

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/2266/2020
DATE: : FRIDAY 28TH JUNE, 2024

BETWEEN:

BARR. BULA ZAKAYO KELLE
(Doing business under the name the
Bulakz Solicitor)

CLAIMANT

AND

1. GWAZE LIMITED
2. JOSEPH OBADIAH

DEFENDANTS

JUDGMENT

The Claimant commenced this action vide a Writ of Summons and Statement of Claim dated the 23rd July, 2020 and filed same date wherein the Claimant claims the following;

- a. A declaration of this Honourable Court that the Defendants are indebted to the Claimant to the tune of N28,500,000.00 (Twenty Eight Million Five Hundred Thousand Naira) only for professional services rendered to the Defendants during the period of his retainership with the Defendants.
- b. A declaration of this Honourable Court that it is wrongful for the Defendants to fail, refuse and neglect to pay the Claimant his professional fees and charges after having bestowed energy, intellect and expertise in diligently rendering professional services to the Defendants.
- c. An Order of this Honourable Court directing the Defendants to pay the Claimant the sum of N28,500,000.00 (Twenty Eight Million Five Hundred Thousand Naira) only for professional services rendered to the Defendants during the period of his retainership with the Defendants.

- d. An Order of this Honourable Court mandating the Defendants to pay the Claimant the sum of N5,000,000.00 (Five Million Naira) only as general damages for the trauma and stress caused by the Defendants wanton and wrongful refusal to pay the Claimant his entitled professional fees.
- e. An Order of this Honourable Court compelling the Defendant to pay the sum of N1,500,000.00 (One Million Five Hundred Thousand Naira) only to the Claimant being the cost of instituting this action.
- f. An Order of this Honourable Court for 10% post judgment interest on its monetary awards in favour of the Claimant, starting from the date of Judgment in this matter till the day the awards are paid in full by the Defendants.
- g. And for such order or further Orders as this Honourable Court may deem fit to make in the circumstances of this suit as though same were specifically sought for.

Upon service of the writ on the 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 deposed to by Bula Zakayo Kelle Esq. the Claimant in this matter

is that; that sometimes in January, 2019, the Defendants engaged his services vide a letter of retainership to handle the company's legal matters. The letter of retainership dated 14th January, 2019 from the Defendants has been pleaded and shall be relied upon at the hearing.

That pursuant to the acceptance of the retainership, he drafted for them and on their behalf a memorandum of understanding between Total Imani Limited and Gwaze Limited for a private partnership to develop 14 units of terrace duplex in Mabushi District, FCT – Abuja. the said Memorandum of Understanding dated 14th May, 2019 between Imani Limited and Gwaze Limited has been pleaded as evidence of job done by him and shall be relied upon at the hearing of this suit.

That on the 18th May, 2019 he prepared at the behest of the Defendants an irrevocable Power of Attorney between Total Imani Limited as "donor" and Gwaze Limited as "donee." The said Power of Attorney has been pleaded as evidence job done by him and shall be relied upon.

That he also drafted a sale of land agreement between the 1st Defendant and Nuel Osilama Global Investment Ltd. in respect of land at Kyami District FCT, Abuja. The said sale agreement has

been pleaded as evidence of job done by him and shall be relied upon at the hearing.

The Claimant further avers that on the 20th July, 2019 pursuant to the Defendant's instruction, he wrote a letter to God' Canol Chambers for a request for reduction of interest rate on loan facility of N300,000,000.00 (Three Hundred Million Naira) only. The said letter has been pleaded as evidence of job done and shall be relied upon.

That the Claimant was further instructed by the Defendants to further write to God' Canol Chambers a letter for reduction of interest rate on a loan facility of N300,000,000.00 (Three Million Naira) only. The said letter of 22nd July, 2019 has been pleaded as evidence of job done and shall be relied upon.

That the Defendant caused him to institute an action in the High Court of FCT suit No. **FCT/HC/CV/08/2019** between ***Gwaze Limited & Another VS. First Rotech Group & Companies Ltd. & 3 Ors.*** A certified true copy of the Writ of Summons and Statement of Claim in respect of the suit above has been pleaded and shall be relied upon.

The Claimant further claimed that the professional fees in respect of this suit mentioned above is the sum of N5,000,000.00 (Five

Million Naira) only and the professional fees was not paid by the Defendants who kept promising that the said fee will be paid.

The claimant further claims that he instituted an action in the aforementioned suit and filed same, while the case was ongoing, the Defendants who were unwilling to keep to their promise by paying the professional fees in respect of the action in court and other professional fees rendered by him, purported to terminate the retainership agreements and to also served on him a notice of change of counsel in respect of the aforementioned suit. The notice of change of counsel dated 2nd October, 2019 has been pleaded and shall be relied upon.

