IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY ABUJA.
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT MAITAMA -ABUJA
ON THE 10TH DECEMBER, 2021
BEFORE HIS LORDSHIP HON. JUSTICE CHIZOBA N. OJI
PRESIDING JUDGE
SUIT NO. FCT/HC/CV/397/16

BETWEEN:
M & E GLOBAL SERVICES LTD ……. PLAINTIFF

AND

LEADERSHIP GROUP LIMITED ……. DEFENDANT

APPEARANCES:
PARTIES ABSENT
U.H USMAN ESQ FOR THE PLAINTIFF
EJIKEME OBIEFUNA ESQ FOR THE DEFENDANT

JUDGMENT

By a writ of summons and statement of claim filed on 6th December 2016, the Plaintiff seeks:-

> ***(a) Judgment in the sum of ₦8,552, 614.31k (Eight Million, Five Hundred and Fifty Two Thousand Six Hundred and fourteen Naira, Thirty one kobo) only being the outstanding sum for security services rendered by the Plaintiff to the Defendant at the Defendant's Head Office building situate at No 27, Ibrahim Tahir Lane, Off Shehu Musa Yaradua Way, Utako Abuja and the Defendant's Chairman's residence situate at Maitama which the Defendant failed, neglected and/or refusal to pay for, despite repeated demands.***

2) Interest at there rate of 20% per annum on the total outstanding sum of ₦8,552,614.31k (Eight Million, Five Hundred and Fifty Two Thousand, Six Hundred and Fourteen Naira, Thirty One Kobo) only from the day of judgment until final liquidation.

3) Cost of this action in the sum of ₦1,000,000 (One Million Naira) only.

4) And for such further order(s) that this court may deem fit to make in the interest of justice in the circumstance.

After failed attempts at out of court settlement, the Defendants eventually filed a Statement of Defence on 29th September 2020, deemed duly filed and served on 14th October 2020.

PW1, Daomi Eniola Fred testified on 10th October 2017 as the sole witness for the Plaintiff.

He adopted his witness statement on oath sworn on 6th December 2016 wherein he testified inter alia that he is an account staff of the Plaintiff and conversant with this suit.

That the Plaintiff carries on business of security services and allied matters within the jurisdiction of this court.
That sometime in January 2012, the Plaintiff had an understanding with the Defendant for the provision of security personnel to guard the Defendant's Head Office building situate an No 27 Ibrahim Tahir Lane, Off Shehu Musa Yar'Adua Way, Utako and the Defendant's Chairman's residence at Maitama, both in Abuja.

Consequently, the Plaintiff mobilised six of its security personnel to guard the Defendant's Head Office building at Utako, and the Defendant's Chairman's residence at Maitama.

That the monthly cost of security services provided by the Plaintiff to the Defendant for each security guard was at the rate of ₦37,110.00 including 5% Value Added Tax of ₦1,855.50k, totally ₦38,965.50k. The total cost for the six guards was therefore ₦233,793.00 monthly.

That the understanding between both parties was at first smooth sailing, until the Defendant began to default in payment in 2013. That notwithstanding, the Plaintiff continued to provide security services to the Defendant.

On 5th April 2013, the Plaintiff received a letter from the Defendant informing the Plaintiff of the commitment of the Defendant's management to settle the bill for security services rendered in the month of March 2013, and a further sum of ₦300,000 monthly until the entire indebtedness of the Defendant to the Plaintiff was liquidated. See Exhibit P1.

The Defendant however continued to pay only infrequently thereby defaulting as the months went by.

That the outstanding sum owed by the Defendant after the Exhibit P1 was ₦8,552,614.31k (Eight Million, Five Hundred and Fifty Two Thousand, Six Hundred and Fourteen Naira, Thirty One Kobo).
That the last time the Defendant paid for security services rendered was in December 2015 for the month of July 2015 via Guaranty Trust Bank cheque dated 8th October 2015 in the sum of ₦233,000. See Exhibits P2A and P2B, leaving a balance of ₦8,552,614.31k.
Due to the Defendant's continuous increasing debt profile without liquidation, the Plaintiff thus terminated the understanding with the Defendant in January, 2016.

