

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT MAITAMA– ABUJA
ON 22ND JULY, 2021

BEFORE HIS LORDSHIP HON. JUSTICE CHIZOBA N. OJI
PRESIDING JUDGE

SUIT NO: FCT/HC/CV/2044/2017

BETWEEN:

**MR UDE A.I (DOING BUSINESS UNDER
THE NAME AND STYLE OF) G.3 GINNO PLAINTIFF
NIGERIA ENTERPRISE**

AND

**THE GOVERNING BOARD NIGERIA NATIONAL DEFENDANT
MERIT AWARD**

APPEARANCES:

K. C. OBI ESQ. FOR THE PLAINTIFF

U. ANYEBE ESQ. FOR THE DEFENDANT

JUDGMENT

In his statement of claim filed alongside his writ of summons on 1st June 2017, the Plaintiff claims against the Defendant:-

“a) The sum of ~~₦~~929,500 being the outstanding balance of the contract sum of ~~₦~~1,690,000 awarded to him in 2014.

b) The sum of ~~₦~~1,950,000.00 being the contract sum awarded to him in 2015, for rehabilitation of air-conditioners and electrical works at Merit House, Maitama Abuja.

c) ~~₦~~5 million Naira as damages for breach of contract

d) 10 percent interest of the total sum from the date of the judgment until full liquidation

e) The cost of this suit assessed at ~~₦~~500,000.00

And such order or declaration the Honourable court may deem fit to make in the circumstance.”

The Defendant filed a statement of defence and accompanying processes on 9th March 2018 deemed duly filed and served on 6th November 2018.

The Plaintiff filed a reply to the statement of defence on 5th November 2018.

To prove his case the Plaintiff testified as PW1.

He adopted his witness statement on oath of 1st June 2017 and his additional witness statement on oath of 5th November 2018.

His case is that the Defendant awarded him a contract to rehabilitate air conditioners as well as other electrical works at its office in Maitama, Abuja in 2014 and 2015.

That the first contract was awarded to him at the contract sum of ~~₦~~1,690,000 which he completed in accordance with its terms and conditions. In the process of payment, the Defendant demanded the letter of award and other documents which he submitted to them. He was paid ~~₦~~760,500 out of the said contract sum of ~~₦~~1,690,000 on 28th October 2015.

He bid for a second contract by his letter dated 24th February 2015. On 27th October 2015, the Defendant awarded him a second contract for rehabilitation of air conditioners and electrical works at Merit House, Maitama Abuja for the sum of ~~₦~~1,950,000.00. He conveyed his acceptance by letter dated 29th October 2015. He also completed the job successfully in line with the terms and conditions and was issued a certificate of job completion by the Defendant date 27th November 2015.

However, the Defendant failed and refused to pay him the outstanding balance of ~~₦~~929,500 for the 2014 contract and the sum of ~~₦~~1,950,000.00 for the 2015 contract despite several demands.

That the Defendant admitted the debt by their letter dated 29th March 2017.

That he is not privy to the internal politics or workings of the Defendant, neither is he a party to the alleged investigation by the Finance and General Purpose Committee of the Defendant, nor was he ever invited by the Defendant for any other purpose after the execution of the services required of him.

That he did everything legally required of him before the second contract was awarded and he diligently executed it.

That the Defendant has both actual and ostensible authority and power to award contract and did award both contracts to him.

The following documents were admitted in evidence through him:-

- Access Bank statement – Exhibit P1
- Certificate of Identification – Exhibit P1A
- Photocopy of quotation letter dated 24th February 2015 – Exhibit P2
- Letter of contract award dated 27th October 2015 – Exhibit P3
- Photocopy of acceptance letter dated 29th October 2015 – Exhibit P4
- Photocopy of Job Completion Certificate dated 27th November 2015 – Exhibit P5
- Letters of demand – Exhibit P6 series
- Defendant's letter dated 28th March 2017 – Exhibit P7

PW1 was cross examined and discharged.

DW1 – AbdulrazaqAbdullahi, Assistant Works Superintendent of the Defendant adopted his witness statement on oath of 9th March 2018. Therein he averred that the Plaintiff was never awarded any contract in 2014 for the rehabilitation of air conditioners and electrical works by the Defendant.

He equally averred that the Plaintiff did not execute nor complete any contract in respect of rehabilitation of air conditioners and electrical works at the Defendant's office in 2014. That the sum of ₦760,500 paid to the Plaintiff by the Former Secretary of the Defendant (one Prof. G. B. Ayoola) is currently under investigation by the Finance and General Purpose Committee of the Defendant amongst several other payments and contracts issued under him.

