

**IN THE HIGH COURT OF FEDERAL CAPITAL TERRITORY
IN THE FEDERAL CAPITAL TERRITORY JUDICIAL DIVISION
HOLDEN AT JABI FCT ABUJA**

SUIT NO: CV/1467/2019

BEFORE HIS LORDSHIP: HON. JUSTICE BABANGIDA HASSAN

BETWEEN:

SAHEED OLAYIWOLA AND SONS LTD.....CLAIMANT

AND

ALHAJI ILIYASU O. ABDUL-RAUFDEFENDANT

JUDGMENT

By the endorsement on the writ of summons with No. CV/1467/2019, the claimant claims as follows:

- (a) A declaration that the defendant is in breach of the several contracts of supply awarded using his unregistered entity (Federal Civil Service Staff with Disabilities Multipurpose Co-operative Society) to claimant dated 21/8/2017; 11/9/2017; 13/9/2017 and 22/9/2017.
- (b) An order of court for the payment of the sum of Ninety-five Million, Four Hundred Thousand Naira (N95,400,000.00) against the defendant, being the outstanding balance of the contracts.
- (c) An order of court for the payment of Twenty-two percent (22%) of N95,400,000.00 per annum being the interest rate on the loan secured by the claimant to perform the contracts of supplies from 21/8/2017 till date of judgment in this action.

- (d) An order of the court directing the defendant to pay ten percent (10%) of the judgment sum per month to the claimant from the date of judgment till the day of actual defrayment of the judgment sum in this action.
- (e) An order of the court directing the defendant to pay claimant the sum of Twenty Million Naira (~~₦~~20,000,000.00) as general damages.
- (f) An order of this court against the defendant for the payment of the sum of Five Million Naira (~~₦~~5,000,000.00) as cost of this action.
- (g) And any other order(s) as this Honourable Court may deem fit to make in the circumstances of this case.

In the amended statement of claim the claimant averred that it is a Limited Liability Company duly registered with CAC, and that the defendant claims to be a Civil Servant with the Federal Government of Nigeria and pose himself as the chairman and alter ego of an unregistered entity under the name of Federal Civil Service staff with Disabilities Multipurpose Co-operative Society with office at No. 1 Usman Danfodio Street, Opposite Presidential Banquet Hall, Aso Villa, Abuja.

It is averred that sometimes in the months of August and September, 2017, the defendant approached it that he (the defendant) is the chairman of Federal Civil Service staff with Disabilities Multipurpose Co-operative Society and that the defendant wanted supplies of bags of rice, blankets, mattresses, mosquito nets and Omo detergents for onward distribution as reliefs materials to some of their members; and that the defendant sought to know if the claimant would be able to make the supplies.

The claimant averred that the claimant who is obviously in the active business of distribution and sales of the needed item and other sundry items assured the defendant that it can handle the supplies, and that after series of meetings and negotiations the defendant on 21/8/2017 awarded it the first job for the supply of One thousand, two hundred (1,200) bags of 50kg Thailand rice worth Twenty-Seven Million, Six Hundred Thousand Naira (₦27,600,000.00).

The claimant further averred that the defendant again gave it the contract letter for the third job worth One Million, Eight Hundred and Eighty-Five Naira (₦1,885,000.00) for the supply of the following items:

- (a) 50kg bags of Thailand Rice;
- (b) 50 pieces of blanket'
- (c) 50 pieces of mattresses;
- (d) 50 pieces of mosquito net, and
- (e) 60 pieces of medium size omo detergent.

The claimant averred that on 22/9/2017, the defendant again gave it the contract letter for the fourth job for the supply of One Thousand, Eight Hundred bags of 50kg Thailand Rice worth ₦41,400,000.00, and that the total sum of all jobs, in paragraphs 6, 7, 8 and 9 above is in the sum of One Hundred and Twelve Million, Two Hundred and Eighty-Five Thousand naira (112,285,000.00).

The claimant averred that it performed the contracts as it did the supplies to the defendant as directed.

The claimant averred that the defendant only paid the sum of ₦16,885,000.00 in the following tranches:

- (a) September, 2017 paid N1,885,000.00.
- (b) 14/11/2017 paid N5,000,000.00
- (c) 12/12/2017 paid N10,000,000.00.

In all these payments, it was only the Ten Million Naira (N10,000,000.00 paid on the 12/12/2017 that was done through the claimant's account.

The claimant averred that a balance of (N95,400,000.00) Ninety Five Million, Four Hundred Thousand remain unpaid till date; and that it performed the contracts through loan of N100,000,000.00 (One Hundred Million Naira) from its banker which the defendant is very much aware of.

The claimant averred that the interest rate of the loan is Twenty-Two percent 22% per year; and that the loan was necessary based on the urgency with which the defendant wanted the jobs performed and his assurances that payment shall be made within the month of performance.

The claimant averred that it performed all the contracts within the time frame required by the defendant, yet, an amount almost equal to the loan obtained is unpaid till date, and that the defendant has been shifting it from post to post in respect of the payment, despite his knowledge that the interest and default fee are running on the loan obtained in performing the contracts.

The claimant averred that it got frustrated by the defendant's acts and sought to get details of other stake holders (trustees) of the co-operative society which is the Pseudo name under which the defendant approached the claimant for the supplies.

The claimant averred that it engaged the services of the law firm of Agada M.B. & Co. to carry out the findings in paragraph 19 above from the CAC Abuja, but in utter dismay, the result of the search on the identities of other trustees of the co-operative society revealed that the said body is not known to the records of the CAC as a registered entity as it is not registered.

The claimant averred that it only known and dealt with the defendant who was alone in parading himself for and on behalf of the unregistered entity.

