

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. 15
CASE NUMBER : SUIT NO: CV/962/2017
DATE: : MONDAY 27TH SEPTEMBER, 2021

BETWEEN:

ARA GBADUMEH AND SONS LTD.
PLAINTIFF

AND

FIRST CONTINENTAL PROPERTIES } **DEFENDANT**
LIMITED(also trading under the }
name “Churchgate”) }

JUDGMENT

Plaintiff commenced this action vide Writ of Summons and statement of claim filed on 17th February, 2017 and dated same day wherein the company claimed the following:-

1. A Declaration that the failure of the Defendant to pay the contract debt sum of N17,216,718.80 (Seventeen Million, Two Hundred and Sixteen Thousand, Seven Hundred and Eighteen Naira, Eighty Kobo) only, for rentage/hire of Plaintiff's transit/concrete mixer, in accordance with the terms of Local Purchase Order (LPO) No. 381, constitutes a breach of contract.
2. A Declaration that the failure of the Defendant to pay the contract debt sum of N7,794,695 (Seven Million, Seven Hundred and

Ninety Four Thousand, Six Hundred and Ninety Fifty Naira) only, for the Plaintiff's supplies/deliveries of River Sand, Granite and Quarry Dust, in accordance with the terms of Local Purchase Order (LPO) No. 886, constitutes a breach of contract.

3. A Declaration that the failure of the Defendant to pay the contract debt sum of N4,135,465.43 (Four Million, One Hundred and Thirty Five Thousand, Four Hundred and Sixty Five Naira, Forty Three Kobo) only, for the Plaintiff's supplies/deliveries of Granite and Quarry Dust, in accordance with the terms of Local Purchase Order (LPO) No. 1086, constitutes a breach of contract.

4. A Declaration that the failure of the Defendant to pay the contract debt sum of N1,871,297 (One Million, Eight Hundred and Seventy One Thousand, Two Hundred and Ninety Seven Naira) only, for the Plaintiff's supplies/deliveries of consumable building materials, constitutes a breach of contract.
5. The sum of N5,000,000.00 (Five Million Naira) only, as damages for breach of contract.
6. The sum of N17,216,718.80 (Seventeen Million, Two Hundred and Sixteen Thousand, Seven Hundred and Eighteen Naira, Eight Kobo) only, being the outstanding cost of Defendant's rentage/hire of Plaintiff's Transit/Concrete Mixer.

7. The sum of N7,794,695 (Seven Million, Seven Hundred and Ninety Four Thousand, Six Hundred and Ninety Fifty Naira) only, being the outstanding cost of Plaintiff's supplies deliveries of River Sand, Granite and Quarry Dust to the Defendant, in respect of Local Purchase Order (LPO) No. 886.
8. The sum of N4,135,465.43 (Four Million, One Hundred and Thirty Five Thousand, Four Hundred and Sixty Five Naira, Forty Three Kobo) only, being the outstanding cost of Plaintiff's supplies/deliveries of Granite and Quarry Dust to the Defendant, in respect of Local Purchase Order (LPO) No. 1086.
9. The sum of N1,871,297 (One Million, Eight Hundred and Seventy One Thousand, Two

Hundred and Ninety Seven Naira) only, being the outstanding cost of Plaintiff's supplies/deliveries of numerous Tanks of Water and/or consumables, to the Defendant.

10. 10% pre-judgment interest per month, from 1st February, 2013 till date of Judgment.
11. 10% Post Judgment interest per month, from the date of Judgment till the Judgment sum is wholly defrayed.
12. The sum of N93,054,528.6 (Ninety Three Million, Fifty Four Thousand, Five Hundred and Twenty Eight Naira, Sixty Kobo) only, as Plaintiff's loss, due to the Defendant's delayed payment, resultant from devaluation of Naira from 2012 till date.

13. The sum of N3,000,000.00 (Three Million Naira) only, being the cost of Prosecuting this suit.

Upon service of the Writ on the Defendant and after pleadings were exchanged, the suit was set down for hearing.

The case of the Plaintiff as distilled from the witness statement on oath of PW1 (AraGbadumeh) is that sometimes in 2011, by Local Purchase Order (LPO) No. 381, Defendant (in Abuja) contracted him to provide on rent/hire, maintain and operate the Plaintiff Company's 2(Nos.) Transit/Concrete Mixer Truck, 10cum capacity, for use in the ongoing construction of World Trade Centre Situate at Plot 1333, Cadastral Zone, Constitution Avenue, Central Business District, Abuja.

