

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY ABUJA
IN THE ABUJA GWAGWALADA DIVISION
HOLDEN AT COURT NO. 13 GWAGWALADA
BEFORE HIS LORDSHIP: HON. JUSTICE A. S. ADEPOJU
THIS 22ND DAY OF JANUARY, 2024**

SUIT NO: FCT/HC/CV/3080/2018

BETWEEN:

**1. EUROTECH W. A NIGERIA LTD }----- CLAIMANT
2. PORTOFINO AND LIFESTYLE LTD }**

AND

**1. MYRICH ENGINEERING LTD }----- DEFENDANTS
2. MR. RICHARD IJEAKU }**

GABRIEL AYEGBA for the Claimant

JUDGEMENT

The Plaintiff's claim as stated on the writ of summons dated the 19th day of October 2018 is for the following:

- a. The sum of **N15,000,000 (Fifteen Million Naira)** being money had and received owing to the Defendants' failure to furnish consideration.
- b. Damages for breach of contract as follows:
 - i. 23% bank interest from 5/6/2018, the date of the due supply of the equipment paid for, until the judgement of the Court.
 - ii. The sum of **N1,500,000** being the professional fees paid to the Claimants' legal practitioners for the recovery of the money.
- c. 10% Court interest from the date of Judgement until judgement debt is fully paid.

The plaintiff's claim arose as a result of breach of contract for the supply of items No. 1.1 to 1.5 of the Defendant's Bill of Quantities to site within forty (40) days of their mobilization to which the 2nd Defendant stated that a payment of **N15,000,000 (Fifteen Million Naira)** would ensure that the Defendants fund the supply of the items to the Claimant's site in Kaduna within forty (40) days of payment.

The Defendant failed to supply the equipment or any unit within the agreed forty (40) days or even 100 days of the payment date of 26th April 2018 which made the Claimants to ensure the installation of the equipment from other supplier and saved the project. The Claimant also through one **Mr. Giuliano Cella** further gave the 2nd Defendant a sum of **N600,000 (Six Hundred Thousand Naira)** only to enable him supply the equipment but the Defendant still failed to deliver the said equipment.

It is on record that the Defendants filed their statement of defence and counter-claim out of time, and to regularize same, filed a motion dated 4/3/2019 for extension of time. The Defendants' Counsel despite several hearing notices declined to appear to move the application. It is an unmove application, which is deemed abandoned and it is hereby stuck out.

To prove the case of the Claimant, its representative **Mr. Giuliano Cella** adopted his witness statements on oath on the 7th February 2023, the statements on oath adopted were both dated 19th/10/2028 and 1/4/2022 respectively. The Defendants did not cross-examine the witness as they were not in court despite being served with hearing notices. The witness

tendered nine (9) documents marked as Exhibits A1-A9 respectively in support of their case. The Defendants were foreclosed from cross-examining the Claimant's witness and to defend this matter after their constant and unexplained absence from Court. The Claimant closed its case and parties were further ordered to file and exchange their final written address.

It is to be noted that the Defendants were at each stage of the proceeding served with hearing notices to appear in court. It is also worthy of note that the Defendants abandoned its pleadings and are deemed to have no defence to the claim of the plaintiffs. The Claimants in their written address have hinged their arguments on the uncontroverted evidence of the plaintiff by the Defendants and submitted a sole issue for determination to wit:

"Whether the Claimants have proved their case as to be entitled to the reliefs claimed."

In their written address dated 5/5/2023, the Claimants' Counsel relied on the provision of Section 131(1)(2) of the Evidence Act 2011 as amended Section 131(1) provides thus:

"Whosoever 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 exist."

Section 131(2) further provides:

“When a person is bound to prove the existence of any legal fact it is said that the burden of proof lies on that person.”

The cases of **SOLANA V OLUSANYA (1985) LPELR 3097 SC** Per George Sodeinde Sowemimo JSC where court held that; ***“Where facts are directly admitted or deemed to be admitted as provided for in our rules of civil procedure dealing with dealings, such averment do not need to be proved.”*** was relied on by the Claimant’s Counsel.

The Learned Counsel also submitted that where facts are uncontroverted or unchallenged especially where the opposing party was given the opportunity to do so, it then lies on the court to accept such evidence having been uncontroverted by the opposing party when given the opportunity cross-examine but fails to do so. The case of **OWNERS OF M/V GONGOLA HOPE & ANOR V SMURFIT CASES (NIG) LTD & ORS (2007) LPELR 2849 SC** Per Ogbuagu JSC was cited by the Claimants’ Counsel in their written address. the Claimants’ Counsel finally submitted that the Defendants having failed to challenge the evidence of the Claimant as led by their witness, the court is urged to rely on same as uncontroverted and unchallenged and grant the reliefs sought as contained on the face of the writ of summons.

I have gone through the testimony of the Claimants' witness and the documents tendered as exhibits. I agree with the written submission of learned Counsel to the Claimants that the claim of the Claimants remain unchallenged and uncontroverted by the Defendants. The documents tendered and the testimony of the Claimants' witness disclosed that there was a breach of contract of supply of 14 units of air conditions for the Sani Uba Project by the Defendants. The said contract was not performed within forty (40) days of the Defendants receiving the sum of **N15,000,000 (Fifteen Million Naira)** which they demanded from the Claimants. It is apparent that the Defendants upon the abandonment of their pleadings do not have any defence to the claim of the Claimants.

On the effect of unchallenged evidence, the appellate court have held in avalanche of cases that the plaintiff is entitled to judgement, if the evidence adduced is cogent, credible and believed by the court. See the case of **MILITARY GOVERNOR OF LAGOS & ORS V ADEYIGA & ORS 2012 (LPELR) 7836 SC LIPEDE & OR V SONEKAN (1995) LPELR 1786 SC, OMOREGBE V LAWANI (1980) 3-4 SC 10, NZE V NPA (1997) LPELR 6254 CA.**

In conclusion, I endorse the submission of the Claimant's Counsel as contained in the written address. I also adopt all the cases cited in support of the argument in respect of the claim of the Claimant and I hold that the Claimants are entitled to judgement as prayed in all the reliefs sought. Judgement is hereby entered for the Claimants accordingly.

Signed

**Hon. Judge
22/1/2024**