IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

HOLDEN AT GWAGWALADA

THIS MONDAY, THE 8TH DAY OF FEBRUARY, 2021

BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI – JUDGE

SUIT NO: CV/371/2015

BETWEEN:

STANFORD COMMUNICATIONS NIG. LTD ....PLAINTIFF

AND

1. PEOPLES DEMOCRATIC PARTY (PDP)
2. ELDER BOLAJI ANANI ………… **DEFENDANTS**
3. MR. JUDE OKORO

JUDGMENT

This case was initially filed under the undefended list procedure. On 18th January, 2016, the matter was transferred to the general cause list and pleadings were ordered. By a statement of claim dated 1st February, 2016 and filed same date in the Court's Registry, the Plaintiff claims against the Defendants jointly and severally as follows:

a. **The sum of N3,745,000.00(Three Million, Seven Hundred and Forty-Five Thousand Naira) only being the Defendants' indebtedness to the Plaintiff for the supply of Ramadan gift items for party faithful and VIP's.**

b. **Ten percent (10%) yearly interest only on the said sum of N3,745,000.00(Three Million, Seven Hundred and Forty-Five Thousand Naira) only from the date of judgment until the total liquidation of same**

c. The cost of action.

The process was then duly served on the Defendants. It may be necessary here to give in some detail how the Defendants approached the defence of this action.

From the Record and on service of the originating court process, only the 1st Defendant entered appearance and filed its statement of defence on 24th February, 2016. The Plaintiff filed a Reply to the 1st Defendant's Statement of Defence on 18th May, 2016. The 2nd and 3rd Defendants did not enter appearance and also did not file their statement of defence.

Consequently, the Plaintiff opened its case on 2nd November, 2017 and called only one witness, **Ms. Ann Izi** who testified as PW1. She deposed to two witness statements on oath dated 1st February, 2016 and 13th March, 2016 which she adopted at the hearing. She tendered in evidence the following documents to wit:

1. Copy of quotation for supply of Ramadan gift items dated 12th June, 2013 was admitted as **Exhibit P1.**

2. Copy of delivery note dated 26th July, 2013 was admitted as **Exhibit P2.**

3. Copy of Quotation for supply dated 12th June, 2013 said to contain the approval for the quotation was admitted as **Exhibit P3.**

4. Two (2) letters of reminder to the National Chairman and National Financial Secretary of 1st Defendant dated 24th February, were admitted as **Exhibits P4 (1) and (2).**

5. Letter of demand by the law firm of Anthonia Vincent & Partners dated 7th September, 2015 to the Acting National Chairman of 1st Defendant was admitted as **Exhibit P5**

6. The Certificate of incorporation of Plaintiff was admitted as **Exhibit P6.**

After the Examination in Chief of PW1, the Defendants failed to exercise their right to cross-examine, despite ample time given to them and their right to cross-examine PW1, was accordingly foreclosed on 19th June, 2018. The matter was then adjourned for defence.

At that point, Counsel for the 1st Defendant appeared in court and indicated that he was now appearing for the 1st and 3rd Defendants and filed an application for extension of time to now file a joint statement of defence dated 3rd August, 2018. They equally filed another application dated 31st October, 2019 to set aside the order of court foreclosing them from cross-examining PW1.

The court granted the former application and refused the latter and directed after the Ruling that the Defendants should open their defence but defence counsel pleaded for time to open their defence which the court reluctantly granted. The Plaintiff filed a Reply to the 1st and 3rd Defendants Joint Statement of Defence dated 15th August, 2018. Again on the Record, the Defendants were given more than ample time to open their defence but they failed to do so and their right to defend the action was equally then foreclosed and the matter adjourned for final address.