That it was also the understanding of the parties, that Plaintiff shall provide 1 additional Transit/Concrete Mixer for use at the construction site, where there is an urgent need for same, in order to meet up with the Defendant's Construction Schedule Plan.

Further, PW1 stated that it was the understanding of the parties that 8Cumulative hours of usage of the Plaintiff Transit/Concrete Mixer will be equal to 1day, for purposes of the contract.

Plaintiff further averred that it was the terms of the contract that he shall supply/deliver the Transit/Concrete Mixers in accordance with the Defendant's periodic demands "as per site requirement", at the rental unit value/price of N90,000.00 (Ninety Thousand Naira) per day and/or N11,250.00 (Eleven Thousand, Two Hundred and

Fifty Thousand Naira) per hour, for/each of the Transit/Concrete Mixers, exclusive of VAT and withholding tax.

That it was also the understanding of parties that the Defendant and the Plaintiff shall jointly prepare hour monitoring of hired heavy equipment and/or heavy equipment monitoring and accomplishment Registry, while the Defendant keeps same, as record of number of hours/days his hired Transit/Concrete Mixers were put to use and for processing of his payments.

It is the deposition of the Plaintiff that he supplied/delivered 2(Nos.) Transit/Concrete Mixers (later increased to 3 Transit/Concrete Mixers) to the Defendant at their construction site situate at Plot 1333, Cadastral Zone, Constitution Avenue, Central

Business District, Abuja, which were fully utilized by the Defendant.

That the Defendant made various payments for the rentage/hire of his Transit/Concrete Mixers for some period, but left the sum of N17,216,718.80 (Seventeen Million Two Hundred and Sixteen Thousand, Seven Hundred and Eighteen Naira, Eighty Kobo) for the period of **12th May, 2012 to 18th May, 2012, 1st September, 2012 to 14th September, 2012, 22nd September, 2012 to 30th November, 2012**, unpaid and outstanding till date.

Plaintiff also stated that sometimes on the 12th September, 2012, by Local Purchase Order (LPO) No. 1086, Defendant (in Abuja) further contracted him to supply/deliver River sand, Granite and Quarry Dust of different description, at the total

contract sum of N11,497,500.00 (Eleven Million, Four Hundred and Ninety Seven Thousand, Five Hundred Naira) to them at their office/site situate at Plot 1333 Cadastral Zone, Constitution Avenue, Central Business District, Abuja.

That upon delivery/supply of the requisite trips of river/sharp sand, granite and stone dust to the Defendant, in compliance with the Local Purchase Order No. 886 and Local Purchase Order No. 1086 between parties, Plaintiff issued various Delivery Notes as contained in Delivery Note Booklet Nos. 1551 to 1600 and Booklet Nos. 1601 to 1650.

It is evidence of PW1 that upon further agreement between parties, he supplied consumable building materials to the Defendant, at the total contract sum of N1,871,297 (One Million, Eight Hundred and

Seventy One Thousand, Two Hundred and Ninety Seven Naira), within the relevant period, which the Defendant has defaulted to defray, till date.

That the Defendant is yet to pay the cumulative total contract debt sum of N31,018,176.20 (Thirty One Million, Eighteen Thousand, One Hundred and Seventy Six Naira, Twenty Kobo), only for rentage/hire of his Transit/Concrete Mixer, his supplies/deliveries of River sand, Granite, Quarry Dust and consumable building materials, till date, and that since Defendant's default to pay the contract sum, Naira Currency has suffered a devaluation of over 300% and that the value of the outstanding contract sum has now reduced in like percentage.

PW1 tendered the following documents in evidence:-

1. Local Purchase Order No. 1086 and 886 as Exhibit 'A'.
2. Local Purchase Order No. 381 as Exhibit 'B'.
3. Documents titled Hour Monitoring of Hired Heavy Equipment (10) as Exhibit 'C'
4. Ruling admitting Exhibits 'B' and 'C' is adopted in admitting document titled, heavy equipment monitoring and accomplishment Registry (3 in numbers) as Exhibit 'D'.
5. Cash invoice No. 0044 and 677 as Exhibit 'E'
6. Cash invoice No. 1551 – 1600 as Exhibit 'F'
7. Cash invoice No. 1601 – 1650 as Exhibit 'G'

PW1 was cross-examined and subsequently discharged.