The Plaintiff's demand for the sum of ₦8,552,614.31k through their solicitor Saf & Sanderston to the Defendant yielded no result. See Exhibit P3.

That the Defendant's failure to settle their debt has negatively affected the Plaintiff's business, making it impossible for the Plaintiff to settle the emoluments of their staff.

Thus the court was urged to grant the Plaintiff's reliefs.

In cross examination PW1 stated inter alia that he got the figure ₦8,552,614.31k from the reconciliation they did of the statement of account of their transaction with the Defendant, but the said statement of account

was not before the court. He said the understanding was terminated in January 2016, before Exhibit P3 was made.
He said between August 2015 and December 2015 will definitely not give a debt of ₦8 million plus.

DW1, Gabriel Achumugu, the Utility Manager of the Defendant testified as the sole witness for the defence on 16th February, 2021. He adopted his witness statement on oath deposed to on 29th September 2020 wherein the Defendant denied any indebtedness to the Plaintiff.
They denied receiving Exhibit P3, and insisted that the Defendant discharged all of her own obligations to the Plaintiff.

The Defendant equally denied any agreement of the number of personnel to be used and of any person known as "the Defendant's Chairman."

The DW1 was cross examined and discharged.

In his final written address filed on 5th March 2021, Mr Ejikeme Obiefuna for the Defendant submitted two issues for the courts determination thus:

> ***"1. Whether this Honourable Court has the jurisdiction to grant the Plaintiff's reliefs as can be seen from the writ of summons and the statement of claim.***
>
> ***2. Whether the Plaintiff by her processes and evidence placed before this court has established her claim to warrant judgment to (sic) her favour."***

ON ISSUE 1

After an analysis of the evidence led by the Plaintiff and the Defendant, learned counsel submitted that the Plaintiff claimed reliefs which included Value Added Tax (VAT) which is a revenue of the Federation and that the National Assembly has clearly established a Tribunal to that effect.

Further that Section 151 (sic) 251 (1) (a) & (b) of the 1999 Constitution of the Federal Republic of Nigeria clearly mandated the Federal High Court to

superintend over matters stated therein which includes revenue of the Federation. That the Plaintiff is also not the body mandated by law to collect such revenue on behalf of anybody. It was argued that the court cannot separate the VAT related claim for which it has no jurisdiction from the claim of the Plaintiff, the Plaintiff having not done so herself.

It was further submitted that the Plaintiff's case was made worse by the failure of the Plaintiff to lead evidence as to how it arrived at the figure claimed as VAT.
Citing **UGO V UGO (2008) 5 NWLR (PT 1079) 1 AT PARA B,** he urged the court to hold that the relief being sought by the Plaintiff is incompetent.

ON ISSUE 2

Assuming that the court has the requisite jurisdiction to entertain the Plaintiff's claim, it was submitted that the Plaintiff's case is speculative. Learned counsel argued that the Plaintiff failed to show how it arrived at the sum being claimed against the Defendant and her Chairman and the period for which it covered. Therefore the onus of proof never shifted to the Defendant.

It was further argued that nothing in Exhibit P3 dated 25th August 2016 shows it was received by the Defendant's office as the Defendant denied receiving any such letter. There was no name and position of the person receiving it nor was the stamp and seal of the Defendant placed on it.

Besides the author of the Exhibit P3, a legal practitioner did not affix his stamp and seal in compliance with Rule 10 (1) of the Rules of Professional Conduct for Legal Practitioners, 2007. The document is thus voidable. See **SENATOR BELLO SARKIN YAKI V SENATOR ATIKU ABUBAKAR BAGUDU SC/722/20151; WAYO V NDUUL (2019) 4 NWLR (PT 1661) PAGE 60.**

It was finally submitted that even if Exhibit P3 was found to be competent that it did not define the rights and the liabilities of the parties.