The Claimant further avers that he served the Defendants a bill of charges for professional services rendered dated 8th October, 2019 demanding the total sum of N28,500,000.00 (Twenty Eight Million Five Hundred Thousand Naira) only which the Defendant received but refused to acknowledge but positively stated through his new counsel in court in the aforementioned suit. Bill of Charges has been pleaded and same shall be relied upon.

That the Defendants have failed and neglected to pay him professional fees as per the bill of charges served on them.

The Claimant avers that he briefed his solicitor wherein a letter of Demand for the sum of N28, 500,000.00 (Twenty Eight Million Five Hundred Thousand Naira) as per Bill of Charges was served on the Defendants and were given 7 days' notice within which to pay up the money, but despite the receipt of the letter, the Defendants refused to pay the entitled fees for services rendered. A copy of the demand letter dated 13th July, 2020 has been pleaded and shall be relied upon.

That the Claimant upon the Defendants' neglect to pay him his entitled money for service rendered caused this action to be instituted in court for which he was charged the sum of N1,500,000.00 (One Million Five Hundred Thousand Naira) only.

The Claimant states that the actions of the Defendants have caused him untold hardship, trauma, embarrassment and financial loss.

PW1 tendered the following documents in evidence;

1. Letter of Retainership dated 14th January, 2019.
2. Letter written by the Claimant's Solicitor
3. Letter written by the Claimant's Solicitor

4. C.T.C of writ of summons CV/08/2019
- b 5. Notice of Change of Counsel
6. Bills of charges dated 8th October, 2019
7. Solicitor's letter from Yakubu Gana & Co.
8. GT. Bank Statement of account of the Claimant with certificate of compliance.
9. Original Cash Receipt by the Bula's Solicitor.
10. Memorandum of Understanding.
11. Irrevocable Power of Attorney
12. Sales of Land Agreement.
13. Deed of Assignment.

All admitted and marked Exhibits "1" – "13" in that Order.

PW1 was cross – examined and subsequently discharged.

Claimant closed his case to pave way for defence.

The case of the Defendants as distilled from the statement of defence and evidence of DW1 (Joseph Obadiah), the 2nd Defendant is that; the 1st Defendant retained the services of the

Claimant as legal practitioner in January, 2019 and the retainership was neither for any period or lengths of time nor based on a particular fixed amount but based on pay as you go, that is, service and immediate payment arrangement which was kept till when same was terminated.

The Defendants contend that the Claimant was duly paid for all the works and services rendered to the Defendants based on the nature of works and services rendered and was not owed a dime.

The Defendants further contend that the arrangement was that the Claimant would help the Defendants drafts legal documents and then send the soft copies to the Defendants after which the Claimant would be paid his legal fees sometimes in cash and sometimes through cash transfer. That this was how the Claimant was paid all the legal documents he helped the Defendants drafts and owe him no dime. Print out showing cash transfers of the sum of N150,000.00 and N7,000.00, N5,000.00, N500,000.00, N20,000 and N101,000.00 on 18th February, 2019, 31st May, 2019, 28th June, 2019, 1st August, 2019, 23rd January, 2019 and 27th June, 2019 respectively to the Claimants are hereby pleaded and shall be relied upon at the trial.

The total sum of money transferred to the Claimant by the Defendants between January to August, 2019 was N783,000.00 (Seven Hundred and Eighty Three Thousand Naira).

Defendants further state that the 2nd Defendant paid the Claimant over N2,000,000.00 (Two Million Naira) in cash at several times without collecting any receipt for the payments based on an established relationship on trust.

The Defendants contend that at times, they still pay the Claimant for his legal fees despite doing a shoddy job for the Defendants. The Memorandum of Understanding referred to in the statement of claim was so shabbily and unprofessionally drafted by the Claimant and same landed the 2nd Defendant in trouble as the claimant did not protect the interest of the Defendants.

That the 2nd Defendant was arrested and detained based on the said Memorandum of Understanding at Zone 7 Police headquarters and yet he paid the Claimant for the job.

Defendants further state that, the Claimant had at one time in June, 2019 introduced them to one capital plus who the Claimant claimed was going to lend a total of N200,000,000.00 (Two Hundred Million Naira) to the Defendants, but Defendants later suspected a foul play in the whole arrangement and subsequently

pulled out of the transaction. The purported loan offer given to the Defendant by the said capital plus at the behest of the Claimant is hereby pleaded and shall be relied upon.