Plaintiff closed its case to pave way for defence. Defendant opened their defence by calling DW1 (Olatunbosun Otaiku). The case of the Defendant as distilled from the witness statement on oath of DW1 is that it was most irregular for a contract for the hire of cement mixer from a contractor to include maintenance and operation of contractor's cement mixer by the contractor.

That the inclusion of such term is either erroneous or a collusion with errant members of staff of the Defendant, and the Plaintiff cannot legitimately benefit from such term.

It is evidence of DW1 that Defendant would have issued an LPO to the Plaintiff for the supply of an

additional concrete mixer if it is true as claimed by the Plaintiff, as there was no contract supply or any understanding in that regard, and that it is the practice of Defendant that rented machines do not work more than 8 hours in a day, and that the hours rented machines are used on site are calculated independently and paid for accordingly.

That the Plaintiff was never contracted by the Defendant to supply a third cement mixer.

Defendant stated in its evidence that a total sum of N56,330,832.63 (Fifty Six Million, Three Hundred and Thirty Thousand, Eight Hundred and Thirty One Naira, Sixty Three Kobo) was paid to the Plaintiff from 15th December, 2010 – 2nd November, 2012 for services rendered.

Defendant maintained that a closer look at the record “hour monitoring of hired heavy equipment” stated by the Plaintiff, especially for Friday 23rd November, 2012, one will observe that the cement mixers worked for 18 hours, 19 hours and 20 hours in a day. It is a wonder how man and machine will continuously keep working for such long hours in a day, despite the Defendant having stated that rented machines will only work for a maximum of 8 hours in a day. These hours were repeated by the Plaintiff in a clear effort to defraud the Defendant in collusion with unscrupulous members of staff of the Defendant and that Plaintiff was issued with LPO 886 by the Defendant for the supply of various aggregate materials stated in the LPO and for the quantity indicated.

It is the further deposition of DW1 that there was no contract between the Plaintiff and the Defendant for the supply of consumable building materials and there is no record of the Plaintiff's cash invoices on the alleged supply of consumable building materials to the Defendant.

DW1 tendered the following documents in evidence.

1. Statement of account and certificates of compliance tendered as Exhibit 'D1'.
2. Additional witness statement on oath of One Ebere A. tendered and admitted as Exhibit 'D2'.

DW1 was cross examined and accordingly discharged.

Parties closed their respective cases to pave way for filing and adoption of written addresses.

Learned counsel for the Defendant formulated a sole issue for determination to wit;

“Whether in the circumstances of this Suit, the Plaintiff has successfully proved its case to be entitled to the reliefs and the damages sought as contained in the Writ of Summons.”

Counsel argued that it is trite law that he who alleges must prove and the burden of proving that the Defendant is indebted to the Plaintiff in the sum N31,018,176.20 (Thirty One Million, Eighteen Thousand, One Hundred and Seventy Six Naira, Twenty Kobo) or any sum whatsoever, rests upon the Plaintiff, the said burden which the Plaintiff failed to discharge. Section 131 and 132 of Evidence Act, 2011; ***MOGAJI VS. ODOFUN (1978) 4 S.C 91*** were cited.

Learned counsel further argued that the purported claims by the Plaintiff were for the same period, between 2011 and 2012 and Plaintiff never raised the issue with the Defendant, until at the time of filing of the Suit, as no demand letter or any letter was issued or served on the Defendant to that effect.

Learned counsel submit that with the totality of evidence tendered and admitted by the Court, the Plaintiff has failed woefully to establish its case to be entitled to the reliefs/damages sought in this Suit in the sum of N31,081,176.20 (Thirty One Million, Eighteen Thousand, One Hundred and Seventy Six Naira, Twenty Kobo) or any amount whatsoever. Counsel urge the court to so hold.

On their part, Plaintiff formulated a sole issue for determination to wit;

“Whether the Claimant has proved its case on the balance of probability so as to be entitled to any or all the reliefs sought in this Suit.”

Learned Counsel submit that the Claimant has proved his case on preponderance of evidence, to be entitled to the reliefs sought. When all the evidence adduced in the course of trial are placed on the imaginary scale of justice, the court will find that the unimpeached testimony of PW1 far outweighs the testimony of the Defence Witness (DW1) who showed himself not to be a witness of truth.