The court was thus urged to hold that the Plaintiff had failed to prove his case, and dismiss same.

In his final written address filed on 29th March 2021. Mr. U. H. Usman for the Plaintiff distilled two issues for the court's determination thus:-

> ***"a. Whether on the preponderance of evidence adduced before my Lord, the Plaintiff is entitled to the reliefs sought against the Defendant.***
>
> ***b. Whether from the records before this Honourable Court, the Defendant has a defence to the Plaintiff's action."***

Learned counsel submitted that the evidence of the Plaintiff on the amount owed by the Defendant for security services rendered to the Defendant was not challenged in cross examination neither was Exhibit P1, the Defendant's commitment to pay its outstanding debt challenged. He therefore urged the court to find that the Defendant tacitly accepted the truth of the evidence of PW1. See **GAJI V PAYE (2003) MJSC 76, 80 RATIO 5 (PAGE 91) PARAGRAPH D – E.**

He further submitted that the Defendant has no defence to the suit of the Plaintiff. Thus the burden of proof on the Plaintiff is discharged on minimal proof and the court is bound to accept the evidence in support of the claim. See **NEW NIGERIA BANK PLC V DENCLAG LIMITED & ANOR (2004) ALL FLWR PT (228) P 606 AT 642 PARAGRAPH E.**

Thus learned counsel urged the court to enter judgment in favour of the Plaintiff.

On Value Added Tax, with the leave of the court learned counsel responded orally that the Plaintiff's claim is simply for recovery of debt which is clearly stated in the prayers sought. That the Value Added Tax came in to support the main prayers of recovery of debt, which VAT the Defendant had been paying before.

He therefore urged the court to discountenance the submission of the learned defence counsel and hold that the court has jurisdiction to grant the Plaintiff's relief.

RESOLUTION

I have considered the evidence before me and the written and oral submissions of learned counsel on both sides. Issue 2 of the Defendant and issues 1 and 2 of the Plaintiff are essentially the same.

The Defendant's issue one is on jurisdiction. I shall address it first and thereafter take issue 2 of the Defendant as it encompasses the rest of the issues of the parties.

ON ISSUE ONE

Whether the court has jurisdiction the grant the Plaintiff's reliefs.

The argument of the learned defence counsel is that the court lacks jurisdiction to entertain the Plaintiff's reliefs which embodies Value Added Tax (VAT), particularly as the Plaintiff failed to separate the VAT from the amount so claimed.

The Plaintiff urged that their claim is for recovery of debt for which this court has requisite jurisdiction to entertain and that VAT is only ancillary to their claim.

To appreciate the claim of the Plaintiff the court must revert to the statement of claim filed before this court. It is clear from paragraph 18 of the statement of claim of the Plaintiff that the claim of the Plaintiff, which I had earlier set out at the beginning of this judgment, is for recovery of debt for security services it rendered to the Defendant, interest on the said debt and costs of action.

The law is well settled that in a case initiated by writ of summons and statement of claim jurisdiction of the court is determined by the Plaintiff's statement of claim. See **ADETAYO & ORS V ADEMOLA & ORS (2010) LPELR 155 (SC); ADEYEMI V OPEYORI (1976) 9-10 SC 31 AT 51, ORTHOPAEDIC HOSPITAL MANAGEMENT BOARD V GARBA (2002) 14 NWLR (PT 788) 538 AT 563.**

Section 257 (1) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) subject to Section 281 and other provisions gives this court the jurisdiction to:

> ***"hear and determine any civil proceedings in which the existence or extent of a legal right, power, duty, liability, privilege, interest, obligation or claim is in issue…"***

Section 251 (1) (a) to (s) of the said Constitution provides for the Jurisdiction of the Federal High Court.

As I earlier stated, the claim of the Plaintiff is for the recovery of debt of ₦8,552,614.31k for security services rendered upon agreement of the parties to the suit. That is a simple debt arising from a simple contact.

