

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**

**IN THE ABUJA JUDICIAL DIVISION**

**HOLDEN AT MAITAMA**

**BEFORE HIS LORDSHIP: HON. JUSTICE Y. HALILU**

**COURT CLERKS : JANET O. ODAH & ORS**

**COURT NUMBER : HIGH COURT NO. 22**

**CASE NUMBER : SUIT NO: CV/0338/17**

**DATE: : THURSDAY 17<sup>TH</sup> JUNE,2021**

**BETWEEN:**

**MRS. OMOBOLANLE ADENUGA ...CLAIMANT**

**AND**

**EMOSYN G. RESOURCES LTD. .. DEFENDANT**

# **JUDGMENT**

The Claimant via a Writ of Summons dated 5<sup>th</sup> day of December, 2020 commenced this action under the undefended list procedure against the Defendant claiming the following reliefs:-

1. A Declaration that pursuant to the letter dated 20<sup>th</sup> January, 2017 and signed on 21<sup>st</sup> January, 2017 by the Managing Director/Chief Executive Officer of the Defendant, and the letter from Tale Alabi and Co. dated 17<sup>th</sup> July, 2017 to the Receiver/Manager of the Defendant, the Plaintiff is entitled to the total sum of N18,900,000.00 (Eighteen Million and Nine Hundred Thousand Naira) only being the debt owed her by the Defendant for her services and items supplied to

A.U Guest House, Asokoro Abuja on the instruction of Defendant.

2. A Declaration that having put into use all the kitchen equipment supplied to the Defendant for putting in place A.U. Guest House, Asokoro Abuja by the Plaintiff as well as other items of furniture, beddings, pool-sides chairs and benefitted therefore, the Defendant is obligated to pay the sum owed the Plaintiff for the items.
3. A Declaration that having engaged the services of the Plaintiff to supply the above listed items and render other services for the taking off and running of A.U. Guest House, Asokoro Abuja, the Plaintiff is entitled to payment for the goods supplied and received by the Defendant as well as services rendered.

4. An Order directing the Receiver/Manager of the Defendant to immediately pay to the Plaintiff the sum of N18,900,000.00 (Eighteen Million and Nine Hundred Thousand Naira) being the debt owed by the Defendant on the account of goods supplied and other services rendered at A.U. Guest House, Asokoro Abuja.
5. An Order for payment of interest on the above stated sum of 18, 900,000.00 (Eighteen Million and Nine Hundred Thousand Naira) calculated at 2 points above the MRR from 12<sup>th</sup> July, 2017 to the date the Judgment is delivered and 10% (ten percent) from the date of Judgment until the Judgment sum is liquidated.

After hearing both parties this Honourable Court Ordered that the matter be transferred to the general

cause list and parties Ordered to file their respective pleadings.

In compliance with the Order of the Court, the Claimant filed her statement of claim dated 26<sup>th</sup> April, 2018 while the Defendant filed her statement of Defence dated 6<sup>th</sup> June, 2018.

Upon service of the Writ on the Defendant and after pleadings were exchanged, the suit was set down for hearing. The case of the Claimant as distilled from the witness statement on oath of PW1 (Mrs. Omobolanle Adenuga) is that she was a major stakeholder in the setting up of the Guest House specifically A.U. Diplomatic Guest House. And that upon her engagement by the company, she committed her funds into the setting up and running of the Guest House to the tune of N18,900,000.00

(Eighteen Million and Nine Hundred Thousand Naira).

The Claimant contends further that she sourced, pooled and disbursed the sum of N10,000,000.00 (Ten Million Naira) towards the rent of the property hosting the Guest House before the appointment of the Defendant and she supplied all the kitchen equipment some furniture, some beddings, pool side chairs and other items to the company in the preparation for the opening and effective running of the Guest House.

The Claimant contends that she offered numerous services to the company which resulted in the accumulated bill of N18,900,000.00 (Eighteen Million and Nine Hundred Thousand Naira) yet to be settled.