***MANTECH WATER TREATMENT NIG. LTD.
VS PETROLEUM (Special) TRUST FUND
(2007)15 NWLR (Pt. 1058) 451.***

Counsel further argued that the Defendant did not call either of Frederick Formoso, Melvin Nomos,

ElejerioLibrado, Roseller Dalit or Rester Amoroso, to deny their signatures, in Exhibits 'C' and 'D' and that DW1 affirmed during his cross-examination that the aforesaid persons are Officers/Staff of Defendant's Company.

Learned counsel contends and urged the court to hold that the Claimant has proved on balance of probability that he was contracted to supply River Sand, Granites and Quarry Dust by the Defendant and he performed the contract. In support of their contention, counsel urged the Court to take judicial notice of Exhibit 'A' (LPO Nos. 886 & 1086), Exhibits 'F' & 'D' (Delivery Notes).

It is the further submission of learned counsel that the said Ledger Account/Exhibit 'D1' is a worthless document, same not having being signed by any

Officer of the Defendant who produced same.
***OMEGA BANK (NIG) PLC. V.O.B.C LTD. (2005)
LPELR – 2636 (SC).***

On their part, the Defendant replied on points of law to the Plaintiff final written address as follows:-

1. On whether the Claimant has proved its case on the balance of probability so as to be entitled to any or all the reliefs sought in this Suit and existence of contract for Rentage of Claimant's Concrete Mixer Truck.
2. On Plaintiff's submission that Defendant did not call either Fredick Formoso, Melvin Nomos, Elejerio Librado, Roseller Dalit or Rerter Amoroso to deny their signatures in Exhibits 'C' and 'D'.

3. On existence of contract for the Claimant's supply of River Sand, Granites, Quarry Dust and Consumables to the Defendant and Claimant's performance of the said contract.
4. On non-payment for the Claimant's Truck and supply of River Sand, Granites, Quarry Dust and Consumables to the Defendant and whether Ledger Account/Exhibit 'D1' was made by the Defendant during the pendency of this Suit.
5. On the Plaintiff's Counsel urging the court to grant all reliefs sought by the Plaintiff.

On point 1 raised by Counsel to the Defendant, it is submitted that submission of the Plaintiff's counsel in paragraph 5.1 to 5.4 of final written address that contractual agreement can be in writing, oral or implied from the conduct of the parties as argued by

the Plaintiff's Counsel, Plaintiff has not successfully satisfied the burden of proof provided in Section 131, 132 and 136 of Evidence Act, 2011. ***WARIGBELEGHA VS. OWERRE (2012) 3 NWLR (Pt. 1288) 513 at 517 Ratio 3 C.A, ORAEKWE VS. CHUKWUKA (2012) 1 NWLR (Pt. 1280) 169 at 182 Ratio 19 C.A, ANPP VS. USMAN (2008) 12 NWLR (Pt.1100)1.***

On point 2, learned counsel submit that Plaintiff had ample opportunity before closing its case to bring the said mentioned individual persons working with the Defendant and who had its authority to contract or signed any documents or Exhibits 'C' and 'D' at the material time they alleged on behalf of the Defendant as witness vide "writ of subpoena Duces Tecum and Ad Testificandum" which it failed to do.

On point 3, learned counsel argued that Plaintiff failed to place any evidence before the Court to the effect that Defendant received the alleged items/goods, and that on the face of Exhibits ‘C’, ‘D’, ‘E’, ‘F’ and ‘G’, it is clear that the documents were not acknowledged/signed/stamped on behalf of the Defendant and no evidence of LPO issued to the Plaintiff in respect of the said items/materials. ***OMEGA BANK (NIG.) PLC VS. O.B.C LTD. (2005) LPELR 2636 (SC)*** was cited.

On point 4, learned counsel submitted that the evidence of payment to the Plaintiff is before this Court, Exhibit ‘D1’, the Ledger Account clearly shows the total payment made to the Claimant, and that Plaintiff failed to prove that the Defendant is indebted to the Plaintiff in the sum N31,018,176.20 (Thirty One Million, Eighteen Thousand, One

Hundred and Seventy Six Naira, Twenty Kobo) as claimed.

On point 5, counsel contended that the argument of the Plaintiff's counsel in paragraph 5.41 to 5.53 as contained in their written address on breach of contract was unfounded and lacken in merit. Learned counsel urged the Court on the whole to dismiss the case of Plaintiff.

From the state of pleadings as reproduced on the body of this Judgment, Plaintiff is contesting the fact that Defendant breached the contract entered-into with them and therefore claimed for payment of:-

1. N17,216,718.80 (Seven Million, Two Hundred and Sixteen Thousand, Seven Hundred and Eighteen Naira, Eighty Kobo) only being the

outstanding cost of Defendant rentage/hire of Plaintiff's transit/concrete mixer.

