

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT MAITAMA – ABUJA**

BEFORE HIS LORDSHIP: HON. JUSTICE. H. MU’AZU

**SUIT NO: FCT/HC/CV/1401/2022
DELIVERED ON THE 30/04/2024**

BETWEEN:

URBAN SHELTER LIMITED.....CLAIMANT

AND

<p>1. SOVEREIGN TRUST INSURANCE PLC</p> <p>2. EXECUTIVE CERAMICS LIMITED</p> <p>3. MR. SULEIMAN IBRAHIM IDRIS</p> <p>4. MR. CISSE HASSAN MOHAMED</p>	}	<p>.....DEFENDANTS</p>
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JUDGMENT

The Claimant by a Writ of Summons dated and filed the 29/4/2022 sued the Defendants herein on claim of breach of contract. The claimant and 2nd defendant had via a supply of goods agreement entered a contract for the 2nd Defendant to supply assorted Saudi Ceramics wall floor tiles for the Bellavue Residences, Lot III, Life Camp Abuja a real estate property belonging to the claimant. The said agreement executed on the 18/2/2021 was for a period of 60 days upon

issuance of the local purchase order (LPO). However the contract was not performed and the time period elapsed. The claimant then sought for the following from the Defendants jointly and severally;

- (a) A declaration that the 2nd defendant has breached the supply of Goods Agreement it had with the claimant entered on the 18th day of February, 2021.*
- (b) A declaration that the 3rd and 4th defendant got the 2nd defendant incorporated on 5th November 2020 as a limited Liability Company with the aim of defrauding the unsuspecting claimant company of its hard-earned funds; and for carrying out fraudulent activities to their advantage and to the disadvantage and pain of unsuspecting persons/entities.*
- (c) A declaration that the claimant company is entitled to a full refund of the 50% (Fifty Percent) consideration paid by it as agreed to the 2nd*

defendant company for the supply of assorted Saudi Ceramics Walls and floor Tiles by the 2nd, 3rd and 4th Defendants jointly and severally for the failure of the 2nd Defendant to so supply.

*(d) A declaration that the claimant is entitled to be satisfied and discharged by the 1st defendant of the damages suffered by the claimant in the hands of the 2nd to 4th defendants up to the sum of **₦122,839,470.00 (One Hundred and Twenty-Two Million, Eight Hundred and Thirty-Nine Thousand, Four Hundred and Seventy Naira)** only as contained in the Advance Payment Bond signed by both the 1st and 2nd defendants on 22nd February, 2021 wherein the claimant is the principal.*

*(e) An order of the Honourable Court directing/compelling the 1st defendant to pay the plaintiff the sum of **₦122,470.00 (One Hundred and Twenty-two Million Eight Hundred and***

*Thirty-Nine Thousand, Four Hundred and Seventy Naira) only being the sum the 1st Defendant is bound to pay the claimant as contained in the Advance Payment Bond with Bond Number **BON/APB/02/21HQ/00068** for the default of the 2nd defendant.*

- (f) *An order of the Honourable Court awarding damages in the sum of **₦100,000,000.00 (One Hundred Million Naira)** only in favour of the claimant against the 2nd to the 4th Defendants jointly and severally for the breach of the supply of Goods Agreement/Contract entered into by the claimant and the 2nd defendant on the 18th of February, 2023.*
- (g) *An order of the Honourable Court awarding interest at 21% per annum on the judgment sum in favour of the claimant and against the 2nd to 4th Defendants until the aforesaid sum is fully liquidated.*

(h) An order of the Honourable Court compelling the 2nd to the 4th Defendants jointly and severally to pay the sum of N6,295,522.80 (Six Million Two Hundred and Ninety Five Thousand, Five Hundred and Twenty Two Naira Eighty Kobo) only as cost they undertook/signed to bear in the event of the breach of the supply of goods Agreement of 18th February, 2021 and the claimant seeking redress.”