The matter of VAT mentioned in paragraphs 5 and 6 of the statement of claim is only ancillary to the principal claim of debt recovery of the Plaintiff as the VAT is embedded in their cost of security services rendered to the Defendant.

It is trite law that the Federal High Court lacks jurisdiction on a dispute founded on simple contract. It is the High court not the Federal High Court that has jurisdiction to entertain a claim of simple contact. See **INTEGRATED TIMBER & PLYWOOD PRODUCTS LIMITED V UNION BANK NIGERIA PLC (2006) LPELR – 1519 (SC) PAGE 19 PARAGRAPH D-E, Per Ogbuagu JSC; FEDERAL HOUSING AUTHORITY V PETER OTEH (2005) LPELR-11913 (CA).**

In any event, the claim for VAT is ancillary to and inextricably tied to the claim of the Plaintiff for recovery of debt for security services rendered.
It is equally trite law that a court cannot hear and determine ancillary claims if it has no jurisdiction to entertain the principal claims. See **KAKIH V PDP & ORS (2014) LPELR – 23277 (SC); CROSS RIVER STATE FORESTRY COMMISSION & ANOR V ANWAN & ORS (2012) LPELR – 14416 (CA).**
Therefore the Federal High Court will not be the proper venue to hear the claims of the Plaintiff, rather it is the High Court of the FCT which has

jurisdiction to entertain the principal claim that can entertain the suit and I so hold.

The challenge to the jurisdiction of this court is therefore misconceived and is hereby overruled.
Issue 1 is thus resolved in the affirmative, in favour of the Plaintiff.

ON ISSUE TWO

Whether the Plaintiff has established her claim to warrant judgment in her favour.

The law is trite that he who asserts, must prove. See Section 131(1) to Section 133 (1) (2) Evidence Act 2011.

In the instant case, it is the Plaintiff that asserts that the Defendant owes her the sum of ₦8,552,614.31k for security services rendered to the Defendant. The Defendant denied the claim. The onus of proof falls squarely on the Plaintiff to prove her case on a preponderance of evidence.

The Plaintiff must therefore succeed on the strength of her own case and not on the weakness of the defence. The onus of proof does not shift to the Defendant until it has been satisfied by the Plaintiff with credible evidence.

See **ONYIA V ONYIA (2011) LPELR – 4375 (CA) PAGE 17 PARAGRAPH C. per Oseji JCA (as he then was and of blessed memory); IHEJIRIKA V IHEJIRIKA & ORS (2013) LPELR 21906 (CA) PAGE 22 PARAGRAPH A-E per Ekpe JCA.**

So what is the evidence adduced by the Plaintiff to prove her claim of ₦8,552,614.31k?

PW1 the sole witness for the Plaintiff testified that in January, 2012 the Plaintiff had an understanding with the Defendant to render security services to the Defendant for ₦233,793, per month at two locations, the Plaintiff's Head Office building at 27 Ibrahim Tahir Lane, Off Shehu Musa Yar'Adua Way Utako Abuja, and at its Chairman's residence at Maitama Abuja.

That the Defendant started defaulting in 2013 and was owing ₦8,785,614.31k and then paid ₦233.000 via Exhibits P2A and P2B, leaving a balance of ₦8,552,614.31k.
That the Plaintiff terminated the parties' understanding in January, 2016. PW1 tendered also Exhibit P1 and P3.

The Defendant as I earlier stated denied owing the Plaintiff. The evidence of PW1 leaves much to be desired in proof of the Plaintiff's case.

It was not indicated the period for which the sum of ₦8,552,614.31k was said to be owed and for which premises it was being owed, whether the Defendant's head office at Utako or its Chairman's residence at Maitama? It was not indicated.

The Defendant's letter Exhibit P1 dated April 5, 2013 on which the Plaintiff's counsel placed so much reliance while admitting indebtedness of the Defendant, did not mention any amount owed by the Defendant or for what period it was owed. Exhibits P2A and P2B were for ₦233,000 paid to the Plaintiff on the 8th October 2015 and 13th December 2015.