It is the averment of the Claimant that after several demands for the payment of the outstanding bills from the company failed and neglected to pay her the sum of N18,900,000.00 (Eighteen Million and Nine Hundred Thousand Naira) owed up and until the appointment of the Defendant, she has decided to approach the court.

PW1 tendered the following documents in evidence:-

1. Letter dated the 20<sup>th</sup> January, 2017 tendered as Exhibit 'A'.
2. Receipt dated 28<sup>th</sup> September, 2016 tendered and marked Exhibit 'B' rejected.
3. Acknowledgment copy of letter dated 17<sup>th</sup> July, 2017 tendered and admitted as Exhibit 'C'.

PW1 was then cross-examined and subsequently discharged.

PW2 (Miss. Suzie Dung) a subpoenaed witness from Hasal Micro Finance Bank tendered a statement of Account of Mrs. Omobolanle Adenuga as Exhibit 'D1'.

PW2 was not cross-examined and accordingly discharged.

PW3 (Mr. Sunny Anyanwu) (a subpoenaed witness) tendered the following in evidence:-

1. 23 receipts as Exhibit 'D1' 10 – 23.
2. Retainer-ship Agreement as Exhibit 'D3'.

The certified true copies of the under listed documents were tendered by the Defendant's



counsel from the bar, after same were confirmed by the PW3 and admitted in evidence as follows:-

1. 2 Loan Application and 2 Board Resolutions as Exhibit 'D4'
2. Deed of all Assets Debenture – Exhibit 'D5'
3. CAC letter of confirmation of registration of Deed of Appointment – Exhibit 'D6'
4. Deed of Appointment of Receiver/Manager – Exhibit 'D7'
5. CAC letter of confirmation of registration of the Deed – Exhibit 'D8'
6. Order of Federal High Court – Exhibit 'D9'

PW3 was accordingly cross-examined and then discharged.

The Claimant closed its case to pave way for defence.

The case of the Defendant as distilled from the Defendant's statement on oath is that by a Board Resolution dated 16<sup>th</sup> August, 2016 and 24<sup>th</sup> October, 2016 the Claimant applied for a term loan facility of N25,000,000.00 and N5,000,000.00 respectively from Hasal Microfinance Bank (The Bank).

The Defendant further claims that in order to secure the loan, the Defendant executed a Deed of All Assets Debenture dated 29<sup>th</sup> August, 2016 in favour of the Bank which was duly registered by the Corporate Affairs Commission, pursuant to which a certificate of Registration was issued to the Bank.

The Defendant claims that when the liabilities of the Defendant to repay the loan facilities became due and payable and the Defendant could not meet its obligation under the security, the Bank; pursuant to a registered Deed of All Assets Debenture and an instrument of appointment-appointed Mr. OkechukwuAjunwa as the Receiver/Manager of the Defendant to take control of and realize all of the secured assets of the Defendant in Order to repay the secured Creditor's debt.

The Defendant claims that by an Order of the Federal High Court vide Suit **No. FHC/ABJ/451/2017** (Coram: Hon. Justice NnamdiDingba) dated 21<sup>st</sup> June, 2017, he was directed as the Receiver/Manager to take over the place of business and any other places identified to be owned by the Defendant and to take such steps as

maybe necessary to preserve and protect the properties and that shortly after his appointment as the Receiver/Manager of the Defendant, he called on Creditors of the Defendant for a formal proof of debt against the Defendant.

The Defendant claims that the company is neither owing nor indebted to the Claimant to the tune of N18,900,000.00 or any other money at all. There is nothing on record showing that the Claimant did commit any funds to the tune of N18,900,000.00 or any other sum of money in the likes to the Defendant for the purpose of setting up and running the Defendant or any of the Defendant's property.

The Defendant further claims that the loan facilities of initial N25,000,000.00 and N5,000,000.00 respectively obtained from Hasal Microfinance Bank

was for the upgrading of the Defendant and purchase of additional materials such as furniture, kitchen utensils, pool side chairs and other items essential for the smooth running of the Defendant.