Now I recognize that fair hearing is a fundamental element of any trial process and it has some key attributes; these include that the court shall hear both sides of the divide on all material issues and also give equal treatment, opportunity and consideration to parties. See **Usani V Duke (2004) 7 N.W.L.R (pt.871) 16; Eshenake V Gbinijie (2006) 1 N.W.L.R (pt.961) 228.** It must however be noted that notwithstanding the primacy of the right of fair hearing in any well conducted proceedings, it is however a right that must be circumscribed within proper limits and not allowed to run wild. No party has till eternity to present or defend any action. See **London Borough of Hounslow V Twickenham Garden Dev. Ltd (1970) 3 All ER 326 at 343.** The Defendants have here been given every opportunity to defend this case but they exercised their right not to defend same.

In the final address of Plaintiff, only (1) one issue was raised as arising for determination as follows:

"Whether the Plaintiff has proved its case on balance of probabilities and therefore entitled to its claims and reliefs?"

I have carefully considered the pleadings and evidence led and it does appear to me that the issue raised by Plaintiff is apt but will be slightly modified by court hereunder. In the court's considered opinion, the single issue which arises for determination is simply: **whether the Plaintiff has established its case in the circumstances and therefore entitled to all or any of the Reliefs sought.**

This issue is not raised as an alternative but fully incorporates the issue raised by Plaintiff and has therefore succinctly captured the pith or crux of the contest that remains to be resolved shortly by court and it is on the basis of this issue that I would now proceed to consider the evidence and submissions of counsel.

Now to the merits or substance of the case.

At the beginning of this judgment, I had stated the claims of Plaintiff. The case clearly is founded on contract of supply. I had also indicated that the 1st Defendant initially file a statement of defence before a joint statement of defence was filed on behalf of both 1st and 3rd Defendants. I also indicted that no evidence was led whatsoever in support of these processes. The implication in law is that in the absence of evidence in support of these processes, the statement of defence filed on behalf of both 1st and 3rd Defendants are deemed as lacking probative value and abandoned. In **N.I.M.V. LTD V F.B.N. Plc (2009)16 N.W.L.R (pt.1167)411at 437 D.E**. the Court of Appeal stated thus:

"Pleaded facts on which no evidence was adduced in support are deemed abandoned. Pleadings are the body and soul of any case in a skeleton form and are built and solidified by the evidence in support thereof. They are never regarded as evidence themselves and if not supported by evidence are deemed abandoned."

As a logical corollary and flowing from the above, it is equally accepted principle of general application that the Defendants are in the circumstances assumed to have accepted the evidence of the Claimant and the trial court is at liberty to act on the Claimants' unchallenged evidence.

Notwithstanding the above general principle, the court is however still under a duty to examine the established facts of the case and then see whether it entitles the claimant to the relief(s) it seeks. I find support for this in the case **of Nnamdi Azikiwe University vs. Nwafor (1999) 1 NWLR (pt. 585) 116 at 140-141** where the Court of Appeal per Salami JCA expounded the point thus:

"The plaintiff in a case is to succeed on the strength of his own case and not on the weaknesses of the case of defendant or failure or default to call or produce evidence … the mere fact that a case is not defended does not entitle the trial court to over look the need to ascertain whether the facts adduced before it establish or prove the claim or not. In this vein, a trial court is at no time relieved of the burden of ensuring that the evidence adduced in support of a case sustains it irrespective of the posture of the defendant…"

A logical corollary that follows the above instructive dictum is the attitude of court to the issue of burden of proof where it is not satisfactorily discharged by the party upon which the burden lies. The Supreme Court in **Duru vs. Nwosu (1989) 4 NWLR (pt. 113) 24** stated thus:

"… a trial judge ought always to start by considering the evidence led by the plaintiff to see whether he had led evidence on the material issue he needs to prove. If he has not so led evidence or if the evidence led by him is so patently unsatisfactory then he had not made out what is usually referred to as a *prima-facie* case, in which case the trial judge does not have to consider the case of the defendant at all."

