document tendered by the Claimant herein was "doctored" as alleged by the 1st Defendant. It is trite that he who alleges must prove. The case of ***ALINE VS. AFRIBANK (2000) 15 NWLR (PT. 689) 181 AT 196 PARA. D*** was cited.

The allegation that the Claimant "procured" Exhibit "11" because Maurice Okoro now late in order to "mislead this court not only misconceived but it is also speculate and lacking in substance. The law is firmly settled that the Court has no business with

speculation. Counsel cited ***ODI V IVALA (2004) 8 NWZR (PT. 875) 283 AT 311 PARAGRAPHS B-C***.

In conclusion, counsel urge this Court to grant the reliefs being claimed by the Claimant.

In turn, 1st Defendant filed reply on points of law to the Claimant's final written address.

It is the reply of the 1st Defendant that the authorities cited by the Claimant, the ***ATTORNEY GENERAL OF ANAMBRA STATE VS C.N. ONUSELGUN ENTE LTD 1987 ALL N.L.R, OSHIRNJINRIN & ORS VS ALHAJI ELLIS & ORS (1970) ALL N.L.R. AND DATOGOEM DAKAT VS MUSA DASHIE*** are not all fours with the fact of this case, but ***ATTORNEY GENERAL OF ANAMBRA STATE VS C.N. ONUSELGUN ENTE*** (supra), the Claimant led credible evidence to proof his entitlement.

Learned counsel submits that Exhibit "4" carries no probative value, the Claimant's letter was not written to the 1st Defendant nor sent to its address as stated in Exhibit "1" but was written to Efab Group at Syndicate plaza, Exhibit "1" states the mode of communications between the Claimant and the 1st Defendant. The

authorities of ***RAMATON SERVICES LTD VS NEM IKE INSURANCE PLC (2020) 14 NWLR PT 1744;***

ALHAJI GARBA ABUBAKAR BAGOBIRI V. UNITY BANK PLC (2016) PELR 41161 are in applicable as Exhibit "4" was not written to the 1st Defendant to warrant a reply.

Learned counsel further submits that it is trite law that a document should be construed as a whole and not in isolation. Exhibit "12" is predicated on the petition by Tony Anyadike against Maurice Okoro, Victor Ochie, Saturday Atanose, Churchill Onoride, Momoh Ahmed, Ajah Michael. The 1st Defendant was never a suspect, it was never invited or volunteered statement. The petition was a case of fraud, stealing, threat to life and conduct likely to cause breach of peace. The petition was not to question the kilometer the Claimant executed, No mention was made of job completion certificate signed by NNPC & 2nd Defendant by the petition.

Learned counsel argues that in paragraph 3.11 and 3.12 of the Police report, Maurice Okoro stated that the Claimant was awarded 5km. The 1st Defendant having not volunteered statement or invited by the police to state its own case, the report cannot affect it.

Counsel further argues that PW1 is not the maker of the Exhibit "12", the maker of the purported Exhibit "12" was not called as a witness to enable the other parties cross examine him as to how he obtain his findings that the Claimant executed 6.2km, when such was not contained in Tony Anyadike Petition.

Learned counsel contends that the police report, Exhibit "12", is subject to the approval of the Assistant Inspector General of Police Zone 5. No such Approval was tendered by the Claimant. Subject to approval is defined to mean that the finding is not final until the required approval is obtained. So, Exhibit "12" is of no probative value.

Learned counsel concludes by urging this Court to dismiss the suit of the Claimant with substantial cost as it is baseless and an attempt to unjustly profit.

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 pleadings.

From the pleadings and evidence as reproduced in the preceding part of this Judgment, Claimant is claiming damages for breach and other sundry claims which are all hinged on the said Breach of Contract.

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.

I shall attempt to consider the basic elements that ought to be in place for there to be a valid and enforceable contract in law.

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 literally.

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 breach of the Subcontract Agreement between the Claimant and the 1st Defendant in that the 1st Defendant has failed, neglected and or refused to pay for the job executed by the Claimant for the Defendant at the Defendant's request and other expenses incurred by the Claimant under and by virtue of the said Subcontract Agreement.

On their part, Defendants contended, that the Claimant delayed in mobilizing to site and used the issue of disturbance by irate youths in the community to justify the delay in mobilizing to site and no irate youths threatened or disturbed the Claimant from mobilizing to site.