The Defendant claims that its applied and was granted loan facilities of N32,000,000.00 for tenor of 365 days with an interest rate of 2 % by Hasal Microfinance Bank. And that the loan was covering a property located at Plot No. 102, Cadastral Zone 09-07 of about 600m<sup>2</sup>, in Abuja Clinic by NIA Layout, with File No. OD43370, Karu, Abuja.

The Defendant further claims that he knows that the Defendant is neither indebted to the Claimant to the tune of N18,900,000.00 or any other amount for that matter nor owed the Claimant any amount.

The Defendant fielded no witness from its own side but led evidence on its pleadings through the cross-examination of PW1 and PW3.

Parties closed its case to pave way for filing and adoption of written address.

The Defendant filed his written address and proffer the following as issues for determination.

1. Whether the Claimant disclosed a reasonable cause of action against the Defendant; and if the answer is in the negative, whether the claim is liable to be dismissed?
2. Whether the Claimant has placed sufficient evidence before this Court in proof of her claim to entitle her to Judgment?

3. In view of the provision of Section 393 of Companies and Allied Matters Act, whose interest enjoy priority of payment of debts between secured and unsecured creditors?

On issue one, whether the claim disclosed a reasonable cause of action against the Defendant; and if the answer is in the negative, whether the claim is liable to be dismissed?

Learned counsel argued that the law is clear that a Company once registered or incorporated is a separate legal entity, distinct from its members or the officers. ***ONUEKWUSI AND ORS VS REGISTERED TRUSTEES OF THE CHRIST METHODIST ZION CHURCH (2011)6 NWLR (Part 1243) 341***, was cited in support of the argument.

Learned counsel further argued that, where a person executes a contract in his name and without qualification, he shall be taken to be contracting personally. *ALI VS. IKUSEBIALA (1985) 1 NWLR (Pt. 4) 630; (1985) LPELR Page (SC)* was cited.

On issue two, whether the Claimant has placed sufficient evidence before this Court in proof of her claim to entitle her to Judgment?

Learned counsel submit and argued that the law is now settled that in civil cases, the burden of first proving the existence or inexistence of a fact lies on the party against whom the Judgment of the court would be given if no evidence were produced on either side, regard being had to any presumption that may arise on the pleading. *C.B.N VS ARIBO (2018) 4 NWLR (1608) Page 130 R 18* was cited.



The learned counsel argued that besides the non-particularization of the claims, the Claimant's case also suffers lack of cogent admissible evidence in its support. It is elementary principle of law that he who alleges must prove. Unless the Claimant has discharged that burden of proof, the Defendant cannot be called upon to disprove that which has not been proved. *FBN PLC. VS BAM (2010) LPELR – 4160 (CA) and SHEKA VS BASHARI (2013) LPELR – 21403 (CA)* were cited in support of the arguments.

On issue three, In view of the provision of Section 393 of Companies and Allied Matters Act, whose interest enjoy priority of payment of debts between secured and unsecured creditors?

Learned counsel argued before the court that it is not in dispute between the parties that the Defendant before the court is currently under receivership with a legal practitioner who has taken over the affairs of the Defendant.

Learned counsel argued and submit that Judgment debt must be subject to the prior legal interest of secured creditors. Such as Hasal Microfinance Bank Ltd, hence the general maxim that secured Creditors take prior to unsecured Creditors applies. *F.A AKINBOBOLA & SONs VS PLISSION FSKO LTD and OTHERS (1986) 4 NWLR (Pt. 37) Page 162 and INTERCONTRACTOR VS N.P.F.M.B (1988)2 NWLR (Pt. 76) Page 280 R. 16* were cited.

Learned counsel submit that the court should dismiss the claim with substantial cost for being frivolous, vexatious and gold-digging.

Upon service, the Claimant replied to the final written address of the Defendant.

On issue one and two raised by the Defendant, learned counsel respectfully contended that Defendant failed to appreciate the case of the Claimant before the Honourable Court. Counsel contended that in 21 paragraph statement of claim, Claimant established that there was a contractual agreement and understanding between her and the Defendant which had made her spent monies and executed jobs in expectation of payments.