In his statement of defence, the defendant admits only paragraph 1 of the statement of claim and denied the rest of the paragraphs, although admitted in paragraph 4(ii) that, the defendant acting as the chairman Rehabilitation Committee (Chief Executive Officer of the Federal Civil Service Staff with Disabilities Multipurpose Co-operative Society Limited approached the claimant for supply of some food item among officers; and that in paragraph 5 of the statement of defence, the defendant admitted to entering into the said contracts referred to by the claimant in paragraphs 6, 7, 8 and 9 of the amended statement of claim.

The defendant averred that throughout the transactions with the claimant under reference, the defendant denies ever entering into the contracts in his personal capacity, neither did he personally guaranteed, surety or indemnified the indebtedness of the Federal Civil Service Staff with Disabilities Multipurpose Co-operative Society Limited.

The defendant averred that the claimant who was impressed with the selfless activities of the Co-operative Society voluntarily agreed to contribute the sum of N14,550,000.00 (Fourteen Million, Five Hundred and Fifty Thousand Naira) as its own donation to be deducted from the contract sum to support the cause as confirmed in the letter of demand of its counsel dated 12th February, 2018 to the defendant's office contrary to the bold face and attempt to suppress these facts from the Honourable Court.

The defendant admitted to have paid the sum of N16,885,000.00 apart from N14,550,000.00 voluntary

donation made by the claimant, and this is in addition to the transfer of the sum of N10,000,000.00 made to the personal account of the claimant. In a nutshell, the defendant averred that a wrong defendant is before the court.

The claimant filed a reply to the statement of defence of the defendant and denies paragraphs 4, 5, 6, 7, 8, 9, 10, 11, 13 and 15 of the defendant's statement of defence and put the defendant to strict proof, because they are fresh issues, and also averred that the defendant is using the unregistered Federal Civil Service Staff with Disabilities Multipurpose Co-operative Society Limited as a Pseudo name to swindle hard earned monies from the innocent members of the public like the claimant, and the said co-operative society does not exist as a legal entity, and that the transaction leading to the debt in this action is a personal transaction of the defendant as he did same in the name of an unregistered entity.

Both the PW1 and DW1 adopted their witnesses' statement on oath in the course of the trial; and were duly cross examined by each other's counsel.

The PW1 tendered during the trial, the following documents:

1. Award of contract letter dated the 21st August, 2017, marked as EXH. 'A2'.
2. Certificate of Incorporation of the claimant with No. 1282776, marked as EXH. 'A1'.
3. Award of Contract in letter dated the 11th September, 2017 marked as EXH. 'A3'.
4. Award of contract letter dated the 13th September, 2017 marked as EXH. 'A4';
5. Award of Contract letter dated the 22nd September, 2017 marked as EXH. 'A5';

6. Re-supply of 1,200 bags of rice valued at N27,600,000 dated the 11th September, 2017, marked as EXH. 'A6';
7. Re-supply of Relief Items valued at N1,885,000.00 dated 22nd September, 2017 marked as EXH. 'A7';
8. Re-supply of 1800 bags of rice valued at N41,400,000.00 dated 22nd September, 2017 marked as EXH. 'A8';
9. Re-supply of rice for persons with Disabilities in Nigeria dated 6th October, 2017, marked as EXH. 'A9';
10. Search Report made by Agada M.D. & Co. dated 12th February, 2019 marked as EXH. 'A10';
11. The Certificate of Compliance with section 84 of the Evidence Act, marked as EXH. 'A11'.

The defendant, through the DW1, tendered the following documents:

1. A letter from the office of the president, state house with reference No. OSSAP –DM/BEF/057/XX/007 dated the 11th September, 2017 marked as EXH. 'D1';
2. Certificate of Registration of the Federal Civil Service Staff with Disabilities co-operative Society Limited dated the 19th December, 2012 which was marked as EXH. 'D2'.
3. Payment Demand Letter from the claimant to the defendant dated 12th February, 2018 marked as EXH. 'D3';
4. Demand Notice/Letter, being a letter from Theodore Azubuike Chukwugozie made to the defendant dated 20/9/2018 marked as EXH. 'D4';

5. Letter from the office of the Special Assistant to the President on Disability matters to the defendant dated the 4th February, 2020 marked as EXH. 'D5';
6. Letter of authority written by SSA to the president, Disability matters to the defendant dated 18th December, 2017 marked as EXH. 'D6';
7. Letter from the Social Development Secretariat to the defendant dated 17th July, 2013, marked as EXH. 'D7';
8. Certificate of Occupancy of the Co-Operative Society, marked as EXH. 'D8';
9. Certificate of Occupancy issued by Kaltungo local Government to the Federal Civil Service Staff with Disabilities multipurpose Co-operative Society Aso Villa office Abuja dated the 2nd July, 2014 marked as EXH. 'D9'.

At the end of the trial, both counsel to the two parties proffered final written addresses and adopted same.

In his final written address, the defendant formulated two issues for determination, thus:

- (1) **Whether or not the defendant can be personally held liable for the contract between the claimant and the Federal Civil Service Staff with Disabilities Co-Operative Society Limited?**
- (2) **Whether or not the claimant could justifiably reclaim the sum of N14,550,000.00 (Fourteen Million, Five Hundred and Fifty Thousand Naira) from the defendant which sum was voluntarily donated to the Federal Civil Service Staff with Disabilities Multipurpose Co-Operative Society Limited as part of the claimant's Corporate Social Responsibility?**

On the issue No. 1, the counsel to the defendant submitted that the gravamen of the claimant's case is that the defendant is personally liable and was sued in this case on the contract with the claimant because the Federal Civil Service Staff with Disabilities Multipurpose Co-operative Society Limited is an unregistered entity, unknown to law, and the claimant tendered EXH. 'A10' is a Search Report for an incorporated trustees which the co-operative society never claimed to be, and secondly Corporate Affairs Commission does not register or regulate the activities of Co-Operative Societies in Nigeria. The counsel then submitted that it is a trite Law that for a party to be heard by the court, it must have legal capability to sue and be sued, that is, it must be a natural person or artificial person with the legal personality to sue and be sued, and he cited the case of **Reptico S.A. Geneva V. Afribank (Nig.) Plc (2013) NWLR (pt 1373) at 172.**

