

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

BEFORE: HON. JUSTICE O.C. AGBAZA

COURT CLERKS: UKONU KALU & GODSPOWER EBAHOR

**COURT NO: 11
SUIT NO: FCT/HC/CV/249/16**

BETWEEN:

GABRIEL OFODILE OKAFOR (SAN).....PLAINTIFF

AND

1. HAJIA HABIBA .A. ISMAIL

3. MIRAGE POND NIG LTD.....DEFENDANTS

RULING/JUDGMENT

By a Writ of Summons dated 21/11/2016 and filed same day, the Claimant commenced this Suit against the Defendants. The pleadings are: The Claimant Statement of Claim on 21/11/2016, the Defendant in response, on 28/12/2016, filed a 30 Paragraph Statement of Defence, along with Statement on Oath of the 1st Defendant.

The claim of the Claimant against the Defendant is stated as follows:-

- (a) A sum of ₦12,000,000.00 (Twelve Million Naira) being money had and received from the Claimant for total failure of consideration.

- (b) A sum of ₦400,000.00(Four Hundred Thousand Naira) being commission paid to the two agents.
- (c) A sum of ₦233,333.33 every month from 1st August, 2014 till date of judgment.
- (d) 10% interest on the judgment sum from date of Judgment till final payment.
- (e) A sum of ₦500,000.00 as cost of the Suit.

After pleadings have been settled by the parties and case set down for hearing, the Claimant vide a Motion on Notice filed on 13/1/2017 prayed for Judgment on the admitted sum of ₦7,500,000.00 (Seven Million Five Hundred Thousand Naira) by the Defendant in their Para 17 and 20 of their Statement of Defence, consequent upon that the court in a considered Ruling gave Judgment in favour of the Claimant in the sum of ₦7,500,000.00, consequent upon a further sum of ₦1,000,000.00 (One Million Naira) paid while the matter was pending.

Consequent, upon this summary judgment on the admitted sum, the court ordered the Claimant to proceed to prove its case on the disputed balance.

In proof of its case, the Claimant called the PW1- Gabriel Ofodile Okafor (SAN) who testify and the Defendant did not call any witness.

The PW1 – in his testimony adopted his witness deposition of 31 paragraphs. He testified to the payment of ₦10,000,000.00 vide Exhibit "A", and ₦4,000,000.00 vide Exhibit "B" as payments for the said Plot of

land for which the transaction failed. In course of his evidence PW1 also cause to be tendered the following document received in evidence.

- (1) Exhibit "C" –Visitor's Receipt
- (2) Exhibit "D" – A letter dated 9/7/2014 – Titled "Breach of Contract for sale of 1000 Sq Mtrs Plot at Apo.
- (3) Exhibit "E" – Photocopy of GTB Bank Cheque dated 21/4/2016 for ₦2,000,000.00.
- (4) Exhibit "F" – A letter dated 5/2/2014 –Titled "Cheating & Obtaining Credit by false Practices: Hajiya Habiba A. Ismail , ₦20,233,333.31.
- (5) A copy of UBA Cheque dated 30/4/2013 for ₦200,000.00 (Two Hundred Thousand Naira) was tendered but marked Tendered but Rejected.

At the close of the Claimant's case and after protracted adjournment at the instance of the Defendants, the Defendants were foreclosed from defence, and upon their own application. The case proceeded to adoption of Final Written Address.

In the Final Address of the Claimant settled by the Learned Silk, Gabriel Ofodile Okafor (SAN), only two (2) issues were formulated for determination namely;

- (a) What amount if any, is due and owing from the Defendants to the Claimant.

- (b) Whether the Claimant is entitled to the sum of ₦12,400,000.00 less the Judgment sum ₦6,500.00 being the balance of the total sum paid and other reliefs.

Submits and rely on the Exhibits :A: and "B' and judicial authorities cited, contends that the Claimant has sufficiently prove his case on the balance of probability in line with Section 131 and 134 of the Evidence Act, 2011.

Further that the Defendant has admitted owing ₦7,500,000.00 and facts admitted need no further proof.

On the rejected document tendered but marked rejected, urge this court to re-admit in evidence the document have been pleaded. Referred the court to case of Dr. Torti Torki Vs Chief Chris Ukpabi (1984) 1 SC 370 @ 392, and the court having the powers to re-admit document that is shown to be wrongly rejected. Moreso, they stated that the said monies were paid in two installment, cash and cheque.

Further, submits that in all of these, the Defendant who filed a defence, failed to lead in evidence in support, and that it is settled that where no evidence is led that the pleadings serves no useful purpose and referred to cases Insurance Brokers of Nigeria Vs Atlantic Textile Mfg Co Ltd (1969) 9 – 10 SCNJ 171, 183 Udom Vs Umana (No.1) (2016) 12 NWLR (PT. 1526) 179 @ 218 Para D – F; and Inua Vs F.B.N. Plc (2016) 2 NWLR (PT. 1495) 89 @ 110 Para B – D. Consequent upon this the court is bound to accept the evidence of the Claimant in proof of his case.