The Defendants aver that they paid the Claimant for the said letter despite the fact that the loan offer was a greek gift, a 419 arrangement between the Claimant and some people the Claimant introduced to the 2nd Defendant from Kaduna State who collected N600,000.00 from the 2nd Defendant without providing the loan facility to the Defendants nor refund the money. The Defendants later discovered they were duped by these people introduced by the Claimant and would be duped more if the 1st Defendant company continues to retain the services of the Claimant and therefore the 1st Defendant met and decided to terminate the retainership that was based on pay as you go.

Defendants further added that they shall contend at the plenary hearing of this suit that the purported Bill of Charges is incurably defective, baseless and that no competent action for recovery of professional fees can be found on it.

Defendants further claim that they are not obliged to pay the Claimant any professional fees as they fully paid the claimants all his entitlements before parting ways with him in October, 2019.

The Defendant further deny the responsibility for any perceived or imaginary untold hardship, trauma and financial loss the Claimant alledged and that the Defendants deny reliefs being sought by the Claimant and states that they are bogus, frivolous, vexatious, ostiose and gold – digging.

Defendants urge the court to dismiss the Claimant's suit with substantial cost.

That it is in the interest of justice that this suit be dismissed.

DW1 tendered the following document;

1. 3 print – out showing cash transfer
2. Loan offer from Capital Plus Ltd.
3. Letter from the C.E.O of Origen Nigeria
4. Solicitor's letter
5. Cash receipt from the Bula's Solicitor.

All admitted and marked Exhibits "D1", "D2", "D3", "D4" and "D5" respectively.

DW1 was cross – examined and subsequently discharge.

On their part, Claimant filed reply to the statement of defence and further witness statement on oath as follows:-

The Claimant contends in response to paragraph 4 of the statement of Defence that because the letter of retainership did not expressly provide for fees chargeable for him, he is entitled to send his charges for professional services rendered in so far as they accord with the law and the nature of the work done. He further states that he is entitled to charge 10% of the consideration for the documents touching on transfer of interest to land howsoever. That it is not true that he was duly paid for the services he rendered and he knows he is owed by the Defendants to the tune claimed in his Bill of Charge which the Defendants did not in any way deny or challenged.

The claimant further avers that he was not paid for drafts of legal document and the Defendants found solace in exhibiting before the court transfers of monies for other jobs in an attempt to mislead this court.

Claimant states that he went with the 2nd Defendant Dept. of Development Control AMMC on numerous occasion without count and also went to Kaduna and he severally appeared in court for the Defendants and the sum of N150,000.00 (One Hundred and

Fifty Thousand Naira) only sent by the Defendant on 18th February, 2019 was to cover these work done and was in no way professional fees for legal documents prepared or change for litigation. That the sum of N20,000.00 was transferred to him by the Defendants on 23rd January, 2019 was to cover cost of printing, filing and logistics.

That the sum of N101,000.00 (One Hundred and One Thousand Naira) only transferred to him by the Defendants on 27th June, 2019 for onward transfer of the sum of N100,000.00 to capital plus as non -refundable application fee for loan facility of N200,000,000.00 (Two Million Naira) and that could not have amounted to paying him for professional services. A copy of GTBank statement of his account evidencing receipt and disbursement of monies has been pleaded and same shall be relied upon.

Claimant further denies paragraph 8 of the statement of defence and that he was not paid by the Defendants at various times monies cumulatively amounting to the sum of N2,000,000.00 (Two Million Naira) or any sum in satisfaction of legal services to the Defendants.

He further avers that he did not do a shoddy job for the Defendants but rendered services to the best of his ability with competence and due diligence and the subject matter before the court is for recovery of professional fees and nothing pretentiously different. The Claimant further added that he tried to represent the interest of the Defendants when the Defendants applied to Origen Nigeria for a loan of N300,000,000.00 (Three Hundred Million Naira) only when they were told to pay the sum of N1,000,000.00 (One Million Naira) for the company to come and inspect the collateral intended to be used to secure the loan and that he told the company the amount was too much and it should be deducted from the amount to be advanced to the Defendants.

The Claimant contends further that the company refused the proposal and insist that the money must paid, so he negotiated the sum down to N500,000.00 (Five Hundred Thousand Naira) only and insisted that it will be paid after a written agreement is executed, that should the loan facility not be advanced, the money shall be paid back to the Defendants.

Claimant further contends that paragraph 17 of the statement of defence is false and states in response that he has not received

the sum of N5,000,000.00 (Five Million Naira) that he only drew a receipt for the said amount and told the Defendants that the receipt will be handed over to them after they pay for the action and not before. He states that he has the original copy of the receipt with him and what the Defendant have exhibited before the court is a certified true copy from the record of the court in suit No. **CV/08/2019**.

A copy of the receipt has been pleaded and shall be relied upon at the hearing of this suit.