The counsel submitted that the governing statute over co-operative societies in Nigeria is the Nigerian Co-Operative Societies Act Cap. N98, Vol. II LFN 2004, and he quoted the provisions of Section 1 of the Act. The counsel further quoted the provisions of Section 4(1) of the Act to the effect that application for registration shall be made to the Director, and submitted that it is to note that by Section 57 of the Act, the "Director" referred to in Section 4(1) is the Federal or State Director of Co-Operatives as provided in Section 1 of the Act and this includes any person exercising the powers of the Director as may have been conferred upon him under the relevant section of the Act.

The counsel submitted that section 7 of the Act further provides that a Certificate of Registration, signed and sealed and delivered by the Director shall be conclusive evidence that the society mentioned in the Certificate is

duly registered, unless it is proved that the registration of the society has been cancelled, and he submitted that the Certificate of Registration of the Federal Civil Service Staff with Disabilities Multipurpose Co-Operative Society Limited tendered by the defendant as EXH. 'D2' is conclusive proof of the registration and existence of the said co-operative society. The counsel submitted further that section 6 of the Act, the registration of a society renders it as a body corporate by the name which it is registered, with perpetual succession and a common seal vested with the powers to hold movable or immovable property, enter into contracts, institute and defend suit, and other legal proceedings, and he therefore submitted that by its Certificate of Registration EXH. 'D2' and its land title documents EXH. 'D8' and 'D9', the Federal Civil Service Staff with Disabilities Multipurpose Co-Operative Society Limited is duly registered Corporate personality, capable of suing and being sued in its registered name.

The counsel submitted that the claimant misconceived the legal personality of the co-operative society, when in paragraph 3(g) of his witness statement on oath, the PW1 stated that the Registrar of Co-Operative Societies of the Federal Capital Territory Abuja do not have powers to register any entity with the appellation or description of "Limited" as the defendant could want this Honourable Court to believe, and he quoted the provisions of section 3(5) of the Act to the effect that the word "Limited" or its vernacular equivalent shall be the last word in the name of every society registered under this Act.

The counsel submitted that by the authorities cited above, the Federal Civil Service Staff with Disabilities Multipurpose Co-operative Society Limited being duly registered entity, capable of suing and being sued by its

registered name is the party which ought to be sued in this case and not the defendant herein. The defendant never entered into the contracts with the claimant in his personal capacity but as Chief Executive Officer and chairman Rehabilitation Committee of the said co-operative society.

The counsel submitted that it has been settled that an agent of a disclosed principal cannot be sued via place of the principal, and he cited the case of **Carlen (Nig.) Ltd V. UniJos (1994) 1 NWLR (pt 323) 631 at 659, paras. F-G.**

The counsel submitted that the PW1 in paragraph 8 of the witness statement on oath stated that the defendant approached the claimant as the chairman of the Federal Civil Service Staff with Disabilities Multipurpose Co-operative Society Limited and that the defendant wanted supplies of bags of rice, and under cross examination the PW1 was asked whether by this his statement of claim and all his exhibits, he stated that he entered a contract with the said co-operative society, and to which the PW1 answered in the affirmative.

The counsel submitted that the PW1 was further asked that as he contracted with the defendant as the chairman of said co-operative society and the PW1 answered in the affirmative.

The counsel submitted that all the letters of award of contract and their acknowledgment letters of contract performance, i.e. EXH. 'A2' 'A3', 'A4', 'A5', 'A6', 'A7', 'A8' and 'A9', bear the letter head of the said co-operative society and were signed by the defendant in his capacity as the Chief Executive Officer and Chairman, Rehabilitation Committee; and he cited the case of **G.T.B. Plc V. Noble (2019) 14 NWLR (pt 1693) 389 at 413, paras. A-C** to the effect that an agent of a disclosed principal is not ordinarily personally liable on a contract he enters on behalf of the

said principal, and the counsel urged the court to hold that the defendant who signed the letters of award and acknowledgement of same is not personally liable for the contract between the claimant and the said co-operative society.

The counsel relied on the case of **Joan Davids Const. Co. Ltd. V. Riacus Co. Ltd (2019) 16 NWLR (pt 1697) 143 at 182, paras. C-E** to the effect that by the maxim *qui facit per alium facit per se*, meaning that he who does an act through another is deemed on law to do so himself.

The counsel submitted that they contend that the mistaken assumption of the claimant cannot confer liability over the contract unto the defendant and he urged the court to so hold and absolve the defendant from being personally liable for a contract he signed on behalf of the said co-operative society.

On the issue No. 2, the counsel to the defendant submitted that on the unlikely event that the Honourable Court determines issue No. 1 in favour of the claimant, that it is trite law that a party cannot be allowed to resile from a contractual commitment he voluntarily made. A party cannot be allowed to approbate and reprobate, and he cited the case of **Mohammed V. Farmers Supply Co. (Kds) Ltd. (2019) NWLR (pt 1701) 187 at 198**. The counsel submitted that the claimant cannot reclaim the sum of N14,550,000.00 (Fourteen Million, Five Hundred and Fifty Thousand Naira) which the claimant voluntarily donated in compliance with its corporate social responsibility, as this will amount to the claimant resiling from its contractual commitment to donate to the said co-operative society which is not acceptable in law.

The counsel submitted that there are plethora of laws, regulations, and policies, that allow the Federal Civil Service

Staff with Disabilities Multipurpose Co-operative Society Limited to source for funds towards the actualization of the mission of the co-operative society.