Having carefully considered the pleadings and the evidence and submission of learned counsel for the Claimant as well as the judicial authorities cited, the court finds that only one issue calls for determination;

“Whether from the totality of facts and evidence adduced in support of the claims, the Claimant can be said to have proven its case and therefore entitled to the reliefs sought”.

In this instant case, the evidence of the PW1 – Claimant is straightforward and clear, and which was not challenged or controverted. The Defendants had every opportunity to do so but rather rested their case on that of the Claimant. Granted that it is settled law that pleading not backed by evidence, goes to no issue, however, a Claimant to succeed in his case must rely on the strength of his case and not on the weakness of the case of the defence. See *Andrew Vs INEC* (2018) 9 NWLR (PT 1626) 507 @ 552 Para A – B. It is settled that in the course of this case, and upon the admission of the Defendant of owing the sum of ₦7,500,000.00 and in a considered Ruling, granted the payment of ₦6,500,000.000.00, in consequence therefore, the balance due from the total balance of ₦11,000 is ₦5,500,000.00 (Five Million, Five Hundred Thousand Naira), now due and payable by the Defendant. Accordingly, Relief 1 is resolved in favour of the Claimant.

On the relief 2, claim for ₦400,000.00 (Four Hundred Thousand Naira) paid as commission to the agents. The Claimant relied on a UBA Cheque pleaded in Para 17 of the Statement of Claim and Para 18 of the Witness Statement on Oath being payment made in two installments of cash and

cheque. The said document relief on as the basis of proof of this claim was marked tendered but rejected. The Claimant counsel has in his submission, argued and urged this court to e-admit this document that was wrongly rejected as been a proper document pleaded and should be admitted in evidence.

It must be quickly stated that granted that the law permits the court in writing its judgment consider a document that was earlier tendered but rejected if it finds it wrongly done and re-admit it. In this instance case, this court indeed considered the admissibility or otherwise of this document relied on in proof of its case, and found that though the document was pleaded, as it relates to fact that commission of ₦400,000.00 (Four Hundred Thousand Naira) only was paid on commission to agents, the court found that the document sought to be tendered reflected the sum of ₦200,000.00 (Two Hundred Thousand Naira) only which is at variance with the said UBA Cheque. It is on that basis that the document was marked rejected in the absence of any evidence to explain the contrary. In the light of all of these, I still refuse to be persuaded by the submission of the learned counsel and hold that this document stands marked tendered and rejected. Consequently, this reliefs fails.

On the relief 3, claim for the sum of ₦233,333.33 every month from 1st August 2014 till date of judgment.

It is the contention in proof of this relief that the Defendant pursuant to their Para 20 of their Statement of Claim, had in Para 14 of the Statement of Defence admitted to this relief, that is Exhibit "D" and relying on the

case of Co-operative Development Bank Plc Vs Ekanem (2009) 16 NWLR (PT. 1168) 585 @ 601 Para D.

A clear reading of the said Para 14 of Statement of Defence, is in clear denial of any agreement to pay the said 20% interest. This court has stated in the Judgment that a Claimant must succeed on the strength of his case and not on weakness of the case of defence. There is no document evidencing such agreement to pay 20% interest, anywhere before this court. It is my firm view that the submission of learned counsel, relying on the case of Omega Bank Nig Ltd Vs OBC Ltd (2002) 16 NWLR (PT. 794) 483 @ 531 Para G – H that on commercial transaction a Claimant would be entitled to interest, it must be premised on an existing agreement by the parties, which in the instantis not stated or brought before this court. It is in the light of this, that I shall refuse this claim it therefore fails.

On the relief (d), 10% interest on the judgment sum from the judgment till final payment. By the Provision of Order 39 Rule 4 of the Rules of court, a Claimant shall be entitled to this claim where the court so holds judgment in his favour. Accordingly, this relief enures in favour of the Claimant and grantable.

On the relief (e), A sum of ₦500,000.00 as cost of this suit. It is settled that cost follows event, the court having found in favour of the Claimant, shall be entitled to cost at the discretion of the court.

In consequent; the cost is assessed at ₦250,000.00 as cost against the Defendant.

In conclusion, judgment is hereby entered as follows:

- (1) The Defendant are hereby ordered to pay the total sum of ₦5,500,000.00 (Five Million Five Hundred Thousand Naira) only being the outstanding balance due to the Claimant on the failed transaction.
- (2) The relief b fails and hereby refused.
- (3) The relief c, also fails and hereby refused.
- (4) The relief d, succeed. By Order 39 Rule 4 of the Rules of Court, the Defendant is hereby ordered to pay to the Claimant to pay 10% interest on the judgment sum from the date of judgment till final payment.
- (5) Cost of this action is assessed at ₦250,000.00 (Two Hundred and Fifty Thousand Naira) only against the Defendants.

This is the judgment of this court.

HON. JUSTICE O.C. AGBAZA

Presiding Judge

29/6/2020

APPEARANCE

T.N. NWACHUKWU ESQ - FOR THE CLAIMANT

O.B.A. OLUFON ESQ - FOR THE DEFENDANTS