Claimant further contends that the said amount contained in his Bill of Charges is not a bogus claim but is based on the work he has done for the Defendants.

Claimant avers in response to paragraph 24 of the statement of Defence that the legal practitioner is entitle to serve on the client a Bill of Charges for an amount taking into consideration the nature of the work done and amount permitted or prescribed by law where there is no clear agreement.

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

Learned counsel for the Defendant formulated two issues for determination to wit:

1. **Whether or not the 2nd Defendant being an agent of the 1st Defendant is a proper – party in this suit.**
2. **Whether or not having regards to the pleadings, evidence and exhibits tendered before this Honourable Court the Claimant is entitled to the reliefs as claimed.**

On Issue One, **Whether or not the 2nd Defendant being an agent of the 1st Defendant is a proper – party in this suit.**

It is the submission of learned counsel, that the 2nd Defendant being an agent of the 1st Defendant is not a proper party in this suit and as such, his name ought to be struck out by this Honourable Court.

It is trite law that a company upon registration becomes a legal person distinct and separate from its members this general principle of law was firmly established by the renowned case of ***SALOMON VS. SALOMON*** and several other cases has been built and decided on its foundation ever since. He cited the cases

of ***UNITED CEMENT CO. LTD. & ANOR. VS. LIBEND GROUP LTD. & ANOR (2016) LPELR 42038 (CA).***

Learned counsel further argues, in line with the authorities cited above, that the 2nd Defendant in this case is simply an agent of the 1st Defendant and ordinarily ought not to have been joined in this suit. This fact was established and admitted by the Claimant during the course of cross – examination, the Claimant admitted that he was aware that the 2nd Defendant was indeed a director and an agent of the 1st Defendant and that he was not the only director of the 1st Defendant.

Counsel argues, that the 1st Defendant is a distinct legal entity from the 2nd Defendant and can be held liable for any alleged claims. Furthermore, the 1st Defendant is a disclosed principal of the 2nd Defendant, and it is an established principal of law that an agent cannot be held liable for actions taken on behalf of a disclosed principal. ***ISA & ORS. VS. A.A. RANO CONSTRUCTION LTD. (2017) LPELR – 45063 (CA)*** was cited.

Learned counsel therefore submits, that the 2nd Defendant is not a proper party in this suit and no cause of action has been disclosed against him to which he may be held personally liable

alongside his disclosed principal and as such his name ought to be struck out from this suit. The court is urge to so hold.

On Issue two, **Whether or not having regards to the pleadings, evidence and exhibits tendered before this Honourable Court the Claimant is entitled to the reliefs as claimed.**

Learned counsel humbly submits, that the claimant has failed to established his case as he ought to, as provided by the Evidence Act. The provisions of section 134 of the Evidence Act 2011 is quite clear in its provisions that the burden of proof shall be discharged on the balance of probabilities in all civil proceedings. This is the evaluation of evidence and what this entails is that the evidence adduced by both parties are properly examined by the court by placing same on an imaginary scale to determine the relevant weight to be attached or ascribed to each piece of evidence and that which holds more value and weights more ultimately tips the scale in favour. ***GUDUSU VS. ABUBAKAR (2017) LPELR 43007 (CA);***

TUGGA VS. DAN HAUSA (2013) LPELR – 21886 (CA) were cited.

Learned counsel argues that the Claimant during his testimony tendered certain unsigned documents including a Memorandum of Understanding, an irrevocable Power of Attorney, Sale of land Agreement and a Deed of Agreement between Total Imami Limited and Gwaze Limited which were admitted in evidence and marked as Exhibits "10", "11", "12" and "13" respectively. The position of the law with regards to the admissibility of unsigned documents is quite clear. ***DAVIDSON & ORS. VS. INEC (2021) LPELR 52805 (CA)*** was cited.

It is further the argument of learned counsel, that there was no written or any sought agreement whatsoever as to the amount to be paid as professional fees during the term of the retainership, and the Claimant has failed to supply any evidence that proves otherwise. He further states that the term of the agreement between the parties seems largely informed, on receipt of the letter of retainership, the Claimant did not write back accepting the offer and no agreement was signed by the parties establishing their new professional relationship. Nevertheless, from the conduct of the parties, it can be assumed that the parties largely agreed to fees to be paid per services rendered orally and assuming without conceding that the parties agreed to some other terms different from the provisions of the bill of

charges, it is our position that same has been fully paid by the Defendants.

Learned counsel submits, that it is a rudimentary that documents speaks for themselves, and as such documentary evidence tend to be more superior to oral evidence. ***AKINBISADE VS. STATE (2006) LPELR 342 (SC)***. Was cited.

