

IN THE HIGH COURT OF JUSTICE OF THE F.C.T.

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT KUBWA, ABUJA

ON WEDNESDAY THE 16TH DAY OF JUNE, 2021

**BEFORE HIS LORDSHIP: HON. JUSTICE K. N.
OGBONNAYA**

JUDGE

SUIT NO.: FCT/HC/CV/2893/2015

BETWEEN:

JOSEPH ONYEMAECHI JIDEOBI ----- } PLAINTIFF
(Trading under the name and style of JJOG PROFESSIONAL SERVICES)

AND

1. NIGERIA SOCIAL INSURANCE TRUST FUND
MANAGEMENT BOARD
 2. MANAGING DIRECTOR NIGERIA SOCIAL
INSURANCE TRUST FUND MANAGEMENT BOARD
- } DEFENDANTS

JUDGMENT

The Plaintiff filed the initial Writ on the 7th of October, 2017. And in an amended Writ, the Plaintiff, Joseph Onyemaechi Jideobi trading under the name and style of JJOG Professional Services instituted this Suit against Nigeria Social Insurance Trust Fund Management Board and Managing Director, Nigeria Social Insurance Trust Fund Management Board claiming the following:

- 1. That Plaintiff was in charge of all entities in the Power and Energy Sector including those entities owned by the Oil Companies for the period of July 2011 and February 2013.**

- 2. An Order to compel and pay to the Plaintiff all the commissions accruable from all remittances received and credited into the account of the Defendant by all employer/entities in the Energy and Power Generation/Distribution/Marketing Sector including all those owned and/or managed by Oil Companies nationwide for the period of July 2011 and February 2013. The Commission calculated on the basis of 7.5%.**

- 3. Payment of initial sum of Forty Six Million, Seven Hundred and Seventy Thousand Naira (N46, 770,000.00) covering the initial remittances in respect of their NERC Licensed Afam and Ompal Power Plants which the Plaintiff was fully aware of.**

- 4. Computation and payment of the sum due to Plaintiff on remittances made by all Independent Power Producers (IPP) Nationwide including those owned by Oil Companies (DISCOS) in Northern Nigeria for March 2013 to February 2014 as per Defendant's Letter of Engagement dated 8/2/13 to Plaintiff and all remittances made pursuant thereto after the date for the period covered by the Letter of Engagement.**

5. Five Hundred Million Naira (₦500, 000,000.00) as General Damages for the refusal to make good the Plaintiff's commission on the received remittances from Energy and Power Sector.

6. Omnibus prayer.

The Defendants filed an amended Statement of Defence. The Plaintiff Counsel called the Plaintiff, a sole Witness. He testified and tendered 9 documents. The Plaintiff subpoenaed a Witness – Zenith Bank, which is the Defendants' Zenith Bank Account Officer, who tendered the Statement of Account evidencing monies received by the Defendant from the Energy and Power Sector including from Shell Petroleum Development Corporation (SPDC) and from AGIP too. On their own part, the Defendants called one Witness who did not tender any document.

In their Final Address the Defendant Counsel raised 6 Issues for determination which are in terms of the Reliefs sought. Responding to the six (6) Issues raised seriatim the Defendant Counsel submit in summary that the Plaintiff failed to establish that he was engaged to collect ECA Contribution from Power Entities in the Oil and Gas Sector over the relevant period. That the Plaintiff also failed to establish that he fulfilled the conditions of his engagement which would entitle him to payment of any commission. Also that the Plaintiff failed to establish that remittances were made to the 1st Defendant Board of ECA Contribution for the Power Sector (assigned to him) over the relevant period.

Also that the Plaintiff failed to establish breach of duty or contract entitling him to any award of Damages. That award of General Damages is not permitted in the circumstance of his claim. The amended Court Processes are void and original and original Processes are incompetent. That the jurisdiction of the Plaintiff's claims is exclusively vested on the Federal High Court not in the State/FCT High Court. That the engagement of the Plaintiff was in breach of the Public Procurement Act and that the Suit is barred by Public Officers Protection Act. He urged the Court to dismiss the Suit based on the above outlined reasons.

In their Final Address, the Plaintiff Counsel raised a sole Issue for determination which is:

“Whether from the facts and evidence adduced in this case, the Claimant has successfully proved her case against the Defendant so as to be entitled to the grant of Reliefs sought before this Court.”