That it settled all community issues in respect of the 25 kilometers pipeline laying contract before the Claimant and other sub-contractors mobilized to site.

That it was not due to the Claimant's completion of substantial portion of the contract job that the Claimant's contract was extended to 10 kilometers but that the Claimant approached the 1st Defendant for additional 5 kilometers of pipeline welding contract and due to the need to ensure it mobilizes back to site, the 1st Defendant awarded additional 5 kilometers on the condition that the Claimant shall mobilize back to its existing site latest 24th December, 2014 which it failed to do and the contract for the additional 5 kilometers was terminated.

That the contract of pipe haulage is a separate and independent contract that the Claimant executed and it has been fully paid for by the 1st Defendant.

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 which subsequently went sour.

This can easily be deduced from the content of **Exhibit "1"** I.e Subcontract Agreement. Contract for laying of 25 kilometres 36"

gas pipe line by Zakhem Construction Nigeria Limited and that it sub-contracted five (5) kilometres of welding, weld repair, tie-in welding and repairs of the gas pipeline contract to the Claimant and the terms and conditions are stated in the Contract Agreement executed by the Claimant and 1st Defendant.

It is pertinent to note, that Claimant stated before this court that "on getting to site, its workers and agents were violently confronted by irate youths who were armed with all sorts of dangerous weapons and further states that its said men and materials were put under serious danger by the said youths of the community where the said job is to be carried out."

That "it took the timely intervention of the Security Agents to save the situation from getting out of hand and the Claimant was constrained to make un-budgeted expenses in order to calm the said irate youths."

I now turn to the said Sub-Contract Agreement.

Clause 5, second paragraph of Subcontract Agreement is hereby reproduced to settle communities along the right-of-way***. "The Contractor shall undertake the settlement of all communities along the right-of-way. In addition, the Contractor shall provide non-community security***

(Nigerian Mobile Policemen/Nigerian Army) for use by the Sub-contractor."

It will then be correct to say that Claimant is not the appropriate party to fulfil that obligation.

What more? Claimant neglected to inform the 1st Defendant of this issue until after they (Claimant) had handled the issue as they have stated before this court.

Claimant on the other hand did not tender any evidence before this court to prove their assertion, which to them is a solid reason as to why their performance of their contractual obligation was stalled.

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.

1st Defendant stated in their evidence, that according to the terms of the agreement for the award of the 5 kilometers pipeline welding contract, the Claimant is only entitled to payment when

the work completion certificate has been issued by Zakhem Construction Nig. Ltd. and Nigerian National Petroleum Corporation and this certificate has not been issued which suggest that Claimant's welding work has not been satisfactorily completed.

Claimant on their part in their statement on oath averred that "That in spite of these constraints and strictures on its way towards the due execution of the said subcontract, the Claimant was still able to complete substantial portion of the contract job satisfactorily"

There is nowhere in the Subcontract Agreement that completing a "substantial portion" is the same as completing the project.

The execution of work and disbursement of funds for work done are clearly spelt out in the Subcontract Agreement and the Claimant have not achieved the milestones which is subject to issuance of certificate of completion by 2nd Defendant i.e Zakhem Construction Nig. Ltd. and NNPC to be entitled to further payment.

Claimant clearly admitted their shortcomings, i.e failure to complete the project as per terms of the Subcontract Agreement.

This in law is admission against interest.

The law on the issue of admission against interest is settled.

In law, admission of facts against self-interest is not only admissible but is also perhaps the strongest form of evidence available to the adverse party in any suit between the parties and the adverse party is perfectly entitled to rely upon and make use of same.

See ***BARR. EMMANUEL NWABUIKE VS. P.D.P & 2 ORS ELC (2022) 7723 (SC) Page 1.***

Supreme Court similarly lends its voice on same.. for an admission against interest to be valid in favour of the adverse party, same must not only vindicate or reflect the material evidence before the Court, it must also vindicate and reflect the legal position.

See ***ODUTOLA VS. PAPERSACK (NIG) LTD. (2007) 1 NJSC 129 at 142.***

Claimant stated, that the 1st Defendant had already awarded to the Claimant via contract award letter of 10th June, 2014 and under the extant Subcontract Agreement subsisting between the Claimant and the 1st Defendant to Ebiwalex Nigeria Limited; and

that the 1st Defendant acting by itself and its agent Ebiwalex Nigeria Limited forcefully ejected the Claimant from the projects site and confiscated the Claimant's materials thereby frustrating the Claimant from completing the awarded contract although it had completed substantial part of the job.