The counsel cited section 11(2) of the Act which states that co-operative society shall make bye laws in respect of matters such as the purposes to which its funds may be applied and the mode of custody and investment of its funds. It shall also make laws regarding the manner of raising the share capital nor other funds.

The counsel submitted that in furtherance of section 11(2) of the Act, the bye-laws of the National Co-operative Insurance Federation was created and section 7 of the said bye-law clearly states that the co-operative society can source for funds from contributions, grants and subsidies and any other sources approved by the Federal Director of Co-operatives and all such sources which may be necessary for the realization of the objects of the co-operative.

The counsel submitted that section 46 of the Discrimination against persons with Disabilities (Prohibition) Act 2019 stipulates that the Commission that is instituted for the welfare of disabled persons can accept gift, money or other property provided such terms and conditions are not inconsistent with any prevailing law.

The counsel submitted that paragraph 5(5) of the Co-operative Development Policy For Nigeria 2002 also provides that private organisations which appreciate the contributions of co-operatives to the democratic governance, the peaceful co-existence and the improvements in the income, the welfare and living standards of large numbers of Nigerians, would also be willing to make grants and donations towards the movement activities.

The counsel submitted that the defendant tendered before the court EXH. 'D5' and 'D6', that is, the letters of authorisation from the office of the president of the Federal Republic of Nigeria through the machineries of the Senior Special Adviser to the President on Disability matters, and the Special Adviser to the president on Disability matters mandating the Co-operative societies to solicit donations from members of the public to assist the disabled and Internally Displaced Persons (IDPS) in the six (6) geopolitical zones of Nigeria, and he submitted further that the defendant also tendered EXH. 'D3' i.e. a letter from the claimant acknowledging that the sum of N14,550,000.00 (Fourteen Million, Five Hundred and Fifty Thousand as its donation towards the activities of the said co-operative society and submitted that documents ex facie, speak for themselves and no oral evidence can be allowed to add to or subtract from or alter or contradict it as decided in the case of **Ugwuegede V. Asadu (2018) NWLR (pt 1628) 460 at 467.**

The counsel submitted that during cross-examination, the defendant was asked whether at the time of entering into the contract, was it part of the agreement that the claimant was to donate any money to the organisation, to which the defendant replied in the affirmative that the claimant agreed to donate being that it is the Federal Civil Service Staff is the Disabilities for this welfare.

The counsel submitted that it is a well known presumption of law that evidence which could be produced and is not produced would, if produced, be unfavourable to the person who withholds it, and he cited section 167 (d) of the Evidence Act 2011 and the case **Okike V. L.P.D.L. (2006) NWLR (pt 960) 67 at 68, paras. B-D,**

that the claimant withheld the fact of its voluntary donation knowing that it would not be favourable to its case.

In his final written address, the counsel to the claimant formulated two issues for determination, thus:

- (1) Whether the defendant has any immunity from liability in his role in connection with the contracts in this action?**
- (2) Whether the claimant has proved this case on the balance of probability and this entitled to the reliefs sought from this court?**

On the issue No. 1, the counsel submitted that the defendant does not have any immunity from liabilities in his role in connection with the contracts in this action, and further submitted that the defendant has full and personal obligation and liabilities to perform his part of these contracts having received supplies and benefit from the claimant on the following grounds:

First, the claimant has proved the personal liability of the defendants in the contracts in this action, and this can be seen in paragraphs 7 to 27 of the witness statement on oath of PW1 as well as paragraphs 3-10 of his further witness statement on oath (all the evidence in chief) which proved the facts in claimant's pleadings without any contradiction.

The counsel submitted that during cross examination, the PW1 gave the following positive evidence:

“Yes, defendant lied to the claimant; and that civil service and co-operative society are not the same”. No, I have not had any dealing with the co-operative society before”

Yes I claim that the defendant's co-operative society is not registered and all I have as basis for my claim is EXH. 'A10' because I was not given

any other documents from CAC apart from EXH. 'A10'.

The counsel submitted that the PW1 told the court that he contacted with the defendant in his official capacity as chairman, and he also told the court that no: he did not accompany the defendant to distribute the items, but he only supplied, and none of his staff accompanied the defendant.

The PW1 went further to tell the court that he did not promise to donate N14,550,000.00 out of the contractual amount to members of the co-operative society.

The counsel submitted that the PW1 told the court that no; no part of the money he is claiming belongs to his business partner.

The counsel submitted that in further proof of the case against the defendant, the claimant tendered EXH. A2, A3, A4, A5, A6, A7, A8 and A9 all of which lend direct and positive credence to the role and liability of the defendant, and the PW1 cited an instance, beyond the clear admission of the defendant, and it is clear from the exhibits available, especially the signature of the defendant in his statement on oath which run through and consistently in exhibits A2, A3, A4, A5, A6, A7, A8 and A9.

The counsel submitted further that EXH. A10 (account statement) also show the payment directly made by the defendant from his personal account to the claimant.

The counsel submitted that secondly, the defendant admitted the case of the claimant at paragraphs 5 and 10 of his defence as well as paragraphs 6 and 11 of his witness statement on oath. The counsel submitted that however, during cross examination, the DW1 contradicted himself in his earlier denials in his statement of defence and witness statement on oath, and the counsel gave an instance that

during cross-examination and among others the DW1 stated that he is a public servant, and as a public servant, he is the current chairman of the Rehabilitation Committee of the office of the Special Assistant to the President on Disability Matters, and according to the counsel this means the committee he chairs is of the office of the special assistant to the president on disability matters but not a committee created by the Federal Civil Service Staff with Disabilities Multipurpose Co-operative Society Limited. The counsel submitted that by the Nigerian Co-operative Societies Act, only members of the co-operative society can create committee to run its affairs.