Learned counsel further argued that the services and expenses incurred by the Claimant were on the

footings of the instructions given to her by the Defendant through her alter ego, Prince George Azubuike. These are the facts that constitute the reasonable cause of action on which the case of the Claimant was founded. ***BARBUS & CO. (NIG.) LTD. And Anor VS OKAFOR UDEJI (2018) LPELR – 44501 (SC). CHEVRON (NIG.) LTD. VS LONESTAR DRILLING (NIG) LTD. (2007) 7 SC. (Pt. 2) 27, MOBIL VS LASEPA (2003) 104 L.R.C.N 240 at 268*** were cited.

Learned counsel argued that it is an anathema that a party will deny liability under a contract from which he has enjoyed unlimited benefits. In equity, a party who has benefited from a transaction cannot turn around to challenge legality of same. ***A.G. RIVERS STATE VS A.G. AKWA IBOM STATE & ANOR (2011) LPELR – 633 (SC) Pp. 174 – 175, Paras G – F,***

***OKECHUKWU VS ONUORAH (2000) LPELR – 2431 (SC).***

On issue three, learned counsel argued that in view of the provision of Section 393 of Companies and Allied Matters Act 1990 LFN whose interest enjoy priority of payment of debts between secured and unsecured Creditors. That basically, parties are at ad idem on the status of the Defendant and the fact that there is a Receiver/Manager appointed to superintend its affairs. Section 393 of CAMA cited.

Learned counsel further submit that Exhibit ‘A’ was issued on 20<sup>th</sup> February, 2017 but signed on 21<sup>st</sup> February, 2017. The Receiver/Manager was appointed on 27<sup>th</sup> February, 2017. From every interpretation and in the eyes of the law, Exhibit ‘A’ was created before the appointment of the Receiver/Manager and this has constituted a prior encumbrance. On Exhibit ‘D5’, the

learned counsel submit that the document titled **DEED OF ALL ASSETS DEBENTURE** is a voidable and an illegal document having failed to comply with Section 168 of CAMA. *BREWTECH NIG. LTD. VS. AKINNAWO & ANOR (2016) LPELR – 40094 (CA)* was also cited.

Learned counsel further alluded that the Defendant has indeed conceded to this case by not controverting the material issues raised in the Claimant's pleadings nor controverted her evidence and this is understandable since the Defendant rested his case on that of the claimant.

Learned counsel finally urged the court to resolve all the issues posed in favour of the Claimant against the Defendant and grant all the reliefs sought by the Claimant as they are not contested by the Defendant thereto.

## **Court:-**

I have gone through the respective cases of the parties before me, I shall be brief but succinctly in considering the issue before me for the interest of justice and posterity.

It must be borne in mind that Claimant's reliefs 1, 2 and 3 are declaratory in nature thereby predicating the success of reliefs 4 and 5 on their success.

It is an established position of law that in cases where declaratory reliefs are claimed as in the present case, the Plaintiff must satisfy the court by cogent and reliable evidence in support of such claim. ***AGBAJE VS FASHOLA & ORS (2008)6 NWLR (Pt. 1088).***

Indeed, judicial pronouncement are ad – idem that declaratory reliefs are never granted base on admission or on default of filing defence.

The court has a duty to satisfy itself that the Plaintiff's evidence upon assessment is credible and sufficient to sustain the claim.

Defendant at the close of claimant's case close to rest its case on that of Claimant thereby not calling any witness.

The purport of a defence counsel resting his case on that of the Plaintiff in a suit means that to him, the Plaintiff has not made out any case for the Defendant to answer or that the Defendant admits the facts of the case as stated by the Plaintiff. In the alternative he may be saying that the Defendant had a complete answer in law to the Plaintiff case. ***OFOMAJA VS COMMISSIONER FOR EDUCATION & ORS (1995) 8 NWLR (Pt. 411).***

Indeed, cross – examination has been described as the noble art which constitutes a lethal weapon in the



hands of the adversary to enable him effect the demolition of the case of the opposing party. Cross – examination if rightly employed, is a potent tool for perforating falsehood and its form part of the case or defence of the party. ***ALHERI GARBA ZIRA & 1OR VS ELISHA VANDU & 7 ORS.(2017) LPELR 42994 (CA).***

It is instructive to state here that the case of the Claimant before this Honourable Court is that there was a contractual agreement and understanding between her and the Defendant which had made her to spent monies and execute job in expectation of payment which stood at N18,900,000.00 (Eighteen Million, Nine Hundred Thousand Naira only) which demands for payment had been made to no avail on the footing of the instruction given to her by Prince George Azubuiké.