Claimant similarly stated, that 1st Defendant acting by itself and through its agent Ebiwalex Nigeria Limited without its consent and authorization deployed its men and materials to complete the remaining portion of the 10km contract for pipe welding and laying which the 1st Defendant frustrated the Claimant from completing, and that they are ready, willing and equipped to successfully complete the entire contract awarded to it by the 1st Defendant before its men and materials were forcefully and illegally confiscated by the 1st Defendant and its agent Ebiwalex Nigeria Limited.

1st Defendant however contended, that it awarded part of its 25 kilometers pipeline contract to Ebiwalex Nigeria Ltd vide **Exhibit "8"**, but the area awarded to it did not encroach on the 5 kilometers line awarded the Claimant.

Furthermore, 1st Defendant stated before this court that that it was not due to the Claimant's completion of substantial portion of

the contract job that the Claimant's contract was extended to 10 kilometers but that the Claimant approached the 1st Defendant for additional 5 kilometers of pipeline welding contract and due to the need to ensure it mobilizes back to site, the 1st Defendant awarded additional 5 kilometers on the condition that the Claimant shall mobilize back to its existing site latest 24th December, 2014 which it failed to do and the contract for the additional 5 kilometers was terminated. This is encapsulated in **Exhibit "5".**

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 Paragraphs B – C CA;***

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

Claimant did not tender any evidence to show that it had mobilized to site in compliance with **Exhibit "5"**.

I need to state at this juncture, that Claimant caused Letter to be written vide **Exhibit "10"** by its solicitors to 2nd Defendant informing them of 1st Defendant's indebtedness to the Claimant.

I have juxtaposed **Exhibit "7"** i.e Subcontract Agreement dated 15th July, 2014 and **Exhibit "10"**, 2nd Defendant is neither a party to any agreement here. Furthermore, there is nowhere in that agreement that shows that Claimant should communicate with the 2nd Defendant.

DW1 gave evidence that the purported agreement is not binding on it, as its staff Maurice Okoro signed his column under duress at the police station and no other staff or director of the company executed the other signature column.

That the police and the Claimant having achieved their unlawful intention of coercing Maurice Okoro to sign the purported agreement released him on bail and to justify the illegal detention charged him and the 1st Defendant to court which they later discontinued.

That the Claimant has no privity of contract with the 2nd Defendant and at no time did it instruct the 2nd Defendant to pay the Claimant directly in respect of the contract the 1st Defendant awarded the Claimant.

Claimant in their evidence, stated that they raised loans and facilities from family, friends and BDCs at high interest rates to execute the job, for which the 1st Defendant is now unwilling to pay for as aforesaid, which facts the Claimant has made known to the Defendants.

This court is not a court of sympathy but of law and the law similarly cannot command an impossibility.

Claimant who signed the Sub-Contract Agreement with the 1st Defendant is under every legal and moral obligation to abide by the terms contained in the said Contract document. This, I say, underscores the importance of Sanctity of Contract, as doing otherwise would undermine Agreements generally.

Their failure to so do is clearly a breach of contract on their part.

Parties to an agreement must be encouraged to respect such agreement and cannot be helped to shirk from same as done by Claimants in this case. This is sanctity of contract.

Having established the fact that there was a valid contract between Claimant and 1st Defendant; that the said contract was not breached by 1st Defendant, Claimant in law naturally cannot be entitled to any assumed restitution in damages from the

alleged breach which clearly were as a result of Claimant's inability to have done the work as specified and agreed with respect to time.

It is very clear that the case of the Claimant has been left in limbo to weather away as a judicial gate crasher that has by established case laws and statutes been consigned to a forlon of legal fossil.

Consequently, **suit no. FCT/HC/CV/2309/2015** is hereby and accordingly dismissed for lacking in merit.

Above is the judgment of this court.

Justice Y. Halilu
Hon. Judge
5th March, 2025

APPEARANCES

C.S. Ikeocha, Esq. – for the Claimant.

Agnes C.O., Esq. – for 1st Defendant.

Olusegun O., Esq. – for the 2nd Defendant.