The counsel submitted that DW1 told the court that his organisation is a Limited Liability entity, and the counsel emphasized that only CAC can register limited liability entity.

The counsel submitted that the DW1 told the court that he is not a member of the board of his organisation Federal Civil Service Staff with Disabilities Multipurpose Co-operative Society Limited, and that it is true that the items that he purchased from the claimant were supplied to him in the office of his organisation at No. 1 Usman Danfodio Street, Opposite Banquet Hall, and that however, that the office belongs to the organisation and to him.

The counsel submitted that the DW1 told the court that nobody was engaged as an agent or intermediary in the course of his contractual negotiation with the claimant.

The counsel submitted that the DW1 told the court that the organisation has partnership with office of the Mr. President and not him, and he further told the court that yes he represented his organisation, and yet, it is true that before he began to act on behalf of the organisation, the

organisation entered into partnership with the office of the special assistant to the president.

The counsel submitted that the DW1 told the court that yes, he remember that he tendered the communication of that organisation, and that EXH. D5 is not the letter of partnership he referred to; as exhibit D5 is from S.A. on Disability, but one he was referring to is the one from Senior Special Assistant, therefore they have two partnerships, one with S.A. and the other with Senior Special Assistant. The counsel submitted that none of these partnership agreements were tendered and this amount to withholding evidence.

The counsel submitted that the DW1 told the court that yes, he received donations to his personal account and it is within the law, and the counsel submitted that the defendant did not refer the court to any law that allows him to receive donations to his personal account on behalf of a co-operative society which he is not even a member.

On the documents tendered by the defendant, the counsel submitted that EXH. D2 puts the name of the defendant's Pseudo organisation thus: Federal Civil Service Staff with Disabilities Multipurpose Co-operative Society Limited.

The counsel submitted that under cross-examination, the DW1 testified that his organisation is a Limited Liability entity, and it is only the Corporate Affairs Commission has the powers to register a Limited Liability entity with effects of shielding shareholders/members from personal liability within the contention of the defendant herein.

The counsel referred to sections 36(5) (b); and 38 of the CAMA 2004, and submitted further that there is no provision in the Nigerian Co-operative Societies Act relied upon by the defendant that is equivalent to the above cited

provision in the CAMA 2004 to exculpate the defendant from liability in this case especially that the defendant is not even a member of his alleged co-operative society and did not disclose the members of the co-operative that even appointed him a CEO to so act on their behalf, and the consequence of this is that the defendant cannot escape personal liability for his role for/on behalf of his organisation that is not registered with the proper and relevant regulatory body, and he urged the court to so hold and resolve this issue in favour of the claimant.

The counsel further submitted that EXH. 'D1' is a letter titled: "Urgent Needs" and dated 11/9/2017, and a good look at this document shows that the defendant is the addressee of the letter, and he also works in the office where the letter originated from, and the counsel referred to the testimony of the DW1 where the DW1 told the court he is the chairman Rehabilitation Committee in the office of Senior Special Assistant to the president on disabilities, and that is a committee within the office of Senior Special Assistant to the president on disabilities where the letter originated from. The counsel submitted that it is not a committee created by the said co-operative society.

The counsel submitted that again, the defendant is also the CEO of his Limited Liability entity, and the Nigerian Co-operative Societies Act does not in any way, section or clause contemplates or create the organ of CEO to run co-operative societies. What it contemplates is a Committee created by its members of the co-operative society to the claimant at the time of the contract. The counsel went further and submitted that in the case at hand, the defendant did not disclose the members of the co-operative to the claimant at the time of the contract; and the defendant did not present anything to this court to show

the ten (10) initial members of the co-operative society and the committee mentioned by the defendant in his testimony was not a committee created by members of the co-operative society but rather a committee in the office of Senior Special Assistant to the president on disabilities where the defendant works; which is a separate and distinct entity all together.

The counsel posed these questions:

Who are the members of the co-operative that appointed the defendant as CEO? How was the defendant appointed? What is the defendant's mandate in his appointment letter or constitution or bye-laws of the co-operative that authorized the defendant to so parade himself on behalf of the co-operative society, and in the manner he dealt with the claimant?

The counsel submitted that the defendant has the evidential burden to show how he was appointed by the members of the board of the co-operative as its CEO, especially that the Nigerian Co-operative Societies Act did not contemplates or provide for the office of CEO to run co-operative societies. It is submitted that the defendant did not show the name of the initial ten (10) members of his Limited Liability entity that applied for and registered the co-operatives as stated in EXH. 'D2'. The defendant did not show this court the alleged institution of his Limited Liability entity which he referenced at paragraphs 4(i) and 5 (l) of his statement of defence and oath respectively.

It is submitted by the counsel that also interesting is the fact that at paragraph 3 of the statement of defence and 5 of his statement on oath, the defendant maintained a consistent position that he is the chairman Rehabilitation Committee/Chief Executive Officer of the said Co-operative

Society, but the defendant contradicted himself when he testified under cross examination that the Rehabilitation Committee is in the office of the Senior Special Assistant to the president on Disability matters. The counsel posed this questions:

How can EXH. 'D1' originate from the defendant's office and at the same time addressed to the defendant on the same guise of his alleged representation of a co-operative society to which he is not a member?

The counsel provided the answer that it is an unholy representation as a tool to swindle the business capital of the claimant.

The counsel submitted that EXH. 'D1' and 'D2' do not aid the defendant in any way to extricate him from personal liability to the claimant in the transactions/contracts that led to the cause of this action, and he urged the court to so hold.

The counsel submitted that the first contract as shown in EXH. A2 has been awarded and performed even before the date EXH. 'D1' was written.

The counsel submitted that EXH. 'D6' did not aid the defendant as it has the same virus as EXH. 'D1'. It originated from the defendant's office, yet addressed to the defendant. The counsel submitted that EXH. 'D5' is a letter of "request for partnership" dated 4/2/2020 and addressed to the defendant, and this letter came into existence after almost a year of commencement of this suit.