According to PW1, parties parted ways in January, 2016.
PW1 also admitted that the Defendant paid some money but that payment was not regular. Exhibit P3 indicated that the understanding between the parties was <u>oral</u>.
Exhibit P3 had nothing to show it was written by a lawyer – no Nigerian Bar Association seal as required by Rule 10 (1) of the Rules of Professional Conduct for Legal Practitioners 2007 and nothing to indicate that the receiver was a staff of the Defendant. The learned defence counsel is correct that Exhibit P3 was neither written by a lawyer nor received by the Defendant.

The court will place no probative value on it.

In cross examination PW1 stated that the understanding between the Plaintiff and Defendant was <u>in writing</u> but he had not laid his hands on it. He said the Plaintiff got the figure ₦8,552,614.31k from the reconciliation the Plaintiff did of the statement of account of their transaction with the Defendant but he never tendered it in court.

He also said he had an invoice to show that the Plaintiff supplied 6 personnel at ₦233,793 per month to the Defendant but he did not tender it in court.

Furthermore, the PW1 stated that he had the reconciliation of accounts which would show that the sum in Exhibit P2B paid on 13th December 2015 was actually for the month of July 2015, yet he did not tender the said reconciliation of accounts before this court. The PW1, and accounts officer, told this court in cross examination that they derived the sum of ₦8.5 million plus from Exhibit P1.
I have thoroughly scrutinised Exhibit P1, and I do not find anything in Exhibit P1 to suggest that the Defendant owes the Plaintiff ₦8,552,614.31k.

In the face of this thorough cross examination of PW1 to which PW1 could not provide credible answers, how can the learned counsel to the Plaintiff argue in paragraph 3.5 to 3.9 of this final written address that the Plaintiff's case is uncontroverted and unchallenged? On the contrary the Plaintiff's case which was weak ab initio, was thoroughly demolished in cross examination.

I agree with the learned defence counsel that the Plaintiff failed woefully to discharge the onus of proof on her to prove her case for the sum of ₦8,552,614.31k against the Defendant.

On the other hand the Defendant put up a good defence to the Plaintiff's action. The DW1 testified that the Defendant met all its obligations to the Plaintiff.

Yes, by Exhibit P1, the Defendant agreed they owed the Plaintiff in 2013. Exhibits P2A and P2B showed payments up to December 2015. DW1 testified that the parties parted ways in December 2015.

The Plaintiff who claimed to have evidence to prove her case decided to keep the vital evidence to herself and out of sight of the court. I think it is proper to invoke the provisions of Section 167 (d) Evidence Act 2011.
Section 167 (d) of the Evidence Act 2011 provides.

> ***"The court may presume the existence of any fact which it deems likely to have happened. Regard shall be had to the common course***

of natural events, human conduct and public and private business, in their relationship to the facts of the particular case, and in particular, the court may presume that:-

> ***(d) evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it."***

See **FALKE V LOCAL GOVERNMENT COUNCIL & ORS (2016) LPELR – 40772 (CA), PP 35-36 PARAGRAPH E per Sankey JCA; AREMU V ADEYORO (2007) LPELR – 546 (SC) P.17 PARAGRAPH A-C per Niki Tobi JSC (of blessed memory).**

This court therefore concludes that the Plaintiff withheld the reconciliation of accounts and invoice because same, if produced, would have been unfavourable to the Plaintiff.

Accordingly, I hold that the Plaintiff has failed to prove her claim for ₦8,552,614.31k against the Defendant.

The principal claim having failed, the claim of interest will collapse with it. There was no evidence to prove ₦1 million costs. That claim also collapses.

Issue 2 is resolved in the negative against the Plaintiff and in favour of the Defendant.

Accordingly, the Plaintiff's case is dismissed in its entirety as it lacks merit.

Obiefuna: We do not ask for costs.
Court: No costs awarded

Hon. Judge