Upon services of the court processes on the defendants, 1st defendants filed it statement of defence likewise the 2nd and 3rd defendants. However, the 4th defendant did not put in appearance in this suit neither was he represented by a counsel despite evidence of service.

In proof of its case, the claimant called one witness – Mallam Abdulazeez Ayinla, its purchasing and supply manager. The 1st defendant also called one witness, Mr. Moses Oyeyemi, its head of claims department to give

evidence in support of its pleadings in defence of the suit of the claimant. The 2nd and 3rd defendants equally called a witness; Agnes Okwunu Egbunu – Accountant at both 2nd defendant and summerset Continental Hotels Ltd in defence of the suit of the claimant. The 4th defendant never entered appearance personally or by counsel; and did not defend the suit against him despite being served all the court processes.

The facts relevant to this case are that sometime in the month of February, 2021 precisely on the 18th day, the claimant entered into an Agreement with the 2nd defendant for the supply of goods assorted Saudi Ceramics Wall and Floor Tiles for its Bellavue Residences LOT III housing project at the Life Camp, Abuja-FCT. The entire consideration for the supply was agreed at the sum of **₦245,678,940.00 (Two Hundred and Forty-five Million, Six Hundred and Seventy-eight Thousand, Nine Hundred and Forty Naira) only.**

Based on the agreement of the claimant and the 2nd defendant, **50%** of the entire consideration was to be paid pre-supply and the balance paid after the supply of the goods delivered in good and merchantable condition and as clearly required by the claimant. The claimant, based on its policy and to secure the **50% (₦125,910,456.75)** payment inclusive of tax, it requested and got from the 2nd defendant and its directors/promoters, precisely the 3rd and 4th defendants an advance payment bond of the 1st defendant. the claimant trusting the 1st defendant's advance payment bond in which the latter was the surety paid the aforementioned **50%** amounting to **₦125,910,456.75** (One Hundred and Twenty-five Million Nine Hundred and Ten Thousand Four Hundred and Fifty-six Naira Seventy-five kobo) only of the consideration for the supply of the Assorted Saudi Ceramics Wall and floor tiles to the 2nd defendant's account number 5100355202 maintained with Heritage Bank.

The 2nd defendant was to supply the goods as agreed with the claimant in the supply of goods agreement and the local purchase orders within 60 days of being paid 50% of the consideration and the balance to be paid after the supply of the products in good condition and as specified by the claimant. The 2nd defendant and its promoters/alter egos- the 3rd and 4th defendants failed to supply the goods as agreed with the claimant despite repeated/several calls and pleas for the 2nd to the 4th defendants to perform as agreed the claimant and paid for by the latter. The claimant witness tendered the follow documents, to wit;

- 1. Certificate of Incorporation of the claimant**
- 2. Status report on the 2nd defendant**
- 3. 3 sales invoice of the 2nd defendant**
- 4. Advance payment bonds (APB)**
- 5. 2 pages of local purchase order (LPO) from claimant**
- 6. Supply of goods agreement**

- 7. Request for E-payment made by the claimant
2/03/2021**
- 8. Statement of account of the claimant showing
transfer of funds to the 2nd defendant**
- 9. Claimant's letter dated 15/7/2021**
- 10. Claimants letter dated 10/8/2021**
- 11. Claimants letter to 1st defendant dated 10/9/2021**
- 12. Letter from the 3rd defendant to claimant on letter
head paper of summerset to the claimant dated
10/8/2021**
- 13. Solicitor letter of 2nd and 3rd defendants to the
claimant dated 14/9/2021**
- 14. Letter of 24/9/2021**
- 15. Letter from solicitor to the 2nd and 3rd defendant
to the claimant dated 7/9/2021**
- 16. Claimant letter of engagement of solicitor dated
9/9/2021**
- 17. Claimant's solicitor letter of 27/9/2022 to the
solicitors of the 2nd and 3rd defendant.**