It is the submission of the counsel that by the law and doctrine of lis pendis, this document was wrongly admitted as it has no place in this action, the counsel referred to section 83(3) of the Evidence Act 2011 which forbids the admissibility of documents and evidence that

came into existence during the pendency of an action. The counsel also submitted that it is the law that with or without objection at the time of admissibility, a wrongly admitted document/EXH, can be expunged at the final stage or even on appeal, and he cited the case of **Cyprian Ezewudo V. James Ezenwaka & Ors. (2016) LPELR – 41019.**

In the event, the court is inclined to retain this document (EXH. 'D5') in its record, it is the argument of the counsel that same did not exonerate the defendant from liability in this action, this is because the defendant testified during cross-examination, that yes it is true that before he began to act on behalf of the organisation, that organisation entered into partnership with the office of the Special Assistant to the president. The counsel submitted that though the defendant tried to deny that EXH. 'D5' is not the partnership agreement but that is the only partnership agreement on record, and the defendant failed woefully to tender the alleged communication for partnership between his organisation and the office of Special Assistant to the president. The counsel opined that aside EXH. 'D5', there is no other document before this court on any communication of partnership before the defendant paraded himself to the co-operative society, and the defendant shot himself on the foot by this document, and he urged the court to so hold and disregard the defence of the defendant.

The counsel submitted that EXH. 'D4' and 'D7' go to no issue as they lack probative value to this cause of action, because the DW1 during cross examination testified so clearly that there were no agents or intermediaries between the defendant and the claimant during the contractual negotiation over the transactions in this action, and this

testimony lends credence to the unchallenged testimony of the PW1 in respect thereof, and urged the court to so hold.

The counsel submitted that EXH. 'D3', 'D8' and 'D9' have no relevance to the issue at hand as the defendant presented and represented himself for and on behalf of an unregistered Limited Liability entity, and on the other hand, the claimant's EXH. 'A10' (Search Report) conducted at Corporate Affairs Commission showed that the defendant's pseudo organisation does not exist as a Limited Liability entity as claimed by the defendant, as only the CAC has the power to register any company or entity with Limited Liability status, and the name of the defendant's pseudo organisation is a prank to play fraud on unsuspecting members of the public, the defendant having been presented himself and acted for and on behalf of an unregistered limited liability entity and cannot escape from liability, and the counsel asked the court to so hold in the overall interest of justice.

The counsel submitted that the defendant in his statement of defence and testimony made heavy weather of sections 4, 5 and 6 of the Nigerian Co-operative Societies Act and asserted that the Federal Civil Service Staff with Disability Multipurpose Co-operative Societies FCT Abuja, and the counsel submitted that in consequence, the defendant wants to shift his liability to the said organisation. The counsel quoted the provision of section 4 of the Nigerian Co-operative Societies Act, and submitted that he did not see how members of co-operative society or self appointed CEO like the defendant is immuned or exonerated from personal liability for their acts such as the circumstances of this case at hand. The counsel submitted that in the same way, the defendant failed to provide the name of the initial ten (10) members that applied for

registration of the association to show that he is not a member as he claimed, and the defendant did not present anything to this court to show how he was appointed as the CEO of the co-operative society by the members.

In all these, the counsel submitted that, they have not seen where any provision of the Nigerian Co-operative Societies Act exonerates or immure members of the society from personal liability, and he referred to section 57 of the Act on interpretation.

The counsel to the claimant posed these questions and provided an answers thus:

- (1) Did the defendant prove to this court how his committee (if any) was created by members of his co-operative society?**
- (2) Does any provision of the Co-operative Societies Act create or recognise the office of CEO?**
- (3) Is it equitable and just to allow the claimant herein suffer from the unholy benefits the defendant has taken using the unmasked members of the Federal Civil Service Staff with Disabilities Multipurpose Co-operative Society Limited; all in the guise that it sue and be sued? Especially that there is nothing placed before this court to show the correlation between the defendant and the said co-operative Society?**
- (4) Does it serve the interest of justice to allow defendant to escape liability when he did not show this court how he was appointed or how his committee was created by the members of the co-operative society?**

- (5) Who takes the responsibility for fraudulent representation and concealment of the names of the members of the alleged co-operative society?**
- (6) Do the provisions of Nigeria Co-operative Societies Act exonerate members or self-appointed individuals from liability for their acts?**

On the issue No. 2, the counsel submitted that the claimant has proved his case on the balance of probability and this entitled to the judgment of this court as per all the reliefs contained in the writ of summons and amended statement of claim.

To the counsel, the claimant directly or positively led unchallenged evidence in his statement on oath, further deposition on oath as well as under cross examination of PW1 to prove its claim.

On reliefs (a) (b) (c) (d) (e) and (f) of the statement of claim, the counsel submitted that having argued on the foregoing issue No. 1 above that the claimant has proved its case, it is submitted that the claimant is entitled to all the reliefs sought, and this submission is supported by the evidence on record, especially the uncontroverted evidence of PW1 as well as EXH. 'A1' to 'A11' tendered by the claimant in addition to various admission of the defendant and urged the court to grant the reliefs.

Thus, having reviewed the case of both parties vide their statement of claim, statement of defence and the reply, their respective final written addresses, I adopt the issues for determination as formulated by both counsel, to wit:

- (1) Whether or not the defendant can be personally held liable for the contract**

between the claimant and Federal Civil Service Staff with Disabilities Multipurpose Co-operative Society Limited?

- (2) If the answer to the first issue for determination is in the affirmative, whether the claimant has proved his case on the balance of probability and this entitled to the reliefs sought from this court?**

Before embarking on the resolution of the two issues, let me evaluate the evidence of both parties with a view to ascribe probative value to the ones that are credible. See the case of **Obi V. Ozoewulu (2022) All FWLR (pt 1150) 829 (SC)**.