Learned counsel argues that it is also on record that the Defendants denied owing the Plaintiff any fees as according to him in his testimony, he paid all the services rendered to him by the Claimant either through cash or through money transfer and as such, he is not owing the Claimant any money.

Learned counsel urge the court to dismiss this suit with cost as same is gold digging in view of the age and experience of the Claimant who was less than 3 years at the bar asking for N28,500,000.00 (Twenty Eight Million, Five Hundred Thousand Naira) over purported legal services rendered for only 13 months or there about. By virtue of Rules 48(2) of Rules of professional conduct for legal practitioner, a lawyer shall not enter into an agreement for, charge or collect an illegal or clearly excessive fee.

Learned counsel further cited Rule 52 (1) of Rules of Professional conduct for legal practitioner in support of his argument.

In conclusion, counsel submits that the totality of the forgoing, testimony and evidence adduced by the Claimant has failed to tilt the scale and therefore, the decision of this Honourable Court ought not to be in his favour and the court is urge to so hold.

In line with law and procedure, Claimant filed their final written address wherein two issues were formulated for determination to wit;

- a. **Whether or not considering his role in the instant case, the 2nd Defendant, being the alter ego of the 1st Defendant, is a proper and necessary party in this suit.**
- b. **Whether having regard to the claims of the Plaintiff and the evidence adduced in support of the claim, the Plaintiff can be held to have proved its case on the preponderance of evidence to be entitled to the judgment of this court.**

On issue One, **Whether or not considering his role in the instant case, the 2nd Defendant, being the alter ego of the 1st Defendant, is a proper and necessary party in this suit.**

It is the submission of learned counsel, that the 2nd Defendant being the alter ego of the 1st Defendant and who is instrumental in all transactions material to the cause of action and institution of the present suit is proper as a party in this suit before the court. He added that a party is one who is named as a Plaintiff/Claimant or Defendant in an action. ***GREEN VS. GREEN (1987) 3 NWLR (Pt. 61) 480;***

ARARUME VS. UBAH (2021) 8 NWLR (Pt. 1779) 511 at 533 – 534 Paragraphs H – A;

ENYIBROS FOOD PROCEEING CO. (NIG.) LTD. VS. N.D.I.C (2021) 16 NWLR (Pt. 1800) 559 at 572 Paragraphs F – H were cited.

In support of his argument, counsel argued that some of the payments to the Claimants were done through the 2nd Defendant's account domiciled with Access Bank Plc., the question of payment or nor payment of the Claimant's professional fees and surrounding issues cannot be settled without the 2nd Defendant being made a party to the action. ***JEGEDE VS. INEC (2021) 14 NWLR (Pt. 1797) 409*** was cited.

Learned counsel further argues, that the 2nd Defendant is a proper and necessary party to the instant case and the court is urged to so hold. He added that it is mandatory to join a party to an action once there are material allegations made against him.

JEGEDE VS. INEC at 577 – 578 Paragraphs F - E (Supra) was cited.

This court is urged to resolve this issue in favour of the Claimant and against the Defendant.

On Issue Two, ***Whether having regard to the claims of the Plaintiff and the evidence adduced in support of the claim, the Plaintiff can be held to have proved its case on the preponderance of evidence to be entitled to the judgment of this court.***

Learned counsel submits, and urge the court to hold that from the evidence on the record before this court, the Claimant has been able to prove his case upon the preponderance of evidence and is therefore entitled to the judgment of the court. He cited section 131 (1) and 132 and 133 of the Evidence Act 2011 as amended.

Learned counsel submits as can be gleaned from the processes filed by the Claimant and evidence given is the existence of professional retainership, legal work done for the Defendants during the subsistence of this relationship entitling the Claimant to recover his professional remuneration.

Learned counsel argues, that the Defendants do not join issues with the Claimant on the existence of professional relationship or work done by the Claimant consequent upon this relationship. The only point of divergence is whether the Defendants have indeed paid the Claimant all his professional fees as alleged by them. ***EWEJE VS. O.M OIL IND. LTD. (2021) 4 NWLR (Pt. 1765) 177 at 134 – 135 Paragraphs D – B, 138 Paragraphs B – F.*** was cited.

Learned counsel further argues, that the case of the Claimant as depicted in his evidence before this court is that he was not paid his professional fees by the Defendants. He added that the Defendants denies this and asserts that the Claimant was paid. They however failed woefully to show the evidence of payment of professional fees and so resorted to hanging on every little some ever sent to the Claimant's account by them as evidence of payment of professional fees. He made reference to paragraphs 5

to 8 of Claimant's further witness statement on oath in support of his argument.