From the above, the point appears sufficiently made that the burden of proof lies on the Claimant to establish its case on a preponderance of credible evidence to sustain the claim irrespective of the presence, absence or indeed disposition of the Defendants. See **Agu v. Nnadi (1999)2 N.W.L.R (pt.589)131 at 142; Oyewole V. Oyekola (1999)7 N.W.L.R (pt.612)560 at 564.**

Because the case of Claimant is rooted in contract, it is important to situate what a contract entails in law. Generally in law, a contract is an agreement between two or more parties which creates reciprocal legal obligations to do or not to do a particular thing. To bring a contract to fruition where parties to the contract confer rights and liabilities on themselves, there must be mutual consent and usually this

finds expression in the twin principles of offer and acceptance. The offer is the expression of readiness to contract on terms as expressed by the offeror and which if accepted by offeree gives rise to a binding contract.

It should be pointed out clearly that the offer itself is not the contract in law but the taking of preliminary steps that may or may not ultimately crystallize into a contract where the parties eventually become ad-idem and where the offeree signifies a clear and unequivocal intention to accept the offer. See **Okubule Vs Oyegbola (1990)4 N.W.L.R (pt. 147) 723.**

Putting it more succinctly, the basic elements in the formation of a contract are:

1. The parties must have reached agreement (offer and acceptance)
2. They must intend to be legally bound, that is an intention to create legal relation.
3. The parties must have provided valuable consideration.
4. The parties must have legal capacity to contract.

See Alfotrim Ltd VsA.G Fed (1996)9 NWLR (pt.475) 634 SC; Royal Petroleum Co. Ltd.Vs FBN Ltd (1997)6 NWLR (pt.570) 584: UBA Vs. Ozigi (1991)2 NWLR (pt.570)677.

It is important, however, to note that these five ingredients are autonomous units in the sense that a contract cannot be formed if any of them is absent. In other words, for a contract to exist in law, all the five ingredients must be present. See the cases of **Sobanke V. Sarki (2006) All F.W.L.R (pt.292)131; Orient Bank of Nigeria Plc V. Bilante International Ltd (1997)8 N.W.L.R (pt.515)37; Omega Bank Nigeria Plc V. O.B.C Ltd (2005)All F.W.L.R (pt.249)1964.**

Let us now evaluate the evidence to situate whether the Plaintiff has creditably made a case out putting the court in a commanding height to grant the Reliefs sought notwithstanding the failure of the Defendants to defend this action.

On the pleadings, the case presented by Plaintiff is simple and fairly straight forward. The case of the Plaintiff is that supplies were made to the 1st Defendant at its request but that years after the supply of the goods, the 1st Defendant has refused to live up to its commitments, by paying for the goods supplied.

Let us perhaps situate the case of the Plaintiff and there is no better template to do so than their own pleadings. Paragraphs 6-10 captures the grievance of the Plaintiff in the following terms:

"6. The Plaintiff avers that sometimes in June, 2013, the 1st Defendant, through the 2nd Defendant, requested the plaintiff to supply Ramadan gift items for the party's faithful and VIP's.

7. Pursuant to the 1st Defendant's request, the plaintiff submitted a written quotation for the supply of Ramadan gift items for the party faithful and VIP's to the 1st Defendant on the 12th June, 2013 and same was signed by the 2nd Defendant and approved by Alhaji Bamanga Tukur, the 1st defendant's then National Chairman. A copy of the written quotation dated 12th June, 2013 is hereby pleaded, attached and marked Annexure PA. Notice is hereby given to the defendants to produce the original copy of the said document at the hearing of this case.

8. Consequent to the 1st defendant's approval of the plaintiff's written quotation for the supply of the said Ramadan gift items dated 12th June, 2013, the plaintiff supplied the 1st defendant the said Ramadan gift items, to wit; 100 Bags of rice, 25 Rams, 100 Bags of salt and 100 Tins of Ground Nut Oil, all amounting to N3,745, 000.00 (Three Million, Seven Hundred and Forty-Five Thousand Naira) only and same were duly received b the 3rd Defendant (the 1st Defendant's Asst. Store Officer), on behalf of the 1st defendant, on the 26th July, 2013 vide the plaintiff's delivery note dated 26th July, 2013. A copy of the plaintiff's delivery note dated 26th July, 2013, is hereby pleaded, attached and marked Annexure PB. Notice is hereby given to the defendants to produce the original copy of the said document at the hearing of this case.

