

**THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY ABUJA
IN THE GWAGWALADA JUDICIAL DIVISION
HOLDEN AT COURT NO. 13 GWAGWALADA, ABUJA
BEFORE HIS LORDSHIP: HON JUSTICE A. S. ADEPOJU
ON THE 7TH DAY OF FEBRUARY 2024**

SUIT NO: FCT/HC/CV/1092/2023

BETWEEN:

AZUBUIKE UGOCHUKWU ESQ. -----CLAIMANT/APPLICANT

AND

- 1. DEMOCRATIC REPUBLIC OF CONGO**
- 2. THE EMBASSY OF THE DEMOCRATIC
REPUBLIC OF CONGO IN NIGERIA**
- 3. THE AMBASSADOR OF THE DEMOCRATIC
REPUBLIC OF CONGO IN NIGERIA**



DEFENDANTS/RESPONDENTS

***AZUBUIKE UGOCHUKWU ESQ (CLAIMANT) appears for himself.
Defendants not in Court and not represented by Counsel.***

JUDGEMENT

The plaintiff's claim is premised on non-payment of his professional fee by the defendants as endorsed on the writ of summons dated 16th December 2022. The plaintiff stated that he was engaged by the 3rd defendant, The Ambassador of the Democratic Republic of Congo to represent the 1st and 2nd defendant a Foreign Service mission in a petition written by the Legal Firm called Simmons Copper and Partners representing the interest of the beneficiaries of Late F. A. Davies over illegal occupation of property situate at No. 10, Idowu Taylor Street, Vitoria Ireland, Lagos. The Claimant claimed to have accepted the mandate to represent the defendant, and secured the said property after

representation put up on behalf of the defendants at the Foreign Affairs Ministry and also at Lagos. That the sum of **\$75,000 (Seventy Five Thousand Dollars)** was agreed as his fees at various meetings held between the defendants' Ambassador in April 2014, for payment to the Claimant including other auxiliary legal matters handled on their behalf and too numerous to mention. That despite the debt, 2nd and 3rd defendants also engaged the legal service of the Claimant to help them procure from the Lagos State Government the land use charge bill in respect of the disputed property between the beneficiaries of F. A. Davies and the Defendants.

The Claimant after these representations duly wrote the defendants through its Embassy for the payment of the **\$75,000 (Seventy Five Thousand Dollars)** vide a letter dated 4th April 2019. And by a letter dated 14th June 2019 the Defendants through its Ambassador responded to the bill of the Claimant assuring him of the Defendant's willingness to pay. The Claimant also relied on another letter dated March 2020 wherein the Defendant pleaded for more time to pay him. The Claimant also stated that he was engaged to write a letter to Simmons Cooper & Partners over pre-action notice sent to the Embassy in February 2021. And on or about May 2021 he was informed by the 3rd Defendant that the 1st Defendant had sent money to its staff for payment of house rent and other expenses of its diplomats but failed to pay for his services and pleaded for more time. And when the Defendants got wind that he was aware of the money sent to Nigeria, it quickly paid **\$500 (Five Hundred Dollars)** as part-payment of **\$75,000 (Seventy Five Thousand Dollars)**. And that since

the payment of the **\$500 (Five Hundred Dollars)**, the Defendant have not paid any other sum despite various discussion and visitations to the Embassy in Nigeria.

The claimant further informed the Court that he duly issued the mandatory Bill of Charges and demand for payment on the Defendants through its Ambassador in Nigeria. That despite being owed, the Claimant stated that he rendered further services, such as negotiation and settlement of agreement over the disputed property with prospective tenant called QPMC. That the agreed fee for the said agreement to be settled by the Claimant is **N3,600,000 (Three Million Six Hundred Thousand Naira)** only. That immediately the agreement between the Defendant the Defendant and the QPMC was settled, the Defendants reneged on the deed of rentage thereby occasioning damage to the Claimant and the QPMC in monetary damages. And that after 3 years of waiting to be paid the balance of **\$74,500 (Seventy Four Thousand Five Hundred Dollars)** he duly issued a pre-action notice to the Defendants through its Embassy in Nigeria and also wrote a letter to the Ministry of Foreign Affairs dated 10th February, 2022 for intervention on the said issue.

The Minister of Foreign Affair intervened through the Permanent Secretary who wrote a letter to the Claimant on 4th April 2022 intimating him of their efforts. And on 22nd of July 2022 he further wrote a reminder to the Permanent Secretary, Ministry of Foreign Affairs, who responded vide a letter dated 15th August 2022 assuring the Claimant of the 2nd

Defendant's willingness to upset the said debt. The Claimant having made several efforts to visit the 2nd and 3rd Defendants for resolving this issue amicably but to no avail instituted the instant action and claims against the defendant jointly and severally as follows:

- i. An Order of Court for payment of the contractual balance of **\$74,500 (Seventy Four Thousand Five Hundred Dollars)** being the sum owed to the Claimant over various legal work done as per Bill of Charges dated 26th July 2021.
- ii. General damages to the tune of **N100,000,000 (One Hundred Million Naira)** only being damages suffered in the course of several legal work done but not been paid to wit: The lease agreement between the Defendant and QPMC settled by the Claimant.
- iii. Cost of litigation to the tune of **N10,000,000 (Ten Million Naira)** only.

