IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION
HOLDING AT MAITAMA
BEFORE HIS LORDSHIP: HON. JUSTICE H. B. YUSUF

SUIT NO: FCT/HC/CV/352/2018.

BETWEEN:

EXCELLENCY VENTURES LTD……CLAIMANT

AND

ARMONIA CONSTRUCTION LTD……DEFENDANT

JUDGMENT

By a Partnership Agreement executed by the parties herein on 15th December, 2014, the Claimant was to provide a suitable parcel of land for the development of 48 Housing Units consisting of 16 Units of 3-Bedroom Terraced Houses and 8 Units of Blocks of Flats containing 4 Units of 2-Bedroom Flats each. The project was specially designed for Staffer of the Economic Community of West African States (ECOWAS) in Abuja. In addition to the parcel of land mentioned above, the Claimant was also mandated under the Partnership Agreement to provide a takeoff grant of N15, 000, 000. 00 (Fifteen Million Naira) to enable the Defendant who is a developer to commence construction work at the project site. Once this was done, the Defendant would be solely responsible for the financial and

other technical aspect of the project. Parties had equally agreed that the Claimant will get a refund of its ₦15, 000, 000. 00 (Fifteen Million Naira) take off grant in addition to the sum of N20, 000, 000. 00 (Twenty Million Naira) being the value of the land provided by the Claimant for the housing project. This payment was to be made once construction work commenced at the project site. At the end of the project, the houses were to be sold and the profit shared in ratio 60 to 40 in favour of the Claimant. The Claimant discharged its obligation under the Partnership Agreement while the Defendant abandoned the project site after putting up some uncompleted structures. The Claimant through its Solicitors served Notice of Breach on the Defendant and requested that the Defendant take steps to correct the violations of the terms of agreement without any positive result. The Claimant in consequence terminated the Partnership Agreement and made some demands which were ignored by the Defendant. The Claimant has filed this action to seek redress. The reliefs sought as captured by paragraph 21 of the Statement of Claim are as follows:

1. **A declaration that the Partnership Agreement between the Claimant and the Defendant was breached by the Defendant.**

2. **A declaration that the Partnership Agreement between the Claimant and the Defendant was duly and legally terminated by the Defendant.**

3. **An Order compelling the Defendant to pay to the Claimant the sum of ₦13,000,000.00 (Thirteen Million Naira Only) being the balance of the refundable take-off capital paid by the Claimant to the Defendant.**

4. **An Order compelling the Defendant to pay to the Claimant the sum of ₦376,058,373.60 (Three Hundred and Seventy Six Million, Fifty Eight Thousand, Three Hundred and Seventy Three Naira, Sixty Kobo) being the loss occasioned to the Claimant by the breach of the partnership agreement by the Defendant.**

5. **An Order compelling the Defendant to pay to the Claimant the sum of ₦1,128,175,120.8 (One Billion, One Hundred and Twenty Eight Million, One Hundred and Seventy Five Thousand, One Hundred and Twenty Naira, Eight Kobo) being the loss occasioned to the Claimant by the Defendant's continuous occupation of the Claimant's land, being Plot 727, Dutse, Gudu District, FCT Abuja for three years after the termination of the partnership agreement, to wit, 2016, 2017 and 2018.**

6. **The sum of ₦376,058,373.60 (Three Hundred and Seventy Six Million, Fifty Eight Thousand, Three**

Hundred and Seventy Six Naira, Sixty Kobo) per annum being further loss to the Claimant from the date of the filing of this suit till the Defendant vacates and removes their structures from the Claimant's land, being, Plot 727, Dutse, Gudu District, FCT Abuja.

7. **A perpetual injunction restraining the Defendant either by themselves, agents, privies, representatives, assigns, workmen or any person claiming through them however and howsoever called or described from further occupation of the Claimant's land, being Plot 727, Dutse, Gudu District, FCT Abuja or interfering with the Claimant's use of his land for easement, work, sales, development, investment or for any reason whatsoever.**

8. **An Order compelling the Defendant to remove from the Claimant's land, all equipments, moribund structures, materials and all such other appurtenances which have altered and defaced the topography of the Claimant's land, being Plot 727, Dutse, Gudu District, Abuja, FCT.**

9. **The sum of N100,000,000.00 (One Hundred Million Naira Only) as general damages.**

10. **The sum of N500,000.00 (Five Hundred Thousand Naira Only) being the cost of this suit.**

11. 10% interest on the Judgment sum from the date of delivery of Judgment until the Judgment sum is fully liquidated.