9. After the supply and receipt of the said items by the 1st Defendant, through the 3rd Defendant, the defendant approved the payment for the said items

vide its officials' directive on the written quotation dated 12th June, 2013. A copy of the said written quotation dated 12th June, 2013, evidencing the 1st and 2nd Defendants' approval of payment for the supplied items is hereby pleaded, attached and marked Annexure PC. Notice is hereby given to the defendants to produce the original copy of the said document at the hearing of this case.

10.The 1st Defendant however refused and/or failed to pay for same, despite its acknowledgment of the receipt of the supplied items and approval for payment of same."

The case from above and as stated earlier is fairly straightforward. What is left really is to situate proof of these averments on the evidence elicited by Plaintiff at trial. It is trite principle of the law that averments in pleadings is not evidence. Evidence must be led to support the pleadings otherwise such pleadings would be deemed to be abandoned. It cannot be right in law for any court to treat averments in pleadings without evidence as evidence of matters averred therein. See **Awojugbagbe Light Ind Ltd V. Chukwu (1995)4 N.W.L.R (pt.390)379 at 427; Omo-Agege V. Oghojafor (2011) (pt.1234)341 at 353.**

Indeed on the authorities, the oral or documentary evidence must be accurate in the sence that it brings out the facts as averred in the statement of claim. In other words, the evidence led must dance to the same music as in the statement of claim. Where the evidence led does not bring out the facts in the statement of claim, or where there is material contradiction, the court is entitled to hold and will hold that the claimant did not prove his case. Here the court uses the statement of claim as a reference point because that is where the facts of the case originally germinate. See **Boniface V Anyika & Co. Lagos (Nig) Ltd V. Uzor (2006) 15 NWLR (pt.1003) 560 at 572 B-C**.

The key question now is whether the evidence on record has brought out the facts in the statement of claim. Now from **paragraph 6** of the claim above, the case is that the 1st Defendant through the 2nd Defendant who is said to be the 1st Defendant's National Financial Secretary "requested" the Plaintiff to supply Ramadan gift items to party Faithfuls and VIP's. A request suggests the act of asking politely or formally for something. There is however nothing on the evidence, however minimal, situating how this request was made; whether oral or

written or indeed if any request was even made at all. If a request was made as pleaded, there is clearly nothing in evidence to support the averment that a request was made.

Now in what appears to be a narrative not entirely consistent with paragraph 6, in **paragraph 7**, the claimant stated that pursuant to this request, they submitted a quotation on their letter head **"Stanford Group"** titled **"Quotation for the supply of Ramadan Gift items for party Faithfuls and VIPs"** vide **Exhibit P1** for the supply of Bags of Rice, Ram, Salt, Groundnut oil in the total sum of ₦3,745,000 (Three Million, Seven Hundred and Forty Five Thousand Naira Only).

What however is strange is that in the **Exhibit P1**, the following appears as follows:

"While we do hope that the quantity of the above quotation can be increased or reduced, we look forward to a favourable consideration of our proposal."

The above will appear to contradict the claim or pleading that the 1st Defendant through 2nd Defendant **"requested"** for the supply of the gift items referred to earlier. **Exhibit P1** clearly donates the position that it was the claimant that made a proposal or formally solicited from the 1st Defendant via **Exhibit P1** dated 12th June, 2013 for the supply of certain items. This exhibit clearly recognizes that the Defendant could increase or decrease the quantity of items sought to be supplied or even reject the proposal outright.