- 18. Letter from solicitors of 2nd and 3rd defendant dated 4/10/2022**
- 19. Letter from the 1st defendant to the claimant solicitor dated 30/9/2021**
- 20. Letter from the claimant's solicitor to the solicitors of the 2nd and 3rd defendant dated 13/10/2021**
- 21. A letter from claimant's solicitors to NAICOM dated 1/2/2022**
- 22. A letter from NAICOM to the claimant's solicitor dated 8/3/2022**
- 23. A letter from the claimant to its solicitor dated 24/2/2022**
- 24. Statement of account and were all admitted and marked as exhibits P1 to P24 in that other.**

On the part of the 1st defendant, its sole witness, Moses Oyeyemi adopted his witness statement on oath, identified and confirmed some documents as exhibits already tendered by the 3rd defendants. The brief case of the 1st defendant is

that; it admitted that the 1st defendant executed the advance payment bond but that the bond had specific terms and conditions which were violated by the claimant.

That the claimant agreed with the 1st defendant that any claim arising out of the bond should be notified in writing to the surety immediately and in any case not later than two weeks after the expiration of the bond.

The 1st defendant contended that the claimant is in breach of the above condition.

On the part of the 2nd and 3rd defendants, it is contended that they are also victims of the 4th defendant's actions and his disappearance. The 2nd defendant being a registered company with the 3rd and 4th defendants as its directors had been defrauded and misrepresented to its banker (Heritage Bank Plc) by the 4th defendant who had presented himself as the sole signatory to the company account and thereby carted away with the total sum paid by the claimant to the 2nd defendant's account as consideration for the contract for

supply of ceramic tiles. The 3rd defendant on his part contend that it was out of the threat and pressure from the claimant for his arrest and criminal prosecution for the crime committed by the 4th defendant that he decided to undertake payment of the total sum in a monthly installment before the claimant filed this case.

The 2nd & 3rd defendant tendered the formerly documents:-

- 1. Letter of 7/9/2021 to the chairman of EFCC**
- 2. Letter of 22/7/2021 to the inspector general of police**
- 3. Letter of 14/9/2021 written to the claimant**
- 4. Handwritten letter by the 4th defendant to the 2nd defendant's bank (Heritage Bank Plc) requesting for increase in daily transfer limit dated 18/2/2021.**
- 5. Letter referred to in paragraph 15 of her witness statement on oath**
- 6. Heritage bank form for increase in transfer limit**
- 7. Letter requesting for token exemption signed by the 4th defendant**

8. Board resolution dated 19/12/2020**9. Bundles of evidence of payment with certificate of compliance**

They were admitted in evidence and marked as Exhibits D1 to D9 respectively. The 4th defendant neither appeared before the court nor sent any legal representative. He neither fielded any witness nor cross-examined any of the parties' witnesses who testified before the court. He was accordingly foreclosed.

Parties filed and adopted their respective written addresses after closing their cases to give way for this judgment.

On the part of the 1st and 2nd defendants, two issues were distilled, to wit;

(1) Whether the claimant has presented the proper case of action before the court to be entitled to the relief sought.

(2) Whether the claimant has sufficiently established his right to legal fee as sought in the reliefs.

Learned counsel argued the above issues succinctly in urging the court to dismiss this suit.

On the part of the 1st defendant three (3) issues were formulated for determination to wit;

- 1) Is a competent cause of action disclosed in the suit of the claimant against the 1st defendant.**
- 2) Is the suit of the claimant against the 1st defendant based on the advance payment bond dated 22/2/2021 not premature in that sum due to the claimant is unascertained.**
- 3) Is the contract of guarantee in the advance payment bond dated 22/2/2021 vitiated by any breach of the claimant?**

Learned counsel argued the above succinctly in urging the court to dismiss this action.

Whereas the claimant formulated a sole issue to wit; *“whether the claimant proved its case against the defendants on the balance of probabilities or preponderance of evidence and is entitled to the relief sought.”*

Learned counsel urged the court to grant it reliefs in the interest of justice.

Similarly, learned counsel both filed replies on point of law in urging the court to rule in their favour.