The Plaintiff Counsel argued and submitted as follows: that the matter of appointment of the Plaintiff is a matter of fact not of law. That Plaintiff tendered the Letter of his Appointment. That letter was dated 7/10/21. He submitted in the said letter that the Plaintiff was appointed as a Consultant to collect contribution from all employer of the Energy and Power Sector in Nigeria.

That by the letter dated 4/7/11 the Defendant introduced Plaintiff to SPDC and AGIP as their Contribution Collection Agent. That both letters were admitted in evidence. Again, that by letter of 6th July,

2012 the Defendant further introduced the Plaintiff to Ministry of Power as Contribution Collection Agent for the Power Sector. That Plaintiff in turn issued several Joint Demand Notes described as NSITF – JJOG Joint Demand Notes for Relevant years to AGIP and SPDC. That these documents clearly show and confirmed that Plaintiff was appointed Consultant of the Defendant for the collection of the said Contribution in the Energy and Power Sector. That the documentary evidence are more reliable and had further buttressed credibility of the oral evidence by Plaintiff/PW1. He referred to the case of:

**Ogbeide V. Osifo
(2007) 3 NWLR (PT. 1022) 427**

That the Defendant who challenged the said appointment of Plaintiff as Contribution Collection Agent for both AGIP and SPDC did not tender any single document to challenge the document tendered by Plaintiff. They did not also contradict the documents tendered by Plaintiff – the Letters of 7/10/11 and 4/7/12 as well as the several/various Joint Demand Notes by the Plaintiff and Defendant to AGIP and SPDC.

That the letter of 8/2/13 which was tendered and admitted in evidence shows clearly that the Plaintiff was the substantive Consultant for the Energy and Power Sector including Oil-owned Companies of Power and Energy Sector, as at 7th February, 2013. That the said letter excluded the oil-owned Energy and Power Sector from Claimant's scope of operation. That it is important to note that Plaintiff cannot be disengaged from doing an act if he was never engaged to do the act in the first place.

That the Claimant is entitled to the sum of Forty Six Million, Seven Hundred and Seventy Thousand Naira (N46, 770,000.00) only. That in line with his appointment as a Consultant by Defendants, Plaintiff issued Demand Notes and letters to SPDC and AGIP. He also issued same to other entities in the Power and Energy Sector. Plaintiff did a follow up in making sure that these entities made remittances. That based on the Demand Notes, SPDC and AGIP specifically made several remittances to the tune of Six Hundred and Twenty Three Million, Six Hundred Thousand Naira (N623, 600,000.00) as the shown by the Defendant's Statement of Account tendered in evidence.

Plaintiff in line with Letter of Appointment sent to the Defendant letter demanding the payment of 7.5% of the remittances made by SPDC and AGIP amounting to Forty Six Million, Seven Hundred and Seventy Thousand Naira (N46, 770,000.00): the position/fact the Defendants did not deny. That since the Defendant did not answer to the said letter it tantamount to admission of that fact as what is not denied is deemed admitted. He referred and relied on the cases of:

Trade Bank V. Chami
(2003) 13 NWLR (PT. 836) 216

Gwari V. Ebule
(1990) 5 NWLR (PT. 148) 201

That the Defendants not responding to the said demand letter means admission of that fact and it confirms and led credence to the Plaintiff's evidence before this Court. That the Claimant has shown the existence of the

Appointment Letter, Demand Notes, Letters to SPDC and AGIP, Remittances made by SPDC and AGIP in compliance with the Plaintiff's Demand Notes and letters as well as the Defendants' refusal to pay the accrued percentage on the received remittances.

That the Court is required by law to make an Order of specific performance on payment of the Plaintiff's commission by Defendants as it is one that is conferred to the enforcement of positive contractual obligations, same binding on the Defendant. He urged Court to grant all the Claimant's Reliefs as prayed.

COURT:

In this case, going by the submission in the Final Addresses of the parties for and against, can it be said that there is merit in the Claim of the Plaintiff going by the testimony of the PW1 and the 9 documents which he had used to support his Claim? Can it be said that the Defendants engagement of the Plaintiff is a breach of the Public Officer Procurement Act and that there was no breach of contract entitling the Plaintiff to award of Damages? Has the Plaintiff been able to establish that he was engaged as he claimed and that he had fulfilled the condition for the Engagement to be entitled to payment of the commission? Has he been able to establish that there were remittances made to the Defendants' Board of ECA contribution for the Power and Energy Sector over the relevant period?