That the Former Secretary had refused to appear before the Committee, insisting that the issues to be investigated by the Committee are subjudice.

That the Former Secretary was suspended in 2016 owing to indiscriminate and general abuse of the contractual processes including contracts awarded and payment made to the Plaintiff, the subject matter of this suit.

That the Defendant, having not awarded the Plaintiff any contract in 2014, could not have requested him to submit documents that were not issued to him in the first place.

That the Defendant awarded the Plaintiff the second contract of 27th October 2015, for ₦1,950,000 which the Plaintiff accepted. However, the said second contract did not follow due process as the provision of the Public Procurement Act regulating contractual processes was completely jettisoned in that same was not advertised, nor bid for.

That the Plaintiff was issued a certificate of job completion for the contract which is part of matters being investigated by the Committee.

That the Defendant is not indebted to the Plaintiff for the sum of ₦1,950,000 or any sum at all as the Plaintiff failed to execute the contract illegally awarded to him.

That the Plaintiff wrote demanding payment for the debt.

That the Defendant's letter, Exhibit P7 did not amount to express admission of the debt, as it is consequent upon the submission of the report of the Finance and General Purpose Committee.

That the Defendant is ready to defray any debt accruing to the Plaintiff if the Governing Board so approves.

The following documents were admitted in evidence through him:-

- Certified True Copy of Letter of Invitation issued to the Former Secretary dated October 12, 2017 – Exhibit D1
- Certified True Copy of response by Lawbright solicitors dated 17th October 2017 – Exhibit D2
- Certified True Copy of motion on notice in Suit No: NICN/ABJ/215/2016 before the National Industrial Court of Nigeria – Exhibit D3

In cross examination, DW1 admitted that the Plaintiff did the works he is claiming he did. He could not tell whether the Plaintiff was invited by the investigating committee as he does not attend managerial meetings. He supervised the Plaintiff's job and the air conditioners worked after Plaintiff had done the job. In 2014 they worked very well.

In 2015 they worked but later started developing one problem or another which warranted the management to come and do the job again. He did not know why the management did not call the Plaintiff back in 2015 when the air conditioners were not working again. He was aware of the payment the Defendant made to the Plaintiff for the 2014 job.

He said the Plaintiff's name did not appear in Exhibit D1 to D3 and he had nothing to show to suggest that it was because of the contract awarded to the Plaintiff that the Former Secretary was removed.

DW1 was thereafter discharged.

In the Defendant's final written address filed by OkalaOkpanachiEsq. on 1st July 2019, deemed duly filed and served on 6th November 2019, two issues were raised for the court's determination thus:-

"a) Whether the Public Procurement Act (2007) is applicable to the facts of this case, and whether the provision of the said Act has not been violated in respect thereto.

b) Whether the Plaintiff has proved its (sic) case on a preponderance of evidence to be entitled to judgment."

In the Plaintiff's final written address filed on 16th March 2020 by P.A.N. Ejiofor Esq. three issues for determination were identified thus:-

"1) Whether the Plaintiff has proved his case based on preponderance of evidence to be entitled to judgment

2) Whether refusal, failure and or neglect to pay for the jobs does not amount to breach of contract

3) Whether the Plaintiff breach (sic) the Public Procurement Act (2007)."

I shall adopt the Defendant's two issues in determining this case as they encompass the three issues of the Plaintiff.

ON ISSUE ONE

Whether the Public Procurement Act (2007) is applicable to the facts of this case, and whether the provision of the said Act has not been violated in respect thereto.

It was submitted that the Public Procurement Act (2007) is the principal legislation regulating the award of contracts in all Federal Government Ministries, Departments and Agencies including the Defendant in this suit and no contract can be awarded outside the strict purview of the Act. Therefore the contracts allegedly awarded to the Plaintiff without recourse to the principal regulating legislation were faulty and cannot stand the heat of legal scrutiny. See Sections 15(1) (a) and 19 Public Procurement Act 2007.

He maintained that there is no shred of evidence any contract was awarded to the Plaintiff in 2014 and the explanation by the Plaintiff that he was required to submit the letter of award and other documents while processing his payment is spurious as that is not a requirement anywhere in government before payment is effected.

He urged that the statement of account, Exhibit P1 tendered is not conclusive evidence of a contractual obligation between the Plaintiff and the Defendant. At best it is mere speculation which the court is not permitted to entertain. See **UAC V MACFOY (1962) AC 152; ARCHIBONG V ITUA (2004) 2 NWLR (PT 858) PG 590.**

Learned counsel submitted that the relevant procurement unit of government (in this case the Defendant) reserves the right to investigate contracts that appear shrouded in secrecy. See Section 53(1) and (2) of the Act.