In the course of cross examination, the PW1 was asked whether he is aware that co-operative societies are legal entity, whether they can sue and be sued, and the PW1 answered in the affirmative, and that Federal Civil Service Staff Co-operative Society can sue and be sued.

The PW1 was asked whether by EXH. 'A10' he can confirm what he was saying, and he answered in the affirmative.

The PW1 was asked whether he was given any list of co-operative societies where the Federal Civil Service Staff with Disabilities Multipurpose Co-operative society limited was omitted as registered at the CAC, and he answered in the negative. The PW1 was asked whether he would be surprised to hear that the co-operative societies are not registered with the CAC, and the PW1 answered that he was not aware.

The PW1 was asked whether the only basis by which he asserts and supports his assertion is that the Federal Civil Service Staff with Disability Co-operative Society Limited is

unregistered as EXH. 'A10' and the PW1 answered in affirmative.

The PW1 was asked whether by his witness statement on oath and all the exhibits, he will agree with the counsel that he entered contract with the Federal Civil Service Staff with Disabilities Multipurpose Co-operative Society, and the PW1 answered in the affirmative. The PW1 was also asked whether he contracted with the defendant in his official capacity as the chairman of that co-operative society, and he answered in the affirmative.

By the above questions and answers during cross examination the PW1 accepted that the defendant did not enter into contracts with the claimant personally but in his official capacity as the chairman of the co-operative society, and therefore evidence of the PW1 has probative value and it is hereby accepted in proof of that assertion. To my mind, the evidence is worthy of acceptance and it is hereby accepted in proof of the fact that the defendant entered into contract with the claimant in his official capacity as the chairman of the Federal Civil Service Staff with Disability Multipurpose Co-operative Society Limited.

The PW1 was asked whether it is correct that after the delivery of the goods in issue that he accompanied the defendant and the staff of the co-operative society to distribute the items to the beneficiaries, and the PW1 answered in the negative, but that he only did supply to them.

The PW1 was asked whether it is also correct that he promised to donate out of the contracted sum to the members of that co-operative society to the tune of ₦14,550,000.00 as his Corporate social responsibility, and the PW1 answered in the negative. By this it could be inferred that the claimant did not say so, because the defendant

should have evidenced this assertion either orally or documentary, but the defendant did not do so. So, the evidence has no probative value and is therefore not credible in proof of that assertion and it is hereby rejected; this is because looking at EXH. 'D3' whereupon the claimant pledged to have contributed the sum of N14,550,000.00 as part of his corporate social responsibility, however, the donation of N14,55,000.00 is subject to the payment of the outstanding amount, and where the payment was not made, there cannot be such donation.

In essence, this agreement is subject to the fulfillment of a certain condition, that is payment of the contract sum, and which was not done. I refer to paragraphs (iii), (iv) and (v) of EXH. 'D3'. It is the law that where a contract is made subject to the fulfillment of a specific terms and conditions, the contract is not formed and not binding unless and until those terms and conditions are fulfilled. In the instant suit and in the paragraphs referred above the donation of the sum of N14,550,000.00 was made subject to the full payment of the outstanding amount of the contract sum, and this was not done, and therefore as at now the claimant is not liable, and I so hold that the evidence EXH. 'D3' is not worthy of acceptance and it is hereby rejected accordingly.

The PW1 was also asked whether out of the contract money claimed before the court, some of it belongs to his business partner, and the PW1 answered in the negative. However, by the attachment, EXH. 'D4' that is the Memorandum of Understanding, signed by the claimant as one of the parties, the claimant has agreed to pay N2,000.00 per bag of rice for the facilitation of the contract. See paragraph 2 of the Memorandum. By this, it can be inferred that the PW1 was challenged and the evidence is

not worthy of acceptance, and it is hereby rejected accordingly.

Thus, this piece of evidence as to whether there is a Memorandum of understanding between the claimant and any other person is not an issue before this court, and therefore goes to no issue, and I therefore hold.

The DW1 was cross examined, and was asked whether he is a civil servant, and he answered that he is a public servant, and he is occupying the office of the chairman of Rehabilitation Committee at the office of the Special Assistant to the president on disability matters.

The DW1 was asked whether Federal Civil Service Staff with Disability Multipurpose Society Limited is a corporate entity, and he answered in the affirmative; and he also told the court that he is not a member of the board of his organisation.

The DW1 told the court that it is true that the items that were purchased from the claimant were supplied to him in their office of their organisation at No. 1 Usman Danfodio Street, Opposite Banquet Hall, however the office belongs to his organisation.

The DW1 was asked whether as at the time of entering into the contracts, it was part of the agreement that the claimant was to donate any money to the organisation, and the DW1 answered in the affirmative.

The DW1 was asked as to who lodged the complaints against the DW1 at EFCC and ICPC, and the DW1 answered that it was at the behest of the claimant. The DW1 told the court that when he was invited to the EFCC and ICPC, he was told that the offices were not meant to collect debt and the claimant was directed to go to court.

The DW1 told the court upon a complaint to the EFCC and ICPC, they first freeze the account, and that the

organisation is running bank accounts and it was the duty of the accountant to tell the court which account was frozen and which one that was not frozen, and that as at the time of the petition they were told that the account which were using to pay the claimant was frozen.

The DW1 was asked whether as at the time of the negotiation, he involved an agent, and to which he answered that he engaged nobody.

The DW1 was asked whether at Usman Fodio Street, Opposite Banquet Hall, there was any internally displaced persons, and the DW1 answered that they have sick bay that was use to take care of internally displaced persons with disability as at the time of the transaction.