2. N7,794,695 (Seven Million, Seven Hundred and Ninety Four Thousand, Six Hundred and Ninety Five Naira) only being the outstanding cost of Plaintiff's supplies/deliveries of River sand, Granite and Quarry Dust to the Defendant in respect of Local Purchase Order (LPO) No. 886.
3. N4,135,465.43 (Four Million, One Hundred and Thirty Five Thousand, Four Hundred and Sixty Five Naira, Forty Three Kobo) being outstanding cost of Plaintiff's supplies/deliveries of Granite and Quarry Dust to the Defendant, in respect of Local Purchase Order (LPO) No. 1086.
4. N1,871,297 (One Million, Eight Hundred and Seventy One Thousand, Two Hundred and

Ninety Seven Naira) only, being the outstanding cost of Plaintiff's supplies/deliveries of numerous Tank of water and/or consumables to the Defendant.

Defendant on their part vehemently denied the claims of the Plaintiff by joining issues in paragraphs 2,3,4,6,7,8,9,10,12,14,15,16,17 and 18.

Defendant denied paragraph 3 of the Plaintiff's Statement of Claim to the extent that it is most irregular for a contract for the hire of cement mixer from a contractor to include maintenance and operation of contractor's cement mixer by the contractor. Defendant further avers that the inclusion of such term was either erroneous or a collusion with errant members/staff of the Defendant, and that the Plaintiff cannot legitimately benefit from such term.

Defendant then puts Plaintiff to the strictest proof in providing the original of the said Local Purchase Order (LPO) No. 381.

The Defendant denied paragraph 4 of the Plaintiff's statement of claim and avers that the Defendant would have issued an Local Purchase Order (LPO) to the Plaintiff for the supply of an additional concrete mixer if it is true as claimed by the Plaintiff. There was supply contract and any understanding whatsoever.

Defendant admitted paragraph 5 of the statement of claim to the extent that it is the practice of the Defendant that rented machines do not work more than 8 hours in a day. However, the hours rented machines are used on site are calculated

independently and therefore payment would be calculated on hourly basis accordingly.

The Defendant admits paragraph 7 of the statement of claim to the extent that it is the practice of the Defendant to record jointly with the contractor, hours rented machine works, which is then signed off by the contractor and project manager of the Defendant before payment is made.

The Defendant denied paragraph 8 of the Plaintiff's statement of claim and further avers that the Plaintiff was never contracted by the Defendant to supply a third cement mixer. The Defendant hereby restates its position and put the Plaintiff to the strictest proof of providing the original Local Purchase Order (LPO) 381.

Defendant also denied paragraph 9 of the Plaintiff's statement of claim in its entirety and avers that the Plaintiff was fully paid for all the services it rendered to the Defendant. The Plaintiff was paid a total of N118,717,535,89 (One Hundred and Eighteen Million, Seven Hundred and Seventeen Thousand Five Hundred and Thirty Five Naira Eighty Nine Kobo) by the Defendant from 12th April, 2011 – 2nd November, 2012. This unusually large amount paid to the Plaintiff, for just the supply of 2 concrete mixers and some aggregate materials, in such a short period of time was largely due to the Plaintiff's penchant for 'paper supplies' in collusion with errant members of staff of the Defendant, with the intention of fleecing the Defendant. The ledger/schedule of payments to the Plaintiff is

hereby pleaded and shall be relied upon at the trial of this suit.

The Defendant denied paragraph 10 of the statement of claim in its entirety and further avers that the Plaintiff was fully paid for the rental of its cement mixers. There is no record with the Defendant of the hour monitoring of hired heavy equipment being claimed by the Plaintiff in paragraph 10 (a)-(m), therefore the Plaintiff is put to the strictest proof of same duly signed and approved by the Defendant's project manager.

The Defendant in addition to the above averments, further avers that a closer look at the record "Hour Monitoring of Hired Heavy Equipment" stated by the Plaintiff, especially for Friday 23rd November, 2012, will reveal that the cement mixers worked for

18hours, 19hours and 20hours in a day. It is a wonder how man and machine will continuously keep working for such long hours in a day, despite the Defendant having stated that rented machines will only work for a maximum of 8 hours in a day. These bogus hours were repeated by the Plaintiff in a clear effort to defraud the Defendant in collusion with unscrupulous members of staff of the Defendant.