That pursuant to the said provision, the Defendant invited its Former Secretary to appear before the investigative committee via Exhibit D1 to explain all the controversial contracts awarded under him including that of the Plaintiff.

The process was however stalled by the action instituted by the Former Executive Secretary against the Defendant at the National Industrial Court. See Exhibit D3.

It was further submitted that the 2015 contract was not done despite the job completion certificate issued. Again that Exhibit P7, Defendant's letter heavily relied upon by the Plaintiff as an admission was not an expression of admission of debt and was clear as to why payment was not made. Authorities were cited in support of his submission.

In response, learned counsel for the Plaintiff submitted that Section 19 of the Public Procurement Act 2007 must be read in conjunction with Section 17 of the Act which makes the Act subject to regulations such as the Approved Revised Threshold For Service – Wide Application.

That these thresholds clearly spelt out the monetary powers of the various approving authorities and whether such can ordinarily pass through the tender's board.

That in the Approved Revised Thresholds For Service – Wide Application and Special Threshold For Procurement in Oil Sector under (a) therein, Column 5, the accounting officer is the permanent secretary who has power to award contracts for works less than ₦10 million. See Section 20(1) of the Act.

That the Plaintiff's services fall under what the Act calls direct/emergency procurement and covered by Section 42(1)(b); 2(a) of the Act and this does not require tender proceedings.

Learned counsel therefore submitted that there are exceptions to the general procedure for bidding recognized by the Procurement Act.

Regarding the bank statement, learned counsel argued that the Defendant's contention that it is mere speculative evidence that the Plaintiff was awarded a contract in 2014 is untenable, as the Defendant tendered no evidence to contradict the payment to the Plaintiff and information contained in Exhibit P1, therefore the case of **ARCHIBONG V ITUA** (supra) is inapplicable.

Learned counsel equally urged that there is no evidence to support the Defendant's claim that the Bureau for Public Procurement has recommended any investigation as contemplated by Section 53(1) and (2) of the Act as the Plaintiff was never invited nor questioned about his services to the Defendant before the Defendant withheld payment. He urged that Exhibit D1 does not relate to the Plaintiff.

RESOLUTION

Section 15(1)(a) of the Public Procurement Act 2007 provides:-

“(1) The provisions of this act shall apply to all procurement of goods, works, and services carried out by:

- a) The Federal Government of Nigeria and all procurement entities:-... ”

The Defendant being a Federal Government agency responsible for the conferring of awards, the Public Procurement Act is by virtue of Section 15(1)(a) thereof, applicable to it.

The contention of the Defendant is that the contracts awarded to the Plaintiff did not meet the requirements of the Public Procurement Act because there was no advertisement or bidding before the contracts were awarded, therefore the contracts were illegally awarded.

The contracts, the subject matter of this suit are valued at ~~₦~~1,690,000 and ~~₦~~1,950,000 respectively. Each of the two contracts is therefore under ~~₦~~2,000,000.

Section 17 of the Public Procurement Act 2007 provides:-

“Subject to the monetary and prior review thresholds for procurements in this Act as may from time to time be determined by the Council, the following shall be the approving authority for the conduct of public procurement.

(a) In the case of:

- (i) A government agency parastatal, or corporation, a Parastatal’s Tender Board; and
- (ii) A ministry or extra-ministerial entity, the Ministerial Tender Board.” (Emphasis mine)

In the Approved Revised Thresholds for Service – Wide Application and Special Thresholds for Procurement in Oil Sector issued by the Bureau of Public Procurement, under (a) thereof, the approving authority for the goods less than ~~₦~~5 million, is the Accounting Officer: Permanent Secretary; whereas the approving authority for works less than ~~₦~~5 million is the Accounting Officer: Director General/Chief Executive Officer. See Section 20(1) Public Procurement Act 2007.

It therefore follows that the contracts awarded to the Plaintiff could be properly approved by the Permanent Secretary or Director General or Chief Executive Officer of the agency in question.

Also under (c) the Procurement/Selection Method and Prequalification for works less than ₦2.5 million is by shopping (market survey) and not by advertisement as argued by learned counsel for the Defendant.

The provisions of Section 19 of the Public Procurement Act are subject to the regulations which may from time to time be made by the Bureau under the direction of the council.

As there is nothing before this court to show that the contracts of 2014 and 2015 awarded to the Plaintiff by the Defendant flouted the provisions of the Public Procurement Act 2007, the presumption is that both contracts conformed with the provisions of the Public Procurement Act and are therefore legal and valid in every sense of the word.