Now if Exhibit P1 is a proposal and I hold that it is, the proposal is obviously subject to it been **accepted** by the 1st Defendant. An acceptance properly understood is an unqualified expression of assent to the terms as proposed by the offeror. In law, acceptance of an offer can be by the conduct of parties, their words or by documents that may have passed between them. See **Royal Petroleum Co. Ltd V. FBN Ltd (1997)6 N.W.L.R (pt.510)584.** It is the facts in each case that determines whether there was an acceptance or not.

Now in **paragraph 7**, claimant pleaded that the proposal **Exhibit P1** was signed by 2nd Defendant and **"approved"** by **"Alhaji Bamanga Tukur, the 1st Defendant's then chairman."** The question here is where is the evidence to support this critical averment of **approval** or **acceptance** of the proposal of claimant via Exhibit P1. To support this paragraph, the Plaintiff is clearly relying

on the same copy of its proposal, **Exhibit P1** dated 12th June, 2013 as constituting the acceptance or approval. Now a cursory look at the said exhibit will show that there is a signature on it said to be that of the National Financial Secretary (NFS) and a faint word **"approved"** appears on it too said to have been written and signed by the former National Chairman of 1st Defendant, **Alhaji Bamanga Tukur**. No more. There is absolutely no evidence before me showing that the signature on **Exhibit P1** belongs to Elder Anani Bolaji, the NFS and also that the word **"approved"** was written by the then National Chairman of 1st Defendant, Alhaji Bamanga Tukur as specifically pleaded. There is no name to either the signature or the writing **"approved"** on **Exhibit P1** and the court cannot speculate. It is not open to the Claimant to alter or make interpolations at this stage to **Exhibit P1** to suit a particular purpose. See **Section 128 of the Evidence Act. Exhibit P1** thus speaks for itself.

Most importantly, the court cannot on the basis of the unascertained signature and the word **"approved"** written again by an unidentified person speculate as to the import of same and whether it amounts to an acceptance of the proposal or not. It is strange that nobody at all was called or summoned from the 1st defendant familiar with these officials to speak to this document, its contents and the signatories. It is perhaps necessary to add that there is in law a clear dichotomy between admissibility of a document and placing probative value on it. While admissibility is based on relevance, probative value depends not only on relevance but also on proof. An evidence has probative value if it tends to prove an issue. See **Buhari V. INEC (2008) 19 NWLR (pt.1120) 246 at 414 G-H.** Without evidence demonstrating the import of the document and the writings on it, it will be difficult to accord much value to this document without more.

In such very fluid and unclear circumstances, it is difficult to situate the basis of the contention of claimant that the 1st Defendant accepted their proposal to supply certain items on the basis of writings by unidentified persons on their proposal and then attribute it to 1st Defendant. It follows that there is here no valid and legal basis to support or ground an unqualified acceptance or expression of assent to the terms proposed by the claimant in **Exhibit P1** and this clearly gravely undermines the very basis or foundation of the case of plaintiff.

In the context of this absence of a streamlined and clear acceptance, in **paragraph 8** above, the Claimant made the case that they then supplied the gift items at the cost of N3,745,000 and that it was duly received by 3rd Defendant, (the 1st Defendant's Assistant Store Officer) on behalf of 1st Defendant on 26th July, 2013 vide the Plaintiffs' delivery note dated 26th July, 2013 tendered in evidence as **Exhibit P2.**

Without a clearly established offer and acceptance, it is difficult to situate the legal and factual basis of any supply said to have been made by claimant. I have here, out of caution, carefully looked at the delivery note which clearly was prepared by the Plaintiff. Apart from the name **"Jude Okoro"** written in long hand that appeared on the clients signature column; the address of 1st Defendant that is written on it and that certain items were supplied all again written in long hand, there is absolutely nothing on the document showing that 1st Defendant received the goods supplied as itemized in the exhibit and as pleaded in paragraph 10. There is nothing on it signifying that anything was received on behalf of 1st Defendant. There is no official stamp for example of PDP on Exhibit P2 or any document from the 1st Defendant like a Receipt paper or invoice indicating receipt of the materials. It is difficult to accept that goods or items will be supplied and there is absolutely no credible and clear evidence of any kind or even a paper trail from the recipient of the items or goods showing that it indeed received the goods or items. This matter cannot be left to guess work or speculation.