The claimant adopted his witness statement on oath is in pari-material with the statement of Claim and tendered documents as exhibits marked as Exhibit A1 –A19 respectively. It is on record that the Defendants despite service of the Originating process through the diplomatic channel and in accordance with the Rules of Court, failed to put up any appearance nor filed a defence. The Defendants according to the Claimant in his written address were served through the Nigeria Ministry of Foreign Affairs via its Consular in Kinshasa, Congo. The process were also translated into French Language, the official language of the

Democratic Republic of Congo and duly served on the Defendants along with that of the English Language.

The Claimant's written address dated 16th November, 2023 and filed on 17th November, 2023 was adopted by the Claimant as his oral argument on 13/12/2023. In the written address, the Claimant formulated two issues for determination to wit:

1. *Whether the Court has jurisdiction to entertain the nature of this case between the Claimant and the Defendants.*
2. *Whether from the preponderance of evidence adduced before this Court, the Claimant has proved his case.*

With respect to the first issue recourse must be had to the Court interpretation on when a sovereign nation state can be sued in Court of law. The counsel relied on the case of **OLUWALOGBON & 3 ORS V GOVERNMENT OF UNITED KINGDOM & 1 OR (2005) 14 NWLR (PT. 760) PG 605** where the Court decided on whether a sovereign state in Nigeria can be sued in Nigeria. Where in the Court stated:

“A sovereign state in Nigeria cannot impleaded in a legal proceedings that do not exceed the superior authority of the sovereign. However, where the state participates in an activity that is irreconcilable with the superior authority of the state, it must be shown that the state complied with the rules governing the authority otherwise it would risk losing its immunity and thereby be impleaded”

Counsel also relied on the Supreme Court decision in **AFRICAN RE-CORP V J. D. P. CONSTRUCTION LTD (2007) 11 NWLR (PT. 1045) @ PG 224** where the Court said;

“The African Reinsurance Corporation is an international Corporation jointly set up by some African states. The host state confer on it certain immunities usually enjoyed by state. However the immunity granted to it by the Nigerian Government specifically excludes its commercial activities. In the instant case, the transaction between the appellant and the respondent was commercial in nature”

The Claimant submitted that once the transaction sought to be enforced is commercial in nature, then the issue of immunity does not arise. He also relied on the case of **MEMETECH SRL V THE EXECUTIVE SECRETARY, ECONOMIC COMMUNITY OF WEST AFRICA STATES (ECOWAS) & 1 OR** unreported **Suit No. CV/2314/2020** Per **Adeniyi J.** of FCT High Court where the Court held;

“Even if it is agreed for purposes of academic argument, that the Defendants enjoy immunity from the court action, such immunity would not extend to commercial transactions entered into by them and therefore not covered by the diplomatic and immunities privilege Act of 1990, Section 3 (b).”

The Claimant argued that flowing from the above decision it can be deduced that the mandate dated 7th January, 2019 issued to the Claimant by the 2nd and 3rd Defendants on behalf of the 1st Defendant qualifies as a

contractual instrument and therefore commercial in nature and brings it to the jurisdiction of this Court.

The Claimant further argued that aside from the mandate, the hiring of his professional service, the Claimant also complied with the relevant rules of this Court by issuing a pre-action notice of his intention to proceed to court if his bills were not settled, and also service of process of this Court via the Ministry of Foreign Affairs and the translation process into French language in compliance with Order 8 of the Rules of this Court, all brings the Defendant into the Jurisdiction of the Court.

I agree with the Claimant that the rendering of professional legal services to the Defendant brings the Claim of the Claimant within the realm of commercial transaction. It is a simple civil contract between the Claimant and the Defendant and such transaction as rightly argued by the Claimant does not confer any immunity on the Defendants. The Defendants therefore cannot extricate themselves from the jurisdiction of this Court owing to the nature of transaction between it and the Claimant and I so hold.

On the second issue the Claimant submitted that the burden of proof lies or rests on him who asserts and who would fail if no evidence adduced on either side. See Section 137 of the Evidence Act 2011. The Claimant argued that by virtue of Section 16(2) of the Legal Practitioners Act 1975, to enable him recover his legal fee, he has satisfied the following conditions; he has prepared a Bill of Charges which particularized the principal items of his claim, he has served the client with the bill and has

allowed a period of one month to elapse from the date the bill was served. He referred to the Bill of Charge Exhibit A13. Also relied on were the following authorities, **UTC V PAMOTEI (1989) 2 NWLR (PT. 103) PG 244 @ 299, NIGERIA BANK FOR COMMERCE AND INDUSTRY V IKA ASHAKPA & 2ORS (1997) 11 NWLR (PT.572) @ 251, THOMAS V AKINGBEHIM (2021) 16 NWLR (PT. 1802) 283 @ 307-308 and 325.** The Claimant also relied in Exh A20, dated 15th August 2022 reply from the Ministry of Affairs assuring the Claimant of the Ministry's intervention and assurance from the embassy to offset the bills as soon as funds are made available by the competent authorities in Kinshasa, written by **Bola Braimoh Tokura Esq** on behalf of the Permanent Secretary Ministry of Foreign Affairs. The Claimant urged that the admission by the Defendants to Ministry Foreign Affairs with respect to the said indebtedness has put the matter to rest and urged the Court to so hold.