It is the humble view of this Court that the Plaintiff was able to establish that he was lawfully and legitimately engaged by the Defendants to do the duty assigned to

him in that regard. He was also able to establish that there were remittances and that he is entitled to be paid the commission. Most importantly, he was able to show that the Defendants were in breach of the contract, the simple contract they entered with him by virtue of the Letter of Appointment. He was able to show that he is entitled to the commission 7.5% of the remittances collected as agreed by the parties in the contract. The contract agreement between him and the Defendant was not in breach of the Public Officer Procurement Act as the Defendants were erroneously postulating. The contract between him and the Defendants was a simple contract which is not affected by the Public Officer Procurement Act – S.2 of the Act. The contract falls within the exception to the said provision of the Public Officer Procurement Act. The Plaintiff is not a stranger to the Defendants and their contract. He was lawfully and legitimately engaged. He successfully performed his own obligation under the contract. He would not have been disengaged if he was not initially engaged by the Defendants. He is not a meddlesome interloper as the Defendants are trying to portray. The Defendants know him and they cannot deny that. The Defendants, like all parties in every contract, are bound by the contracts they have gladly, voluntarily and joyfully entered into – **Pacta Sunt Servanda**. The Defendants cannot renege on that contract after the Plaintiff had performed his own obligation under the contract. The Plaintiff had established all that by the watertight imperatable testimony of the PW1 who is the Plaintiff himself. He had also tendered very credible documentary evidence – Nine (9) solid concrete and credible documents all speaking

louder than human voice, showing and screaming that the Plaintiff is entitled to his Claims having performed his own side of the obligation under the contract.

It is imperative to state that the Defendants who claimed that the Plaintiff was wrongfully engaged never tendered a single document to counteract the documents tendered by the Plaintiff. They never denied that remittances were made as shown by the subpoenaed documents tendered by the subpoenaed Witness. They did not deny the signing and issuing of the letters. The Demand Notes by the Plaintiff were all there to further buttress the Claims and to show that it was based on those Demand Notes that SPDC and AGIP made or were prompted to make their remittances. The Plaintiff did not, out of the blues, write those letters. The companies did not rise up on their own volition without the Demand Note to make remittances. There is evidence that the remittances were made after the Plaintiff had formally, as an appointed Consultant of the Defendants, made demands especially the Joint Demand Notes after he had introduced himself to the companies: especially by notes of 3/12/12 and 21/1/13 to AGIP and SPDC and other entities in the Energy and Power Sector. If the Plaintiff did not write those notes – 3/12/12 and 21/1/13, the companies and other entities would not have made any remittance of July 2011 to February 2013. Through those credible documentary evidences and the water and airtight oral testimonies, the Plaintiff established his case and he deserves his commission/wage 7.5% of the remittances having shown evidence that there were remittances of Six Hundred and Twenty Three Million, Six Hundred

Thousand Naira (~~N~~623, 600,000.00) made by SPDC and AGIP through Zenith Bank and other Banks during the pendency of the Plaintiff's engagement as a Consultant to Defendants. All based on the Agreement and Letter of Appointment. All the above is the view of this Court. That is why this Court holds that Plaintiff has established his case and deserved to be paid for the job he did.

A closer look at the documents tendered by the Plaintiff in support clearly shows that the Plaintiff's Claim is legitimate and meritorious.

To start with, the Letter of Appointment dated 7/10/11, clearly shows that the Plaintiff was legally appointed and engaged by the Defendants. The Letter was titled:

“Appointment as Consultant For Collection of Contribution Under Employees Compensation Act (ECA) 2010.”

The said letter states:

“... I am pleased to convey the Board's approval appointing you as one of the Consultants for the Collection of Contributions accruing to the Fund from Employers ...”

The letter stated the scope of work which among other things are:

- (1) Serve Employers with Demand Notices ... for the purpose of the contribution.**
- (2) ... ensure remittances of all Contribution.**
- (3) Demand and forward to the fund evidence of remittances made by the assigned employers.**

The letter stated the scope of the Plaintiff's service thus:

“You are assigned to cover all employers in the Energy and Power Generation/Distribution/Marketing in Nigeria.”

The letter stated the duration which was 7th October, 2011 – end of March 2012.

“Your appointment will commence on 7th of October and to last till end of March.”