It is trite that civil suit is decided on preponderance of evidence and balance of probabilities. **EYA & ORS VS. OLOPADE & ANOR (2011) LPELR 1184 (SC)**. In civil cases, the burden of proof is on the party who asserts a fact to prove same.

Indeed, he who assert must prove and the standard of proof is on preponderance of evidence and balance of probabilities. **ISHOLA VS. ISHOLA (2015) ALL FWLR (PT 779) AT PAGE 1136 PARAGRAPH 314.**

By the Provisions of Section 131 to 133 OF Evidence Act, 2011, he who assert must prove and whoever desires to have judgment in his favour must establish his case on preponderance of evidence such a party therefore must lead credible evidence and legally admissible evidence in order to succeed.

It is pertinent to state here that reliefs 1, 2, 3 and 4 claimed by the claimant are declarative in nature thereby predicating the success of other reliefs on their success

A party who seeks judgment in his favour is required by law to produce evidence to support his pleadings. It is an established position of law that in cases where declarative reliefs are claimed as in the present case, the plaintiff must satisfy the court by cogent and reliable proof of evidence in support of his claim. ***AGBAJE VS. FASHOLA & ORS (2008) 6 NWLR (PT 1082).***

The court has a duty to satisfy itself that the plaintiff's evidence upon assessment is credible and sufficient to

sustain the claim. ***SAMESI VS. IGBE 7 ORS (2011) LPELR 4412.***

To arrive at justice in this case, it is pertinent to state here that the kernel of the claimant's case is predicated on the recovery of advanced payment made to the 2nd defendant for the supply of assorted ceramic. It is an undisputed fact in this case that the claimant engaged the 2nd defendant to supply Saudi Wall and floor tiles to it in which advance payment was made and advance payment bond issued by the 1st defendant.

It is also undisputed that the 2nd defendant has failed and/or neglected to supply the product thereby in flagrant breach of the provision of the contract entered into.

In prove of its case, the claimant called a sole witness and tendered some documents in evidence marked as exhibits **P1 to P24** as already capture in the preceding part of this judgment.

I shall therefore, examines the case of the claimant based on both the oral and documentary evidenced adduced to unravel the case.

The law is settled that the simple operation of contract is that where parties voluntarily agree to do an act and one of the parties neglected to or defaulted from carrying out or doing what was agreed to be done, then there is a breach of that contract by the party who neglected or defaulted in performing his or her own side of the contract and the person responsible for the breach of the contract will be liable in damages to the other party. ***OB MIAMI BRICK & STONE (NIG) LTD VS. ACB LTD (1992) LPELR 2177 9SC***.

I pause here to state the law as regards importance of documentary evidence; it has been held by a number of court decisions that documentary evidence is the yardstick or a hanger by which to assess the veracity of oral testimony

or its credibility. ***OGBEIDE & ANOR VS. OSIFOR (2006) LPELR 627 (CA).***

I must state here that, the court is under obligation to interpret every document accurately, not to add or subtract from the content of the document. The implication of tendering exhibits, including evidence before the court of law is capture by Mukhtar JCA (as he then was) in ***JOHN M. BUBA VS. THE STATE (1992) NWLR (PT 215) 1 AT 168*** as thus;

“Exhibit are not tendered and admitted in court for the fun of it, they are for purpose albeit to assist in determining the relevance of the exhibits to the case. Secondly, once this form part of the record, they must be examined, scrutinized and assessed for the just determination of the case, if they are not scrutinized as they apply to the facts of the case, then of what use are they admitted in evidence.”

The claimant tendered exhibit P6 which is Supply Goods Agreement. The said **Supply/Purchase Contract Agreement** was made on the 18/2/2021 between the Claimant and the 2nd Defendant. In the said exhibit **P6**, paragraph 4(i) stated that the date for delivery shall be as specified in the purchase order. Whereas paragraph 4(ii) provides that, the supplier shall forthwith give written notice to Urban Shelter Ltd of any likely delay in delivery of which it becomes aware and shall provide Urban Shelter Ltd with prompt and reasonable written notice of the re-scheduled delivery date.