Furthermore the Claimant referred to Order 10 Rule 3 of the rules of this court and argued that by the said rules the court is mandated to impose interest which only is a pre judgement or post judgement. He invited the Court to look at the date the **\$500 (Five Hundred Dollars)** was paid being 12th May 2021 and urged the court to impose the 10% interest on the **\$74,500 (Seventy Four Thousand Five Hundred Dollars)** from 12th May, 2021 and thereafter 10% from the date of judgement till liquidation. With respect to the general damages claimed, the Claimant urged the Court to consider the various documents tendered, which he argued will go a long way to prove the hardship, and suffering the Claimant had gone through. His various trips to Abuja and Lagos on behalf of the Defendant in

defence of their properties at No. 10, Idowu Taylor Street, Victoria Island, Lagos. The Claimant also referred to the terms of agreement he prepared on behalf of the defendant which was reneged on by the 3rd Defendant without returning the said agreement with the seal of the Counsel and also a breach of agreement.

Finally Claimant appealed to the Court to award the sum of **N100,000,000 (One Hundred Million Naira)** only as general damages occasioned by the Defendants' refusal to honor the contract obligations.

Upon a careful perusal of the Claim of the Claimant, with the attached exhibits, it is not in doubt that there was indeed a breach of contractual obligation on the part of the Defendants. The various exhibits tendered by Claimants was a clear proof of the discharge of the obligation of the Claimant in realization of the incidents contained therein, to the Claimant to represent the Defendant in respect of the subject matter on the mandate. It is on record that the claim of the Claimant remains unchallenged and uncontroverted by the Defendants despite evidence of proof of service of the originating process and hearing notice. The burden in an undefended claim is discharged on a minimal proof since there is nothing on the other side of the scale to be considered by the court. See Section 131(1) and (2) of the Evidence Act;

“(1) Whoever desires any court to give judgement as to any legal right or liability dependent on the existence of facts which he asserts shall prove that those facts exists.

(2) When a person is said to prove the existence of any fact it is said that the burden of proof lies on that person.”

The burden of proof is on the Claimant in this case, and it is my holding that the Claimant has discharged the burden of proof by preponderance of evidence adduced which is unchallenged and uncontroverted by the Defendants. There are plethoras of authorities that where evidence is unchallenged, the court ought to accept it and act on it, particularly if the evidence is cogent and reliable and seeks to prove the claim of the Claimant. See the case of **OKAFOR V OKAFOR (2014) LPELR 23561 CA** where the Court held;

“The law is trite that court is at liberty to accept and act on unchallenged and uncontroverted evidence. There is a quantification to that principle of law for the court to accept and act on unchallenged and uncontroverted evidence, the evidence must in itself be admissible and must be credible where the evidence is glaringly incredible and not capable of being believed, the court will neither accept to act on such evidence.”

See **AIRTEL NETWORK LTD V PLUS LIMITED (2020) LPELR 51383 CA, MTN NIGERIA COMMUNICATION LTD V MUNDRA VENTURES NIG LTD (2016) LPELR 40343 CA, NNAJI V MADAKI & ORS (2012) LPELR 20097 CA.**

Having said that, I shall go ahead to examine the Claim of the Claimant. By virtue of Order 10 Rule 3 of the Rules of this Court, the Claimant is entitled to the sum of **\$74,500 (Seventy Four Thousand Five Hundred**

Dollars) as his legal fee, which has been clearly stated on the Bill of Charges, Exh A13 served on the Defendants. The Claimant is also entitled to post judgement interest rate of 10% on the judgement sum. Post judgement interest rate from today the 7th day of February, 2024 till the entire judgement sum is liquidated. The plaintiff did not ask for pre judgement interest in his writ of summons and no evidence led to prove same.

The Claimant ask for **N100,000,000 (One Hundred Million Naira)** as damages. I think the Claimant is entitled to general damages for stress and anxiety he must have gone through in the quest of waiting, reminding and appealing to have his professional fees paid through representation to the Ministry of Foreign Affairs and his direct contacts with the Defendants. General damages are compensatory in nature and the impression it flows from the type of wrong complained of by the victim, the inure either as a result of breach of contract or tort. The Claimant is entitled to be compensated as stated and I hereby award the sum of **N15,000,000 (Fifteen Million Naira)** as general damages.

Finally the sum of **N5,000,000 (Five Million Naira)** is awarded as cost of this action.

SIGN

**HON JUDGE
7/2/2024**