Secondly, assuming but without conceding that the said contracts were to have been advertised, it was the duty and responsibility of the Defendant to have advertised the contracts.

As there is nothing to show that the Plaintiff had a duty to advertise the contract or was a willing party to the contract not being so advertised, the Defendant who had the duty to advertise and who enjoyed the full benefit of the contract cannot turn around to complain of its illegality.

In **SALEH V MONGUNO & ORS (2006) LPELR – 2992 (SC)** the Supreme Court per Tabai JSC at page 31 paragraphs C-D held that a party who has committed an illegality cannot be allowed to benefit from same.

In **ALHAJA AUDU GARBA MAINAMA V KEYSTONE BANK LIMITED (2015) LPELR-40877 CA, PAGE 18 PARA B-D**, Adetope-Okojie JCA held that:-

“Furthermore and most importantly, the law is that a party who has benefitted from an agreement cannot turn around to say that the agreement is void. In the words of Onu JSC in the said case, “it is inequitable and morally despicable for the appellant, after obtaining a loan and after utilizing same, to now turn around and allege that the agreement (Exhibit E) between it and the grantor of the loan i.e the 2nd respondent, is null and void.”

See also **IBRAHIM LIMAN KATAGUM & ANOR V ALHAJI DANLAMI ME-MAI (2014) LPELR-23227 (CA) PG 18-19 PARAS E-A**; per Abdullahi JCA; **CHIEF**

GODWIN UKAH & ORS V CHIEF CHRISTOPHER A. ONYIA & ORS (2016) LPELR-40025 (CA) PAGE 23 PARAS B-C per Ogunwumiju JCA wherein his Lordship stated:-

“I have to say that a party who has benefitted from a contract cannot evade his obligations under the contract by relying on an allegation of illegality. For such illegality to avail the party if at all, it must be ex-facie.”

There is nothing ex-facie illegal in the contract of repairs of air conditioners and electrical works which the Plaintiff performed for the Defendant. There is nothing therefore that permits the Defendant after enjoying benefits of the Plaintiff's services, to resile from the contracts.

In conclusion, I find that though the Public Procurement Act applies to this case, however, no provision thereof have been flouted.

ISSUE TWO

Whether the Plaintiff has proved his case on a preponderance of evidence to be entitled to judgment.

For the Defendant learned counsel argued that the Plaintiff failed to prove he complied with the Public Procurement Act 2007 whereas the Defendant pleaded and proved that the contracts were awarded in total disregard of the Act. With the aid of decided cases, he urged the court to find in favour of the Defendant and dismiss the Plaintiff's case.

For the Plaintiff, it was submitted that the Plaintiff had proved by documentary evidence and the Defendant's cross examination that the Plaintiff worked for the benefit, comfort and enjoyment of the Defendant under the supervision of the Defendant's sole witness who testified that the Plaintiff worked very well. It was submitted that the Plaintiff proved the first contract in 2014 by Exhibits P1 and P1A, P2-P5, P7 and is entitled to the balance ₦929,500, as well as the sum of ₦1,950,000 for the 2015 contract.

It was contended that the failure of the Defendant to pay for the contracts already executed, despite demands by the Plaintiff amounted to a breach of contract.

The court was urged to find in favour of the Plaintiff and award the claims of the Plaintiff. See **DODO V SOLANKE (2006) 31 WRN R 2,3; NIGERITE LTD V OSOBA (2016) 13 WRN P158 R 6.**

RESOLUTION

The Plaintiff claims the sum of ₦929,500, being the outstanding balance of the first contract sum of ₦1,690,000 awarded in 2014.

PW1 – tendered Exhibit P1 as proof of part payment for the said contract by the Defendant. The entry for 28th October 2015 in Exhibit P1 reads:-

“R-61005833/FGN:NNMA payment of 50% iro rehabilitation of Air Conditioners: CBN 77343559-38666-61 for the amount of 760,500.00”

Not only did the Defendant not tender evidence in challenge of Exhibit P1, the DW1, AbdulrazaqAbdullahi in his cross examination unequivocally admitted that the Plaintiff did the works he is claiming he did.

In fact, DW1 admitted that he supervised his work, that the air conditioners worked very well in 2014, they also worked in 2015 but later on started developing fault which warranted the management to write another company to do the repairs.

He was also aware that the Defendant paid part-payment to the Plaintiff for the 2014 job.

He also admitted that nowhere in Exhibits D1 to D3 he tendered did the Plaintiff's name appear. He also had no evidence to show the court to suggest that it was because of the contracts awarded to the Plaintiff that the Defendant's Former Secretary, Prof. Ayoola was removed.