The DW1 told the court that the organisation has partnership with the office of Mr. President, and all he did on behalf of the organisation with the claimant and he represented the organisation. And that before he began to act on behalf of the organisation, the organisation entered into partnership with the office of Special Assistant to the President.

The DW1 was asked to have a look at EXH. 'D5' and to confirm whether it is the letter of request for partnership, and the DW1 answered that 'D5' is not the letter of partnership he referred to, as it is from the Special Assistant on Disability, and the one he is referring to is the one from Senior Special Assistant, and this EXH. D5 was tendered to show that they are not defrauding the claimant; and therefore they have two partnerships, one with Special Assistant and the other with Senior Special Assistant.

The DW1 told the court that he received donations into his personal account, and it is within the law.

Thus, from the cross examination, the DW1 was not challenged, nor was he discredited, and evidence is worthy

of acceptance and it is hereby accepted as it is credible. See the case of **Haruna V. State (2022) All FWLR (pt 1178) p. 830 (SC)**.

On the whole, I accept the evidence of DW1 in part as to whether the Federal Civil Service Staff with disability Multipurpose co-operative society having registered is a corporate body capable of being sued and can sue, and I so hold.

On the issue No. 1, it is the contention of the claimant that the defendant does not have any immunity from liabilities in his role in connection with the contracts in this action as the defendant has full and personal obligation and liabilities to perform his part of these contracts, having received supplies and benefit from the claimant, and the claimant relies on EXH. 'A10', which is the search report which was prepared by the solicitor to the claimant dated the 12th day of February, 2019, and in the report it was stated that Federal Civil Service Staff with Disabilities Multipurpose Co-operative Society does not exist as the name was never registered or incorporated with the Corporate Affairs Commission, while it is the contention of the defendant that for a party to be heard by the court, it must have the legal capability to sue and be sued, that is, it must be a natural person or artificial person with the legal personality to sue and be sued, and he cited the case of **Reptico S.A. Geneva V. Afribank (Nig.) Plc (supra)** and also relied on the provisions of Nigerian Co-operative Societies Act.

It is to be noted that the claimant as PW1 has during cross examination not disputed the fact that a corporate entity will sue and be sued in its corporate name when registered. This is admission against an interest. See the case of **Adeboye v. Baje (2016) All FWLR (pt 845) p. 85 at 120,**

paras. E-G where the Court of Appeal, Kaduna Division held that an admission by a party against his own interest is at best the most appropriate evidence in favour of his opponent. It is presumed that no man would desire anything against himself unless it was true. Thus a party is entitled to rely on his opponent's admission as admission against interest to defeat his opponent's claim. See also **Abdulrahman V. Thomas (2019) All FWLR (pt 1005) 395 at 404, paras. B-C** where the Supreme Court, held that evidence either elicited under cross examination that tends to be admission against interest viz-a-viz pleaded facts, or that explains an ambiguity created by pleaded facts or evidence already given by the witness, is related to the fact in issue, and it is therefore relevant and admissible in evidence.

Looking at the exhibits 'A2', 'A3', 'A4', 'A5', 'A6', 'A7', 'A8' and 'A9', the award letters were issued to the claimant from the office of Federal Civil Service Staff with Disabilities Multipurpose Co-operative Society, office of the chairman, Rehabilitation Committee and the defendant signed as the chairman of the committee, and it was based on those exhibits the supplies were carried out by the claimant.

I agree with the submission of the defendant that the governing law over co-operative societies in Nigeria is the Nigerian Co-operative Societies Act and by section 7 of the Act which provides that a Certificate of Registration, signed, sealed and delivered by the Director shall be conclusive evidence that the society mentioned in the certificate is duly registered, unless it is proved that the registration of the society has been cancelled.

Now the defendant tendered EXH. 'D2', which is the Certificate of registration of the Federal Civil Service Staff with Disabilities Multipurpose Co-operative Society Limited,

and there is no evidence adduced by the claimant by the claimant to the contrary, and I therefore hold that the certificate EXH. 'D2' is the conclusive evidence of the fact that the said co-operative society has been registered, and I so hold and the argument of the claimant is discountenanced. I refer to the relevant provisions of the Act to the effect that the registration renders as a body corporate by the name under which it is registered, with perpetual succession and a common seal and vested with the power to hold movable and immovable property, enter and other legal proceedings, and I hold that the Federal Civil Service Staff with Disabilities Multipurpose Co-operative Society Limited is capable of suing and be sued in its registered name and not the personal capacity of the defendant, and I so hold. See the case of **N.N.E.C.A.U. Laloko (2003) FWLR (pt. 144) p. 485 at pp. 495-496, paras. F-A.**

It is the contention of the claimant that only the Corporate Affairs Commission that has the power to register Limited liability entity with effects of shielding shareholders from personal liabilities within the contention of the defendant and he relied on section 36 5(b) and 38 of the CAMA 2004, while it is the contention of the defendant that under section 3(5) of the co-operative societies Act which provides in essence that the word 'Limited' or its vernacular equivalent shall be the last word in the name of every society registered under this Act. By the above provision, it can be inferred that the word 'Limited' is a requirement of the Act that the co-operative society registered must have its name last with 'Limited', and so the argument of the claimant is discountenanced as it is the requirement of law, and I so hold.

In a nutshell, the Federal Civil Service Staff with disabilities Multipurpose C-operative Society Limited is a registered entity, capable of suing and being sued in its own name, and is the party to be sued and not the defendant in his personal capacity, and I therefore so hold.

Having answered the issue No. 1 in the negative, the claimant can do the appropriate things by doing the needful, and therefore there is no need to go into the second issue. The claims of the claimant are refused accordingly and the case is dismissed.

Hon. Judge

Signed

13/1/2025

Appearances:

Sunday A. Ijiga Esq appeared for the claimant.

E.A. Adesinmo Esq appearing with O.P. Osaze Esq for the defendant.