Having stated briefly the facts of the claimant case before this Honourable Court, the court hereby adopts issue one formulated by the Defendant as sole issue for determination in this case to wit;

Whether the claim disclosed a reasonable cause of action against the Defendant, and if the answer is in the negative, whether the claim is liable to be dismissed.

Primarily, the case of the Claimant is hinged on Exhibit “A” (letter of undertaking from Prince George Azubuike). For ease of reference, the said Exhibit “A” is hereby reproduced;

*“I Prince George Azubuike, the Managing Director of Emosyn G. Resources Limited and the operators of AU-Diplomatic Guest House situated at No. 1 HamzaAbdullahi Street, Off MammanNasir Crescent, Asokoro, Abuja,do hereby undertake to Mrs. Adenuga as follows:*

- a. That African Union, AU awarded to Emosyn G. Resources Limited some contracts.*
- b. That the said company is looking for funds to finance the contract.*
- c. That Mrs. Adenuga has spent some money in the running of the AU-Diplomatic Guest House.*
- d. That I hereby agree, that should there be any draw – down i.e money borrowed to finance the contracts awarded to Emosyn G. Resource Limited, all money spent by Mrs. Adenuga in the AU-Diplomatic Guest House shall be paid into Mr. Okechukwu J.P Madu’s Account: Ecobank Plc., Account No: 2522163060, as instructed by Mrs. Adenuga.*

*This is strictly my undertaking and should be given effect to.”*

The said letter is written in the letter headed paper of Emosyn G. Resource Limited. i.e the name of the Defendant herein.

Indeed, cause of action is constituted by the bundle of aggregate of facts, which the law will recognize as giving the Plaintiff a substantive right to make the claim against the relief or remedy being sought.

Once the allegations are such that show a real controversy that were capable of leading to the grant of relief, the reasonable cause of action has been disclosed in the pleading. ***MOBIL VS LASEPA (2003) 104 LRCN 240 at 268.***

As stated from the preceeding part of this judgment, Exhibit “A” is the main bone of contention between the parties. Whereas it is the argument of the Defendant that the said Exhibit “A” which is an undertaking written by the managing Director of the Defendant is a

special contract between Prince George Azubuiké and Mrs. Adenuga the Claimant herein and the undertaking of Prince George Azubuiké will not bind the Defendant unless the claimant has shown that the Defendant is privy to the undertaking.

On its part, Claimant maintained that Exhibit “A” establishes a contractual agreement between the Claimant and the Defendant and that the Claimant in line with the agreement has spent money which the Defendant accepted to pay for all the expenses that would be incurred by the Claimant in furtherance to the terms of the contract.

It is instructive to state here that the law is clear that a company once registered is a separate legal entity, distinct from its members or the officers. The effect of incorporation is to confer on it legal entity as a person separate and distinct from its members. It is a legal

person with personality of its own. It becomes an artificial legal entity once the formal procedure of registration or incorporation has been complied with. This is what underlies the concept of corporate personality which becomes firmly established at common law in the locus classicus case of *SALOMON VS SALOMON & CO. LTD (1897) AC 22., ONUEKWUSI & ORS VS REGISTERED TRUSTEES OF THE CHRIST METHODIST ZION CHURCH (2011) 6 NWLR (Pt. 1243) 341.*

Indeed, where a person executes a contract in his own name and without qualification, he shall be taken to be contracting personally. This is founded on the principle that only one person can answer such description *ALI VS IKUSEBIALA (1985)1 NWLR (Pt. 4) 630.*

Question; has Prince George Azubuike execute Exhibit “A” in his personal name as claimed by the Defendant?