It is indeed difficult to accept that business can be conducted in such cavalier manner. If parties accept to conduct their business in such unclear manner, that is their prerogative, but then the success of such transaction, in the event of challenges, is left to individual conscience and good faith. Where any of the parties however refuses to live up to its commitments and it becomes a matter for judicial intervention, then there is the problem or challenge of proving a case on preponderance of clear and credible evidence. Without critical evidence to support a case, it is difficult to see how such a case would fly. Here again, it is difficult to accept that items were supplied and received by 3rd Defendant on behalf of 1st Defendant in such unclear manner.

Again, in **paragraph 9** above, the Plaintiff then pleaded that after the supply and receipt of the items, that the 1st Defendant again approved the payment for the said

items vide **"officials directive"** on the written quotation dated 12th June, 2013. This was tendered as **Exhibit P3.**

Now what is strange here is that **Exhibit P3** dated 12th June, 2013 is the same document already tendered as **Exhibit P1.** Indeed the document appears to be the same and copied from the same source. The only difference is that part of the written directives on **Exhibit P3** clearly must have been blocked when the photocopy was effected to produce **Exhibit P1.** To all intents and purpose, they are one and the same document. I leave it at that.

Now it is true that certain unclear writings may have appeared in **Exhibit P3** but it is difficult to situate the basis of the contention that these writings amounted to an approval for payment. PW1, the witness for the Plaintiff clearly does not work with 1st Defendant and is certainly not an official of 1st Defendant so it is difficult to situate the basis of the contention that the writings by certain unidentified people amounted to an approval for payment. In any event, there is nothing in the **"writings"** as far as I can see and deduce where an approval for payment was given. All that can be discerned from the writings are **"above for your attention"; "yours above refers"** and **"approval has been given by NC and it is for your necessary action."**

Now, whether the writings are read individually or collectively, it is difficult to situate how they can be said to aggregate to approval of payment for any particular contract. Again at the risk of sounding prolix, there can't be any room to speculate or to reach any conclusion outside what was demonstrated in open court.

In the absence of clear evidence or production of the **"officials"** who gave the directives or authors of the alleged writings or indeed somebody from 1st Defendant, conversant with the writings of these key officials of 1st Defendant, it will be difficult if not impossible to accord value to the clearly speculative evidence of PW1 on the issue of alleged purported approval for the payment for the supplies.

It is true that letters of demand vide **Exhibit P4(1 and 2) and P5** may have been written to the 1st Defendant but in the absence of clear and credible evidence situating a valid contract for the supply of the gift items, the case of Plaintiff, unfortunately stands undermined or compromised.

It is therefore difficult by the confluence of facts evaluated in this case to situate a legally binding contract in the present situation. The question of whether or not parties have agreed to confer rights and impose liabilities on themselves cannot be a matter for speculation or guess work or even the address of counsel no matter how beautifully written and articulated. That question is one of whether the mutual assent between them which must be outwardly manifested can be situated within the evidence. Indeed the test of existence of mutuality is objective and where there is such mutuality, the parties are then said to be *adidem.* In the absence of mutuality, then there is no consensus *adidem* and therefore any claim or pretention to the existence of a contract in such circumstances is compromised. See **Bilante Int Ltd V NDIC (2011)15 NWLR (pt.1270)407 at 423 C-F.**

Flowing from the above and as a logical corollary, the point must be underscored that on the evidence of PW1 and Exhibits tendered**,** there is no template to situate an enforceable contract entered into by 1st Defendant and Plaintiff.