Counsel submits, that the Defendants failed to cross – examined the Claimant on the material facts stated in paragraphs 5 to 8 of claimant's further witness statement on oath.

Learned counsel maintained that the meager amounts sent to the Claimant's accounts were by no means his professional fees but were logistical or out of pocket expenses.

Counsel therefore urge the court to hold that on the preponderance of evidence or balance of probability, the evidence of the Plaintiff is more believable to the fact that his fees were not paid by the Defendants. ***AMADU VS. YANTUMAKI (2011) 9 NWLR (Pt. 1251) 161 at 186 Paragraphs A – B*** was cited.

Learned counsel contends; that needless it is to say that the Defendants have by no means denied the professional service tendered to them by the Claimant. He added that what they contend before this court is that for all these legal jobs done for them by the Claimant, they have paid and are not owing. He further added that the Defendants admitted the job that was done for them by the Claimant. He cited ***CBN VS. DINNEH***

(2021) 15 NWLR (Pt. 1798) 91 at 121 Paragraph D, 123 Paragraph H.

Learned counsel also submits, that the arguments of the Defendant's counsel in the final written address, however brilliant cannot take the place of evidence. ***ABIMBOLA VS. STATE (2021) 17 NWLR (Pt. 1806) 399 at 435 Paragraphs A – B 431, Paragraph A*** was cited.

Learned counsel humbly submits, that the case of the Claimant has been proved upon the balance of probabilities and urged the this Court to so hold. This court is urge to resolve this issue in favour of the Claimant herein and against the Defendants.

On the whole, counsel urge this court to find that the action of the Claimant has merit and same having been proved upon balance of probabilities, the Claimant is entitled to the judgment of this court. This court is further urged to grant all the reliefs sought by the Claimant.

COURT:-

I have gone through the respective cases of parties cum their legal argument by way of written addresses. The issue whether the Claimant has proved his case on the preponderance of

evidence to entitle him to the reliefs sought has been formulated for determination by this Honourable Court.

The crux of the Claimant's case is squarely on alleged professional fees for services rendered, which remained owed by the Defendants.

It is trite that whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those fact exist. ***C.C.C.T & C.S LTD VS EKPO (2008) ALL FWLR (Pt. 418) page 198 at 224.***

Indeed, by the provisions of section 135 -137, of Evidence Act, the burden of proof is on the party who alleges the affirmative, whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.

The burden of proof in a suit or proceeding lies on that person who must fail if no evidence at all were given on either side.

In the case of ***ELEMO & ORS VS OMOLADE & ORS (1968) NWLR 359, SC*** recognized that the burden of proof has two distinct and frequently confusing meanings:-

a. The burden of proof in the sense of introducing evidence.

- b. The burden of proof as a matter of law and pleadings, the burden as it has been called of establishing a case whether by preponderance of evidence or beyond reasonable doubt.

In the first sense, where a given allegation forms an essential part of a party's case, the proof of such allegation rests on him.

In the second sense, the onus rests upon the party who would fail if no evidence at all or no more evidence were given on either side... ***UBA PLC VS ADEMUYIWA (1999) 11 NWLR (Pt. 628) 570*** lends support to above.

The claim of the Claimant herein is that the Defendants engaged his services vide a letter of retainership to handle the company's legal matters.

Indeed, contract is that specie of agreement whereby legal obligation is constituted and defined between the parties. ***NGUN VS MOBIL PRODUCING NIG. LTD (2013) ALL FWLK (Pt. 677) (Pt. 666) 484.***

Contract by their nature may be oral or written. A contract is said to be written when the terms of the contract are reduced in writing and it is oral when such terms are not written. Contracts

which are oral in nature are equally enforceable in law. ***OAMNA VS AKPAN (2011) ALL FWLR (Pt. 580) 1298.***

In the instant case, Claimant stated that Pursuant to the acceptance of the retainership, he drafted for them and on their behalf a memorandum of understanding between Total Imani Limited and Gwaze Limited for a private partnership to develop 14 units of terrace duplex in Mabushi District, FCT – Abuja.

The position of the law is that, where parties had orally agree on a particular point and then later enter into a written agreement, they are bound by it ***S.P.D.C NIG. LTD VS EMEHURU (2006) LPEL 7728 (CA).***

To prove the existence of contract between the parties, Plaintiff tendered Exhibit “1” which is a Letter of Retainership dated 14th January, 2019.

For better appreciation of this case, I shall reproduce the content of Exhibit “1”.

"We the above name and mention company wish to retain you and your firm as the company legal adviser and also to handle all the company legal matters.

With this letter you're therefore to either accept or rejected this offer.

Thank you for the anticipated acceptance, looking forward to have a good cordial working relationship with you."