It equally stated the commission which the Plaintiff is entitled to which for the service rendered thus:

“You will be paid a commission of 7.5% (percentum) based on actual amount remitted and received into the Fund Accounts.”

From the above, it is very clear that all that the Plaintiff is demanding is as based on the Letter of Engagement/Appointment. The Defendants have not denied they issued that letter and set the condition. The Plaintiff has, both in this Claims, oral testimony and documents tendered shown that he has a right to his claim and has established same.

In line with the Terms of Appointment, the Plaintiff had written the Joint Demand Notices to both SPDC and AGIP which are major Power and Energy Companies. That is as shown in letter dated April 24th, 2012 and July 3rd, 2012. This, the Plaintiff did by serving the Demand Notice by the 1st Defendant as required by the Letter of Appointment.

“Serve employees Demand Notices by NSITF for purpose of payment of the Contribution.”

By that action the Plaintiff performed his obligation under the Contract Agreement of his Appointment.

To further show that he was duly appointed by the Defendants, the Plaintiff had tendered letter of 6th July, 2012 written by the Defendants to the Minister of Power introducing him on the appointment of the Plaintiff as Contribution Collection Agent duly appointed by the Defendants. In that letter the Defendants stated thus:

Paragraph 1

“... the Board (1st Defendant) hereby appoints and introduces Messrs JJOG Professional Services as Contribution Collection Agents for the purpose of the Act.”

In the same letter the Defendants also stated what the Plaintiff’s appointment scope covers thus:

Paragraph 2

“They are assigned to cover all employers in the Energy and Power/Generation/Distribution/Marketing in Nigeria.”

In the letter, the Defendants spelt out what the Plaintiff is authorized to do – served Demand Notices on employers, demand and collect evidence of remittances from employers and reconcile with employers payments made and outstanding balances. The letter further stated

what the Plaintiff should not do which is in paragraph 3 thus:

“not authorized the bearer to collect Cheques, bank notes, cash or any other payment.”

The letter clearly confirmed that the Plaintiff was legally and lawfully engaged. It also confirms as the Plaintiff stated that he was to do the service for all and in all Energy and Power Sector in Nigeria.

By the markings on the letter it confirmed that the companies – SPDC and AGIP received the Demand Notices. The Defendants also introduced the Plaintiff to both Shell and AGIP in letters written on 4th July, 2012. These documents further confirm the Plaintiff’s Claims in this Suit and the legitimacy of his claim against the Defendants.

It is also imperative to state that the Defendants issued another Letter of Appointment to the Plaintiff dated 8/3/13. That letter confirmed that the duration of the service is thus:

“Your appointment will commence on 1st March, 2013 and last till 1st of March 2016.”

It was for the Plaintiff to cover all:

“All employers in the Independent Power Producers (IPPs) excluding those own by Oil Companies.”

It also covers thus:

“All Discos in the North.”

This letter extended the scope and duration of the service of the Plaintiff showing that it covers Discos from Northern Nigeria and Independent Power Producers too. It has the same 7.5% percentum of the remittances. The Defendants did not challenge or controvert the above letter. The duration of the contract by the letter is till 1st of March, 2016.

The Plaintiff had in a letter dated 5/7/12 demanded from SPDC for the remittance of 1% of their Gross Payroll of their workers in furtherance to the services he was appointed to render for the Defendants for which he was to earn and is duly entitled to 7.5% of any remittance done by the company. The stamp of acknowledgment by SPDC puts no one in doubt.

The Plaintiff had after rendering the services as per the contract, demanded for the payment of the commission as agreed by the parties and as expressed in the Letter of Appointment. That was done in the letter written to the Defendants, addressed specifically to the E.D. Operations. That letter was dated 4/1/13 demanding for the payment of the commission of the amount remitted by the companies. The Plaintiff had lamented about the effect the untimely and delay in payment of the allowance had caused their company and their work too. He ended the letter by stating:

“... we expect our credit alert soon.”

The Plaintiff has specifically stated in the letter that:

“In line with the resolution reached on 17th December, 2012 our commission on each Remittances made by Shell and AGIP

confirmed by the NSITF (1st Defendant) be promptly into our bank account on pay as you go basis.”

There is clear evidence of the receipt and acknowledgment of that letter on 14th February, 2013 as shown in the face of the letter.