The Defendant was served with the Originating Processes and all relevant hearing notices yet it elected not to defend this action as it neither filed a defence nor put up any representation or appearance throughout the hearing of this matter.

At plenary, the Claimant called Mr. Asibong E. Asibong, the General Manager (Operations) of the Claimant who testified as PW1 and tendered documents marked as Exhibits EVL 1 to EVL 2A. The Court then adjourned for Cross Examination of PW1 but the Defendant who ignored this window of opportunity was foreclosed on 27th June, 2019 and the witness accordingly discharged. The same scenario played out on 29th October, 2019 when the matter came up for defence as the Defendant was again absent and foreclosed on the application of Claimant's Counsel to that effect. Upon the foreclosure of Defendant's defence, the Court adjourned for adoption of final Written Addresses of parties.

What played out on 3rd November, 2020 when the matter came up for adoption is aptly captured by the record of the Court, to wit:

"C.Ogalangwu Esq. – For the Claimant:

Ogalangwu Esq - The Defendant and Counsel are absent. They are on notice against today. The case comes up for adoption of final Written Address. We served our address in January. They have not responded. We are ready to adopt."

Court - I am satisfied that the Defendant has notice against today.

Learned Counsel for the Claimant in his final written address formulated one issue for determination as set down below:

"Whether the Claimant has proved her case and therefore entitled to Judgment."

This issue was argued in about five paragraphs in the un-paginated Final Written Address filed on behalf of the Claimant and the gist of Counsel's submission is that the Defendant was in breach of the Partnership Agreement between parties thereby occasioning losses to the Claimant. That in the absence of any contrary evidence, the onus of proof placed on the Claimant is discharged based on the unchallenged evidence of the PW1. Learned Counsel cited two cases on the legal implication of unchallenged evidence. The cases are: **ALIKOR V. OGWO (2010) 5 NWLR (PT. 1187) 281 AT 312 PARA - D; AND MILITARY ADMINISTRATOR OF LAGOS STATE & 4 ORS. V. ADEYIGA (2012) 2 S.C. (PART 1) 68 AT 116.**

Now the case of the Claimant as borne out by the testimony of the PW 1 is that parties by their written contract agreed to jointly invest in a housing project for mutual profit. Exhibit EVL 1 is the contract document. Clause 3 of the Exhibit described the Claimant as the "First Party" with the following obligations:

OBLIGATIONS OF THE FIRST PARTY:

"3.1. The First Party shall provide land for the building of the Housing Units and construction of other physical infrastructures. To this end, the first Party hereby releases to the Second Party the possession of the property herein measuring 8,650m. provided that the title deeds to the property shall remain in the custody of the property owner until full payment of the sums agreed herein; provided further that nothing in this agreement shall preclude the property owner from releasing the title deeds to a Bank or other financier in fulfillment of a tripartite legal or equitable mortgage.

3.2. The First Party shall provide the sum of ₦15,000,000.00 (Fifteen Million Naira) only (the receipt whereof the Second Party hereby acknowledges) as seed/take-off capital towards the commencement of the

project. This sum shall be non-interest bearing and shall be refundable in full to the First Party."

In a related development, clause 6.1 made it abundantly clear how and when the Claimant is to be compensated with respect to its land and start-up capital. The clause read as follows:

6.1. PAYMENT FOR COST OF LAND AND REPAYMENT OF START-UP CAPITAL.

"The parties hereby agree that the First Party shall be paid the sum of ₦135,000,000.00 (One Hundred and Thirty Five Million Naira) only representing the cost of the land and refund of start-up capital contributed by the First Party in two equal installmental payments. The parties further agree that the first payment shall be made not later than 7 days from the date of the first payment."

The evidence before the Court indicated that the Claimant made land available for the housing project and equally provided the mutually agreed start-up capital of ₦15, 000, 000. 00 (Fifteen Million Naira). That the Defendant mobilized to site and commenced construction work only to abandon the project. That the Defendant paid the sum of N2, 000, 000. 00 (Two Million Naira) out of the start-up capital of N15, 000, 000. 00 (Fifteen Million Naira) thereby leaving an unpaid balance of N13, 000, 000. 00 (Thirteen Million

Naira) while the sum of N135, 000, 000. 00 (One Hundred and Thirty-Five Million Naira) being the value of the Claimant's land was left altogether unpaid. That Defendant left its equipment and other materials on Claimant's land. There is no denial of these lines of evidence. If that be the case, I agree with the learned Counsel to the Claimant that Courts are bound to act on unchallenged evidence except where such evidence is manifestly perverse and unreliable.