In **AG Rivers State V. Akwa Ibom State (2011)8 N.W.L.R (pt.1248)3 at 49, Katsina Alu C.J.N** stated as follows:

"It is the duty of the trial Court to determine whether there is a binding contract between parties and this is done by considering the evidence led. The documentary evidence tendered and accepted by the court and the oral testimony in line with pleaded facts. The terms of a written contract on the other hand are easily ascertained from the written agreement. The traditional view is to look for offer, acceptance and consideration. In the absence of any of them, there is no valid contract. Although that is not always the case. Valid contracts can exist in the absence of offer, acceptance and consideration such as in settlement contracts. The overriding consideration in determining if there is a binding contract between the parties is to see whether there was a meeting of the minds between the parties, that is, consensus *ad-idem.* In all cases of contracts, there must be consensus *ad-idem*.

The point flowing from the above decision is the critical role of evidence as a fundamental basis for any decision relating to the existence and the precise parameters and application of any relationship.

The only point to reiterate or underscore is that this case may not have been defended, but this does not obviate the need or imperative for proof of the critical elements of the case of Plaintiff. It is equally true that a court is not, in all circumstances, bound to accept as true, evidence that is uncontradicted where such evidence is willfully corrupt or corruptly false, incredible, improbable or sharply falls below the standard expected in a particular case. See **NEKA B.B.B Manufacturing Co Ltd V. ACB Ltd (2004)2 N.W.L.R (pt.858)521 at 530, 551**

Before I drop my pen finally, let me also add that cases of this nature brings home the point for parties who engage in contractual relationship to have as much as possible, a structured premise streamlining clearly the basis of a particular relationship; that way, when there is any problem or dispute, there won't be difficulties in determining what parties agreed to.

In this case, parties may possibly have had a contractual relationship but on the evidence, there is really nothing precisely donating this contract and its terms or what was agreed to and the court cannot speculate. In the light of this obvious challenge, it then became a herculean task to then even determine that the 1st Defendant has by words or conduct evinced an intention not to perform or expressly declared that it is unable to perform its obligations with respect to a defined obligation in some essential respect.

The point to again underscore is that the whole trial process, whatever its imperfections is completely evidence driven. Not just any kind of evidence but admissible evidence with probative value, qualitative and with credibility. Where evidence lacks these key values and is improbable, inherently contradictory, feeble and or tenous, that would amount to a failure of proof. See **A.G. Anambra State V A.G Fed. (2005) All F.W.L.R (pt.268) 1557 at 1611; 1607 G-H**.

On the whole, the plaintiff has clearly on the evidence failed in establishing that it had any kind of legally enforceable contractual relationship of supply with the 1st defendant. It is impossible to situate a breach of contract where no contract exist or has been positively identified to exist. In **AG Rivers State V. AG Akwa-Ibom State (supra),** the Apex Court stated further as follows:

"There can be no breach of a non-existent contract. Once it has been determined that no enforceable contract exists between the parties or that what took place between the parties did not translate to a contract between them, the foundation of the relief claimed collapse with the absence of a cause of action, that is, breach of contract. There can be no consequence of a breach of contract when no contract exists. In the instant case, the appellant did not prove any enforceable contract which was binding on the respondent. Therefore, there was no plausible reason for an award of general damages for breach of contract in the circumstance. (Best Nig. Ltd V. Blackwood Hodge (Nig) Ltd. (2011)5 N.W.L.R (pt.1239)95 Reffered to) (pp.427, para F-H; 429, para E-G).

The above illuminating pronouncement has sounded the final death kneel of this case. The single issue raised for determination is thus answered in the negative. As a consequence of this holding, all the reliefs sought by Plaintiff are not availing. You cannot put something on nothing and expect it to stand is a well known legal axiom.

The Plaintiff's case therefore completely fails and it is accordingly dismissed.

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Hon. Justice A.I. Kutigi

<u>Appearances</u>:

1. **S.G. Kekere-Akpe, Esq., for the Plaintiff**

2. **O.J. Otokpa, Esq., for the 1st and 3rd Defendants.**