In line with paragraph 4(i) above, the LPO (local purchase order) which were directly incorporated into the contract was for a period of 60 days the LPO is tendered was **exhibit P5**.

The 2nd defendant as part of its obligation under the contract sought for and obtained an Advance Payment Bond from the 1st defendant.

The said Advance Payment Bond was tendered as **Exhibit P4**.

A perusal of the Bond reveals that the contractor shall duly utilize the Advance Payment for the purpose for which it was granted and observe all terms, provisions, conditions and stipulations of the said contract in that regard then the obligation shall be deemed discharged.

But on default by the contractor the surety shall satisfy and discharge the damages sustained by the principal thereby up to the amount of **₦122,839,470.00** (One Hundred and Twenty Two Million, Eight Hundred and Thirty Nine Thousand, Four Hundred and Seventy Naira only).

On page 2 of **exhibit P4**, (Advance Payment Bond) in paragraph 5. It is provided thus **“it is hereby understood and agreed that any claim arising out of this bond should be notified in writing to the surety immediately and in any case not later than two weeks after the expiration of the bond.”**

It is not in dispute that the Claimant trusting **Exhibit P4** above, which the 1st defendant is a surety paid the aforementioned **50%** amounting to **₦125,910,456.75** (One Hundred and Twenty Five Million, Nine Hundred and Ten Thousand, Four Hundred and Fifty Six Naira, Seventy Five kobo) only of the consideration for the supply of the assorted Saudi Ceramic Wall and floor tiles to the 2nd defendant's account number **5100355202** maintained with Heritage Bank.

The 2nd defendant and its promoter i.e. 3rd and 4th defendant failed to supply the goods as agreed with the claimant hence this action.

The law is settled that when parties enter into a written agreement and have reduced same into writing the written agreement governs their relationship.

Indeed, parties are bound by the terms and condition which they freely agree to in their contractual relationship and the primary duty of the court is to construe such term as agreed

by the parties and not to alter or in any way re-write the terms for the parties. *N.N.P.C VS. FUNGTAI ENG. CO. LTD (2023) 15 NWLR (PT 1906) P 261 PARA. A-B.*

In the instant case, the Claimant has approached this Hon. Court to enforce his right to the entire sum paid to the 2nd and 3rd Defendants for the supply of assorted Saudi Ceramics Wall and floor tiles for the Bellavue Residences, LoT III. Life Camp Abuja.

It is not in dispute that after the failure to supply the wall and floor tiles, the Claimant and the 2nd and 3rd Defendants entered into a Settlement Agreement. The Agreement was that the advance payment would be refunded by the 3rd defendant in installments. For avoidance of doubt, paragraph 37 of the statement of claims provides as thus;

“The claimant avers that further to paragraph 32 above, its solicitor wrote a letter dated 14/10/2021 painfully accepting the monthly repayment amount of the 50% consideration proposed by the 3rd

defendant to commence in September, 2021, and in the same letter informed the 3rd defendant through its solicitors

that 5% of the 50% consideration paid as solicitors professional fees being amount agreed by the claimant and its solicitors to be paid to the later for their services in seeking redress in court for the claimant, recovering the 50% consideration paid to the 2nd defendant and payment of damages amongst other for the breach of the supply of goods agreement by the 2nd defendant.

It is instructive to refer, at this point, to **exhibit P13**, which is a letter dated 14/9/2021 from the 3rd Defendant's lawyer to the Claimant. In the said letter, the 3rd Defendant proposed to the Claimant that, it would be paying the sum of four million naira monthly depending on whatever he is able to realize.

Also, **Exhibit P17** is a letter from the Claimant's lawyer dated 27/9/2021 written in response to the proposal in **exhibit P13**. In the said letter the Claimant expressed readiness to accept payment in installments but not in the sum proposed by the 3rd defendant, but in the sum agreed at an earlier meeting held between the parties.