In **AMAYO Vs ERINMWINGBOVO (2006) 5 S.C (PT.1) 1,** the Supreme Court re-echoed the trite position of the Law that evidence that is neither attacked or discredited, and is relevant to the issues joined ought to be relied upon by a Judge. On this principle of Law, see also the cases of **NWABUOKU Vs OTTIH (1961) 2 NCNLR 2; ADEJUMO Vs AYANTEGBE (1989) 3 NWLR (PT.110) 417; and OKEKE Vs AONDOAKAA (2000) 9 NWLR (PT.673) 501.**

It is also the Law that where the Defendant such as in the instant case did not present any defence, the onus of proof is discharged on minimal evidence. See **EASTERN BREWERIES PLC & 2 ORS Vs NWOKORO (2012) LPELR- 7949 (CA)** where the Court of Appeal held as follows:

> **"Where evidence is uncontroverted, the onus of proof is satisfied on a minimal proof since there is nothing on the other side of the scale. See BURAIMOH Vs**

BAMGBOSE (1989) 2 NWLR (PT 109) 352. The learned trial Judge is right to have decided this case on the uncontroverted evidence of the Respondent alone and to give Judgment for him. This issue is therefore resolved against Appellants."

Claimant in this case has demonstrated that the Defendant was in breach of the Partnership Agreement between parties thereby leading to the termination of the agreement. As a matter of fact, when the Claimant through its Solicitors forwarded Exhibit EVL 2 to the Defendant on the breach of the Partnership Agreement and demanded compliance with the terms of Clause 6.1 of Exhibit EVL 1 the notice was ignored by the Defendant without any legal justification.

From what has played out in this Judgment, I am satisfied that Claimant has established its entitlement to the declaration sought under reliefs (1) and (2) of the claim. The declarations are accordingly granted.

Similarly relief 3 which is for recovery of the outstanding balance of N13, 000, 000. 00 (Thirteen Million Naira) on the N15, 000, 000. 00 (Fifteen Million Naira) take-off grant advanced to the Defendant is meritorious and accordingly granted as prayed.

I have also considered reliefs 4, 5 and 6 which in my view are anticipatory profit from the aborted Housing project and I must say that the reliefs are grossly misconceived. For example, relief 4 is for "**An Order compelling the Defendant to pay to the Claimant the sum of ₦376,058,373.60 (Three Hundred and Seventy Six Million, Fifty Eight Thousand, Three Hundred and Seventy Three Naira, Sixty Kobo) being the loss occasioned to the Claimant by the breach of the Partnership Agreement by the Defendant.**"

This relief is traceable to Clause 6.2.1 of Exhibit EVL1 titled "Project Profit Sharing Formula" which provides that:

> **"The First Party shall be entitled to and receive sixty percent – 60% of the profit accruable from the project i.e. N376,058,373.60 (Three Hundred and Seventy-Six Million, Fifty-Eight Thousand, Three Hundred and Seventy-Three Naira, Sixty Kobo) only. <u>This sum shall become due to the First Party no later than 3 business days from the date Housing Units are delivered to the Association."</u> (underlining supplied for emphasis)**

A careful reading of the clause would reveal that Claimant's entitlement to this claim is subject to the completion and delivery of the Housing project to the target Association for which it was built.

By Claimant's showing the project was abandoned by the Defendant. Hence the condition precedent for this head of entitlement was not met and therefore cannot be granted. To accede this head of claim is tantamount to re-writing the agreement of parties which is not legally permissible.

See **OIL SERVERV LTD V. L.A. IBEANU & CO. NIG. LTD 2008 2 NWLR (PT 1070)191** where the Court held as follows:

> **"Where parties have made a contract for themselves they are bound by the terms thereof. In interpreting the contract the Court at all times should give a meaning that reflects the plain and obvious intention of the parties and should never import into the contract ideas not patent on the face of the contract. It is only when the words used are not clear that the Court would try to find the intention behinds the words. On no account would the Court make agreement for the parties."**

Relief 5 in my view is a needless repetition of relief 4. For avoidance of doubt, the relief is for "An Order compelling the Defendant to pay to the Claimant the sum of ₦1,128,175,120.8 (One Billion, One Hundred and Twenty Eight Million, One Hundred and Seventy Five Thousand, One Hundred and Twenty Naira, Eight Kobo) being the loss occasioned to the Claimant by the Defendant's continuous

occupation of the Claimant's land, being Plot 727, Dutse, Gudu District, FCT Abuja for three years after the termination of the partnership agreement, to wit, 2016, 2017 and 2018." This claim is a rebranded version of relief 3. The only difference is that the claim is for three consecutive years. In other words, the Claimant under this head of claim is saying that it ought to recover anticipated profit for three consecutive years. Claimant cannot in good conscience claim that it has the right to claim annual profit of ₦376,058,373.60k for three consecutive years when there is nothing to show or suggest that parties by their agreement are meant to duplicate the housing project on a yearly basis. In any case, I have already held while dealing with relief 4 that the claim is premature and unsustainable. The claim in my view is neither here nor there and therefore liable to be and is hereby dismissed.