The Plaintiff further on the 7th of December, 2014 demanded for the payment of the 7.5% on all the Remittances made by the SPDC and AGIP for the period of July 2010 to February 2013 in respect of NERC – Licensed Afam and Okpai Power Plants. In that letter the Plaintiff had detailedly narrated the journey so far with the Defendants and pointed out to them in paragraph 4 that Human Resources Manager had informed Plaintiff in a letter that ECA Contribution for January to August 2012 has been processed for payments into the Bank Account of the Defendant in Zenith Bank. The Plaintiff requested for the Defendants’ approval and payment of their outstanding commission.

It is imperative to state that the Plaintiff supported the Claim for the Remittance by tendering through the subpoenaed Witness the Statement of Account of the Defendant in their Zenith Bank Account which was tendered and admitted in evidence. That document showed the exact amount that was remitted and paid in to the said account. It is the 7.5% of those remittances that make up the Plaintiff’s commission which he is legally entitled to, going by the Letter of Appointment issued to him by the Defendants.

The Plaintiff had in their letter to the Defendants written on 21st February, 2013 showed that they were not affected and are not part of the meeting with the NSITF Hybrid Investment Adviser and Excellent on 10th of July, 2013. The Plaintiff had stated that they never made any collections from or demanded payment from Hybrid Investments. They had reconfirmed and clearly stated in that letter that:

Paragraph 3

“We have always focused our energy and power on our section”.

The Plaintiff had attached document evidencing their area of coverage in the contract. They had attached the letter of 7/12/14 for urgent payment as stated earlier. Notwithstanding this, the Defendants continued to breach the contract they entered into with the Plaintiff.

Since the Defendants failed, refused and neglected to pay the Plaintiff, the Plaintiff as a law abiding citizen, employed the service of their Counsel – Ikechukwu Ezechukwu and Co. and instructed them to write to the Defendants to further formally demand for the payment of the said commission. That letter was written on the 28th of August, 2015. Going by the evidence of acknowledgment it was received in the office of the 2nd Defendant on the 28th of August, 2015.

In the letter, the Solicitor noted that the Plaintiff had made several demands for the payment of the said commission (7.5%) of the remittances totaling Forty Six Million, Seven Hundred and Seventy Thousand Naira (N46, 770,000.00) covering a period of eight (8) months

as at that time. The letter specifically notified the Defendants that failure to give favorable response within fourteen (14) days from date of receipt of the letter, the Plaintiff will explore all equitable and legal remedies including instituting an action. The Defendants failed to do so. The Plaintiff instituted this Suit.

It is evidently clear that the Plaintiff had established its claim through the testimony of the PW1 and the nine (9) wonderful documents which engraved the claim of the Plaintiff in this case.

The Plaintiff deserves the Judgment of this Court. His case is a Simple Contract which is not caught up by the Public Officer Procurement Act. This contract falls within the exception of the Public Officer Procurement Act. Plaintiff established that he was duly engaged in the power entities for the relevant period. He had fulfilled the condition for the engagement and is entitled to the payment of his commission. He established that remittances were made by the document presented by the Subpoenaed Witness. By his evidence and failure to pay the commission even after several demands, the Defendants breached the terms of contract as spelt out in the letters of Appointment of Plaintiff as Consultant Contribution Agent.

As in all cases of breach of contract the Plaintiff is entitled to General Damages for the loss he suffered because of Defendants' failure to pay him after he had spent all his resources, time and energy doing and performing his own side of the obligation under the contract.

This Court had in the several Preliminary Objection filed by the Defendants, delivered several Rulings on the issue of jurisdiction and allegation of incompetency raised by the Defendants. The Court will not waste its judicial time to repeat same here. Those Rulings form part of this Judgment in that regard as if set here seriatim. This Court holds that the Plaintiff's Claim is not exclusive vested in the Federal High Court (FHC) as the Defendants are deceptively claiming. It is not caught up by Public Officers Procurement Act.

That being the case this Court hereby Order as follows entering Judgment in Plaintiff's favour to wit:

- ***Reliefs Number 1 – 4 granted as prayed.***
- ***The Defendants are to pay the Plaintiff the sum of Twenty Million Naira (~~N~~20,000,000.00) for the refusal to make good the Plaintiff's commission on the received remittances from the Energy and Power Sector.***

This is the Judgment of this Court.

Delivered today the ___ day of _____ 2021 by me.

**K.N. OGBONNAYA
HON. JUDGE**