The said Exhibit is addressed to the Principal Partner, Bulakz Solicitors, No. 40, Onisha crescent Area 11, Garki Abuja.

Thus, on the 18th May, 2019 he prepared at the behest of the Defendants an irrevocable Power of Attorney between Total Imani Limited as "donor" and Gwaze Limited as "donee." Also, he drafted a sale of land agreement between the 1st Defendant and Nuel Osilama Global Investment Ltd. in respect of land at Kyami District FCT, Abuja. Claimant further avers that on the 20th July, 2019 pursuant to the Defendant's instruction, he wrote a letter to God' Canol Chambers for a request for reduction of interest rate on loan facility of N300,000,000.00 (Three Hundred Million Naira) only. It caused him to institute an action in the High Court of FCT suit No. **FCT/HC/CV/08/2019** between ***Gwaze Limited & Another VS. First Rotech Group & Companies Ltd. & 3 Ors.*** The professional fees in respect of this suit mentioned is the sum of N5,000,000.00 (Five Million Naira) only and the professional

fees was not paid by the Defendants who kept promising that the said fee will be paid.

while the case was ongoing, the Defendants who were unwilling to keep to their promise by paying the professional fees in respect of the action in court and other professional fees rendered by him, purported to terminate the retainership agreements and to also served on him a notice of change of counsel in respect of the aforementioned suit. Claimant further avers that he served the Defendants a bill of charges for professional services rendered dated 8th October, 2019 demanding the total sum of N28,500,000.00 (Twenty Eight Million Five Hundred Thousand Naira) only which the Defendant received but refused to acknowledge but positively stated through his new counsel in court in the aforementioned suit.

Defendants' neglected to pay him his entitled money for service rendered he caused this action to be instituted in court for which he was charged the sum of N1,500,000.00 (One Million Five Hundred Thousand Naira) only.

Indeed, it is now settled beyond peradventure that where the content of a document is clear, express and unambiguous, court

should interpret such document literally. ***JOHN VS UNIVERSITY OF ILORIN (2012) LPELR 9309 (CA).***

Part "B" of the legal Practitioners Act dealing with Rules of Professional Act which was amended by then Attorney General of Federation and Minister of justice/ Chairman General Council of the Bar in line with section 12(4) of the LPA 1990, as amended, deals with relationship between Lawyers and their clients. Section 14(1) of the LPA provides for a lawyer to devote his attention, energy and expertise to the service of his client and subject to any rule of law, to act in a manner consistent with the best interest of the client.

Without prejudice to the provisions of section 14(1) aforementioned which seem general, a lawyer shall always consult with his client in all questions of doubt which do not fall within his discretion.

Section 16(b)(1) of legal Practitioner Act deals with the professional fees of a legal practitioner.

By virtue of above provision, a legal practitioner shall be entitled to recover his charges by action in any court of competent jurisdiction.. subject to the aforesaid, a legal practitioner shall not be entitled to begin an action to recover his charges unless,

- a. A bill for the charges containing particulars of the principal item included in the Bill and signed by him, or in the case of a firm, has been served on the client personally or left for him at his last known address as known to the practitioner or sent by post addressed to the client at that address;
- b. The period of the month beginning with date of delivering of the Bill has expired.

See ***BARR. GBENGA AKNGBEHIM VS CHIEF MRS. THOMPSON (2007) LPELR 8168 (CA);***

SECTION 18(1) LPA

"A client shall be free to choose his lawyer and to dispense with his services as he deem fit provided that nothing in this rule shall absolve the client from fulfilling any agreed or implied obligation to the lawyer including the payment of fees."

SECTION 18(2) LPA.

"The lawyer shall ensure that important agreements between him and the client are, as far as possible, reduced into writing. Claimant in this case has provided relevant documents to support his claim before the court."

The Defendants in contention argued, that the retainership was neither for any period or lengths of time nor based on a particular fixed amount but based on pay as you go, that is, service and immediate payment arrangement which was kept till when same was terminated. That The Defendants contend that the Claimant was duly paid for all the works and services rendered to the Defendants based on the nature of works and services rendered and was not owed a dime.

That the arrangement was that the Claimant would help the Defendants drafts legal documents and then send the soft copies to the Defendants after which the Claimant would be paid his legal fees sometimes in cash and sometimes through cash transfer. That this was how the Claimant was paid all the legal documents he helped the Defendants drafts and owe him no dime.

Defendants insisted that they made cash transfers of the sum of N150,000.00 and N7,000.00, N5,000.00, N500,000.00, N20,000

and N101,000.00 on 18th February, 2019, 31st May, 2019, 28th June, 2019, 1st August, 2019, 23rd January, 2019 and 27th June, 2019 but failed to provide evidence to support this. Defendants further state that the 2nd Defendant paid the Claimant over N2,000,000.00 (Two Million Naira) in cash at several times without collecting any receipt for the payments based on an established relationship on trust.