Relief 6 is similar to reliefs 4 and 5. The claim is misconceived and liable to be and hereby refused and dismissed for want of merit.

However, the Claimant having shown that it provided the land for the housing project in dispute is entitled to recover its property from the Defendant. Accordingly, the injunction sought under relief 7 is in order and therefore granted.

Relief 8 is for an Order compelling the Defendant to remove from the Claimant's land, all equipments, moribund structures, materials

and all such other appurtenances which have altered and defaced the topography of the Claimant's land, being Plot 727, Dutse, Gudu District, Abuja, FCT. From the facts so far disclosed in this Judgment, I am satisfied that this relief is in order and therefore granted as prayed.

Claimant is also claiming the sum of N100,000,000.00 (One Hundred Million Naira Only) as general damages ostensibly for breach of contract. Learned counsel to the Claimant did not address this claim in his final written address. Nevertheless, the principle of law regulating the award of general damages is fairly settled and admits of no controversy. In cases of damages for breach of contract the law is settled that it is only damages within the contemplation of parties vide their contract that is justifiable. Thus in the case of **AGU Vs GENERAL OIL LTD. (2015) LPELR - 24613 (SC)** the Supreme Court in clear terms re-echoed the Law on this point to the effect that:

> **"It is now well settled that in a claim for damages for breach of contract, as in the instant case, the Court is concerned only with damage which are natural and probable consequences of the breach or damages within the contemplation of the parties at the time of the contract."**

The Apex Court held further as follows:

"<u>When considering damages arising from a breach of contract, there is no room for damages which are merely speculative or sentimental unless these are specifically provided for by the express terms of the contract.</u> Also, in awarding damages in such a claim, the Court must be careful not to compensate a party twice for the same wrong. By the law against double compensation, a party who has been fully compensated under one head of damages for a particular breach or injury cannot be awarded in respect of the same breach or injury under another head. This Court has, in quite a number of pronouncements, sustained this principle against double compensation. In ALHAJI MUSTAPHA ALIYU KUSFA V. UNITED BAWO CONSTRUCTION CO. LTD (1994) 4 NWLR (PT. 336) 1, it was held that in cases of breach of contract, the damages that would be awarded are the pecuniary loss that may fairly and reasonably be considered as either arising naturally from the breach itself or such as may reasonably be supposed to have been in the contemplation of both parties at the time they made the contract as a

probable result of the breach." (underlining supplied for emphasis)

I have considered the entire facts and circumstances of this case and it is clear to me that the general damages claim is not within the contemplation of parties. There is nothing to support the award of general damages in this matter. The agreement of parties specifically stated that Claimant will be entitled to recover the take-off grant it disbursed to the Defendant. Relief 3 is the target of this grant which was grant as prayed. The next claim contemplated by parties is the value of the land provided for the failed project. Claimant could not pursue this claim because the project was abandoned by the Defendant and the land naturally reverts to the Claimant. As a matter of fact, in the course of this judgment, I have directed the Defendant to remove its abandoned structure on the Claimant's land. I have also made an Order of Perpetual Injunction restraining the Defendant from interfering with Claimant's land. The claim for general damages is misplaced as it would amount to double compensation which the law frowns at as aptly captured in the case of **AGU Vs GENERAL OIL LTD. (Supra)**. The claim is lacking in merit and accordingly refused and dismissed.

The Claimant is also claiming N500,000.00 (Five Hundred Thousand Naira) as cost of this suit. I have scrutinized the pleadings of the

Claimant and it is clear to me that the claim is neither pleaded or supported by evidence. If that be the case, the claim is not well founded. It is accordingly refused and dismissed.

The last claim is for 10% post Judgment interest and I form the view that in view of the commercial nature of the transaction between parties, the claim is meritorious. In reaching this conclusion, I am conscious of the point that the power to grant this head of claim is statutory as it is donated by Order 39 Rule 4 of the Rules of this Court 2018 and it is designed for the benefit of a victorious party. Evidence need not be given for it to be awarded. It is a discretional power which I hereby exercise in favour of Plaintiff as sought.

Signed
Hon. Justice H. B. Yusuf
(Presiding Judge)
28/01/2021