Again, in evidence is **exhibit P18**, a letter from the counsel to the 3rd Defendant to the Claimant's counsel dated 4/10/2021 where the 3rd defendant agreed to pay between the sum of **₦6,000,000.00** to a maximum of **₦10,000,000**.

Exhibit P20 is a letter dated 13/10/2021 from the Claimant's counsel to the 3rd defendant's lawyer accepting the proposal of the 3rd defendant.

In **Exhibit P20**, the Claimant stated that all monies to be refunded as proposed should be done into Urban Shelter limited Stanbic IBTC Bank Plc account No.**0023009555**.

It is the law that parties to any dispute are free to negotiate the dispute between them and come to arrangement and

compromises that suit them. Whenever they come to a settlement, such settlements supersede the previous Agreement between them. Such that if one party fails to perform on the arrangement or settlement, the offended party cannot go back to the original agreement. ***ABEY & ORS VS. ALEX & ORS (1999) LPELR 32 SC (PP. 13 PARA A).***

Indeed, parties are entitled and indeed are encouraged to settle or compromise all or any of the questions or disputes between them on any terms or conditions as they agree, even without the approval or sanction of the court or prior reference to the court, at any stage of the proceeding. ***UYOBIA & ORS VS. GOVT. OF AKWA IBOM STATE 7 ORS (2014) LPELR 24249 9CA) (PP 43-44 PARA. A-A).***

It is in evidence, that, the 3rd defendant acting for the 2nd defendant commenced the repayment by installments and made monthly installments payments for six months before the Claimant initiated this suit. Pw1 admitted on page 15 of

the original record of this court that the 3rd defendant has paid up to **₦40,000,000** (Forty Million Naira) only out of the money.

From the above revelation therefore, it is obvious that the agreement to supply wall and floor tiles to the Claimant by the 2nd defendant has been compromised. The Claimant has agreed that the contract could no longer be performed and has also agreed to the repayment plan of the advance payment by the 2nd and 3rd defendant.

Having done this, it is my judgment that the only remedy available to the Claimant from this court is an Order for the enforcement of the agreement to repay by installments, particularly when the 3rd defendant has substantially part performed on that agreement.

Indeed, the failure of the 2nd and 3rd defendant to pay six million naira monthly that gave the Claimant the right to approach the court and not the failure to supply the goods/assorted Saudi Ceramic tiles. The Supply of Goods

Agreement was unfortunately breached and the Claimant decided to terminate same via its letter to the defendants on 10/8/2021 (**Exhibit P12**).

This is so because, after the termination and exchange of correspondences and meeting between the parties that a new Agreement for the repayment of the sum was executed for the 2nd and 3rd Defendants to pay the sum six million naira monthly till final liquidation of the sum.

The law is that, the court is bound by the reliefs sought by a party and that the court cannot grant a relief or make an order that was not prayed for by a party. *EHINLE VS. IKORODU LOCAL GOVT. (2021) 1 NWLR (PT 1757) P. 304 PAR. F-H.*

From the gamut of the Claimant claim, there is no where he claimed for monthly repayments of his money as agreed with the defendant via **Exhibit P20** and there is no any order sought directing the 2nd and 3rd Defendants to revert to

the terms of the agreement and pay the claimant the sum agreed monthly.

The reliefs sought by the claimant are bound to fail, accordingly same is hereby dismissed.

However, based on **Exhibits P20** and **P18**, 2nd and 3rd Defendants are hereby ordered to honour the Agreement reached on the payment of **₦6,000,000.00** monthly installments.

The 1st Defendant is not liable.

I make no order as to cost.

SIGNED:
HON. JUDGE
30/04/2023.

Appearance:

Christie Omonue, Esq, holdig the brief of A. O. Ammeh, Esq, for the Claimant

T. C. Shalom, Esq,with P. O. Okere, Esq, for the 1st Defendant

Shegun Olatunji, Esq, for the 2nd & 3rd Defendants