It is trite law that facts admitted need no further proof. See **BEN V NIGERIA SOCIAL INSURANCE TRUST FUND (2014) LPELR-24203 (CA) PG 50 PARA D-D** per Sankey JCA; **AKINNAWO V AYODELE (2013) LPELR-20318 CA; PG 51 PARA C** perKekere-Ekun JCA; **OGUANUHU & ORS V CHIEGBOKA (2013) LPELR-19980 (SC) PAGE 26-27 PARA D-C** per Galadima JSC.

It is clear to me that the Defendant awarded the 2014 contract to the Plaintiff which the Plaintiff executed to their satisfaction for which the Defendant paid part payment of ₦760,500 to the Plaintiff.

The Plaintiff is therefore entitled to the balance of the sum of ₦929,500 for the 2014 contract as claimed.

For the 2015 contract, the Plaintiff tendered Exhibits P2, P3, P4 and P5. The 2015 contract was admitted by the Defendant.

Despite Exhibit P6, the Defendant failed to pay for the balance of 2014 contract and the 2015 contract in full. The Defendant in Exhibit P7 admitted owing the Plaintiff the sum of ₦2,879,500 being the sum of ₦929,500 + ₦1,950,000.

I am satisfied that on a balance of probabilities that the Plaintiff has proved his claim of ₦1,950,000 for the 2015 contract.

I have earlier held that the Defendant's defence that the guidelines laid down in the Public Procurement Act 2007 were not followed in that the contract was not advertised or bid for holds no water, therefore, the Defendant having enjoyed the Plaintiff's services cannot withhold the payment due to the Plaintiff.

The law is trite that parties are bound by their contracts freely entered into. See **LAJIBAM AUTO-AGRIC CONCERNS LTD & ANOR V TRADE BANK PLC & ANOR (2014) LPELR-22779 (CA) PAGE 10 PARAS E-G; UBA V MARCUS (2015) LPELR-40397 (CA).**

Finally, Exhibit D1 makes no mention of the Plaintiff or the contracts awarded to him being the cause of the invitation of Prof. Ayoolabefore the committee.

Therefore whatever squabble the Defendant has with Former Secretary Prof. Ayoola, has nothing to do with the Plaintiff who executed the contracts he was awarded to the satisfaction of the Defendant as testified to by DW1.

There is equally nothing to show that the Bureau considered a criminal investigation necessary in the contracts awarded to the Plaintiff as envisaged by Section 53(1) of the Public Procurement Act 2007 to warrant withholding the payment due to the Plaintiff since 2014/2015.

The Plaintiff is entitled to be paid the sum of ₦929,500 for the 2014 contract and ₦1,950,000 for the 2015 contract. The Defendant's failure to pay these sums due to the Plaintiff amounts to a breach of contract for which the Plaintiff is entitled to damages.

ON DAMAGES FOR BREACH OF CONTRACTS

In **CGC NIGERIA UNITED V MALL MUHAMMED SANNI YUSUF (AKA CHACHANGI) (2016) LPELR-4159 (CA)** on measure of damages in an action for breach of contract. The court at pages 18-19 para D-A per Yahaya JCA held that:-

“Once there is a breach of contract, the measure of damages is the loss directly flowing naturally from the breach and incurred in direct consequence of the breach – **AGBALE V NATIONAL MOTORS LTD (1990) 2 ALR 266**. The idea is to put the successful party into the position he would have been, had the breach not been occasioned. See **U.B.N V CHIMAEZE** (supra) at page 71. Because general damages are taken to be the loss which flowed naturally from the act of the wrong-doer, and the law implies same in every breach, there is no requirement to plead and prove it. It is assessed and quantified by the court taking into consideration, the opinion of a reasonable person – **ACME BUILDER V K.S.W.B (1999) 2 NWLR (PT 590) 288 AT 305-306** and **ODUMOSU V AFRICAN (1976) 11 SC 55**”.

The Plaintiff claimed ₦5 million as damages for breach of contract. The Plaintiff has been owed his money for 6 years to 7 years now respectively. The drastic depreciation of the naira since 2015 when he ought to have been paid is a matter of which this court can take judicial notice.

I think an award of ₦3 million for general damages for breach of contract is fair. Accordingly the Plaintiff is awarded ₦3 million damages for breach of contract.

Pursuant to Order 39 Rule 4 of the Rules of this court, I award 10% interest per annum on the judgment sum from today until the judgment sum is fully liquidated.

I assess costs of this suit at ₦100,000 in favour of the Plaintiff.

Hon. Judge