That at times, they still pay the Claimant for his legal fees despite doing a shoddy job for the Defendants. The Memorandum of Understanding referred to in the statement of claim was so shabbily and unprofessionally drafted by the Claimant and same landed the 2nd Defendant in trouble as the claimant did not protect the interest of the Defendants. At one time in June, 2019 the claimant introduced them to one capital plus who the Claimant claimed was going to lend a total of N200,000,000.00 (Two Hundred Million Naira) to the Defendants, but Defendants later suspected a foul play in the whole arrangement and subsequently pulled out of the transaction.

The claimant insists, hat he did not do a shoddy job for the Defendants but rendered services to the best of his ability with competence and due diligence and the subject matter before the

court is for recovery of professional fees and nothing pretentiously different. The Claimant further added that he tried to represent the interest of the Defendants when the Defendants applied to Origen Nigeria for a loan of N300,000,000.00 (Three Hundred Million Naira) only when they were told to pay the sum of N1,000,000.00 (One Million Naira) for the company to come and inspect the collateral intended to be used to secure the loan and that he told the company the amount was too much and it should be deducted from the amount to be advanced to the Defendants.

Exhibit "9", The Cash receipt of N5,000,000.00 (Five Million Naira) from the Bulakz Solicitor being payment for professional fees in **FCT/HC/CV/08/2019** between ***Gwaze Limited & Another VS. First Rotech Group & Companies Ltd. & 3 Ors.*** was countered by the Claimant in response...he claims, that he has not received the sum of N5,000,000.00 (Five Million Naira) that he only drew a receipt for the said amount and told the Defendants that the receipt will be handed over to them after they pay for the action and not before. He states that he has the original copy of the receipt with him and what the Defendant have exhibited before the court is a certified true copy from the record of the court in suit No. **CV/08/2019**.

On the loan facility, the Claimant contends further that the company refused the proposal and insist that the money must paid, so he negotiated the sum down to N500,000.00 (Five Hundred Thousand Naira) only and insisted that it will be paid after a written agreement is executed, that should the loan facility not be advanced, the money shall be paid back to the Defendants.

Claimant issued a letter of Demand for the sum of N28, 500,000.00 (Twenty Eight Million Five Hundred Thousand Naira) as per Bill of Charges was served on the Defendants and were given 7 days' notice within which to pay up the money, but despite the receipt of the letter, the Defendants refused to pay the entitled fees for services rendered.

A lawyer must at all times be professional in his affairs to avoid any untoward treatment.

It is the law that who asserts a fact must lead evidence to establish the fact asserted. See Sections 131, 322 and 133 of Evidence Act, 2011, (as amended) and the case of ***MR. SATURDAY DIBIA & 1 OR VS. MAXWELL O. TUBONIMIA & 3 ORS (2024) ELC 7882***

Similarly, facts admitted need no further proof.

Claimant who issued Exhibit "D5" i.e Solicitor's Receipt for payment of N5,000,000.00 (Five Million Naira) cannot turn around to say he was not paid any such monies by the Defendants.

How and why would Claimant documentary admit the fact that he was paid money and even issued receipt only to turn around and attempt to retract such hard evidence?

This is most preposterous and unacceptable.

This line of argument is most betraying and unsustainable in law.

There is no evidence at all adduced to show that Claimant in any way acted within the provision of the Legal Practitioner Act with respect to the provision of Section 16(b)(i) and 18(2) of the Legal Practitioner Act (LPA) afore-reproduced.

Having not issued the Defendants with his bills of charges before the work was done and or agreed in writing on his fees, Claimant cannot turn around now and make such claim which have been denied by the Defendants.

Claimant has himself to blame for not been able to set-out his charges in writing before proceeding to do the jobs on behalf of the Defendants. Now that Defendants are contending that they have paid Claimant, it is their words against Claimant's.

I am morethan certain that had Claimant acted in line with the provisions of the Legal Practitioner Act, he would not be in this mess trying to establish whether or not he was paid. Claimant has indeed brought all of these upon himself... so sad.

Having not established evidentially speaking, that he is entitled to be granted the sought reliefs, the claim of the Claimant ought to fail.

On the whole, the claims of Claimant are refused and dismissed.

***Justice Y. Halilu
Hon. Judge
28th June, 2024***

APPEARANCES

Kalat N. Jatau, Esq. – for the Claimant.

P.O. Alegbeleye, Esq. – for the Defendants.