A perusal of Exhibit “A” will reveal that the said document was made in the letter headed paper of the Defendant and paragraph 1, 2 and 3 of the letter, read as thus;

1. “That African Union AU awarded to Emosyn G. Resources Limited some contract.”
2. “That the said company is looking for funds to finance the contract.”
3. “That Mrs. Adenuga has spent some money in the running of the A.U Diplomatic Guest House”.

The said letter was signed by Prince George Azubuike as MD/CEO Emosyn G. Resources Limited.

From above, it obvious that the agreement entered into by the parties is made for the benefit of Emosyn G. Resources Limited (The Defendant in this case).

Indeed, a party cannot rely or take the benefits of the contents of a document and at the same time turn round to question the legality of the same document. Parties have an obligations to honour the terms of contract willingly entered into..This is the hallmark of sanctity of contract. See ***OKECHUKWU VS ONUORAH (2000) LPELR 2431 (SC)***.

I must observe that a company is an artificial person who acts through living persons. But it is not the act of every servant of the company that binds the company. Those whose acts bind the company are their alter ego. Those persons who because of their positions are the directing mind and will of the company, the very ego and corporate personality of the company.

***LEONARDS CARRYING CO. LTD VS ASIATIC PETROLEUM LTD (1915) A.C 705.***



Lifting the veil of incorporation or piercing the corporate veil is the judicial act of imposing personal liability on otherwise immune corporate officers, directors or shareholders for the corporation's wrongful acts.

From what has played out here, it is clear that Prince George Azubuiké's action in law binds the company. I so hold.

The Claimant pleaded that she made purchases and supplied kitchen equipments, furniture, beddings and pool – side chairs to the Defendant's AU Diplomatic Guest House.

Claimant tendered letter of demand as Exhibit "C".

Indeed, documentary evidence is the best form of evidence and court must act on same. ***SKYE BANK & ANOR VS AKINPELU (2010) LPELR 3073 (SC)***.

Having held Prince George Azubuike liable, I have no difficulty entering judgment in favour of the Claimant.

Consequently, Judgment is hereby entered in favour of the Claimant as follows:-

1. A Declaration that pursuant to the letter dated 20<sup>th</sup> January, 2017 and signed on 21<sup>st</sup> January, 2017 by the Managing Director/Chief Executive Officer of the Defendant, and the letter from Tale Alabi and Co. dated 17<sup>th</sup> July, 2017 to the Receiver/Manager of the Defendant, the Plaintiff is entitled to the total sum of N18,900,000.00 (Eighteen Million and Nine Hundred Thousand Naira) only being the debt owed her by the Defendant for her services and items supplied to A.U Guest House, Asokoro Abuja on the instruction of Defendant is **hereby granted.**

2. A Declaration that having put into use all the kitchen equipment supplied to the Defendant for putting in place A.U. Guest House, Asokoro Abuja by the Plaintiff as well as other items of furniture, beddings, pool-sides chairs and benefitted therefore, the Defendant is obligated to pay the sum owed the Plaintiff for the items is **hereby granted.**
  
3. It is hereby declared that having engaged the services of the Plaintiff to supply the above listed items and render other services for the taking off and running of A.U. Guest House, Asokoro Abuja, the Plaintiff is entitled to payment for the goods supplied and received by the Defendant as well as services rendered.

4. An Order directing the Receiver/Manager of the Defendant to immediately pay to the Plaintiff the sum of N18,900,000.00 (Eighteen Million and Nine Hundred Thousand Naira) being the debt owed by the Defendant on the account of goods supplied and other services rendered at A.U. Guest House, Asokoro Abuja is **hereby granted.**
  
5. 10% post judgment interest from the date of judgment until same is liquidated is **hereby granted.**

*Justice Y. Halilu*  
*Hon. Judge*  
*17<sup>th</sup> June, 2021*

### **APPEARANCES**

**Tale Alabi with Florence A., O.O Richie – Adewusi – for the Claimant.**

**IsiaqAdekunle with MazidaAgboola – for the  
Defendant.**