The Defendant denies paragraph 13 of the Statement of Claim in its entirety and avers that the Plaintiff was duly paid for all actual supplies of aggregate material supplies to the Defendant.

The Defendant admits paragraphs 14 and 15 of the Plaintiff's statement of claim to the extent that the Plaintiff was issued with Local Purchase Order

(LPO) No 1086 by the Defendant for the supply of the various aggregate materials stated in the Local Purchase Order (LPO) and for the quality indicated.

Defendant denied paragraph 16 of the Plaintiff's statement of claim in its entirety and avers that the Plaintiff was duly paid for all actual supplies of aggregate material supplied to the Defendant. The Defendant restates that the Plaintiff was paid a total of N118,717,535.89 (One Hundred and Eighteen Million, Seven Hundred and Seventeen Thousand, Five Hundred and Thirty Five Naira, Eighty Nine Kobo).

The Defendant postulates and wonders how a businessman who having supplied materials on an LPO for the total sum of N7,796,250 (Seven Million, Seven Hundred and Ninety Six Thousand, Two

Hundred and Fifty Naira) and is yet to be paid for the same, will further supply all the materials on another Local Purchase Order (LPO) for a total of N11,497,500 (Eleven Million Four Hundred and Ninety Seven Thousand and Five Hundred Naira) issued 2 months after, if payment was not received. Other than the alleged Local Purchase Order (LPO) No. 381, these are the only LPO's duly issued to the Plaintiff who received payments to the total N118,717,535.89 (One Hundred and Eighteen Million, Seven Hundred and Seventeen Thousand, Five Hundred and Thirty Five Naira, Eighty Nine Kobo) in less than two years. The Defendant hereby puts the Plaintiff to the strictest proof of providing valid and approved documentation as rightfully earning the same.

Defendant denied paragraph 18 of the Plaintiff's statement of claim and avers that there was no contract between the Plaintiff and the Defendant for the supply of consumable building materials, other than the LPO's Nos. 886 and 1086, and no such material was received the Defendant from the Plaintiff. The Defendant puts the Plaintiff to the strictest proof of the same. In addition, there is no record of the Plaintiff's Cash Invoices on the alleged supply of consumable building materials by the Plaintiff to the Defendant.

The Defendant denied paragraph 19 of the statement of claim in its entirety and avers that the Plaintiff is not being owed at all by the Defendant for the actual supply of aggregate materials to the Defendant and the rental of cement mixers to the Defendant, as it has been fully paid. In addition, the Defendant has

records of payment to the Plaintiff for the supply of materials but no record of the actual receipt of these materials from the Plaintiff.

The Defendant denied paragraphs 22 and 23 of the Plaintiff's statement of claim and avers that the Plaintiff has visited the Defendant on several occasions and has been correctly informed that all payments due to it have been made. The Defendant did not refuse, neglect and/or failed to pay the Plaintiff for the actual supplies of materials made to the Defendant and the rental of the Plaintiff's cement mixer by the Defendant.

COURT:-

I have considered the issues formulated by Plaintiff and Defendant in their respective final written addresses. They are the same in character. I hereby

adopt the issue formulated by Defendant as the sole issue for determination of the dispute between Plaintiff and Defendant, to wit; “*whether in the circumstances of this suit the Plaintiff has successfully proved its case to be entitled to the reliefs and the damages sought as contained in the writ of summons.*”

I shall take – off by explaining what indeed a contract means in law, as same shall provide the desired template, legally speaking in resolving the instant dispute or conundrum.

In law, a contract generally is an agreement between parties which creates binding obligation on the part of the contracting parties. There shall be offer and acceptance, intention to create legal relationship and the contracting parties must have the desired

capacity to enter into such a contract. See *OJO VS ABT ASSOCIATES INCORPORATION & ANOR (2014) LPELR – 22860 (CA)*.

I need mention at this juncture that the reliefs sought by Plaintiff are declaratory in nature, and the law is already settled on what such a Claimant shall do to be entitled to such declaration, in view of the fact that Declaratory reliefs are not granted as a matter of course but on evidence which shall be most cogent. Admission, absence of defence or weak defence shall not be the basis, either, for granting declaratory reliefs. This in law is what is referred to as evidential burden of proof.

I find solace for above in the case of *NIPOST VS MUSA (2013) LPELR – 20780 (CA)*.

It is only where a party, i.e Plaintiff in this case, adduces evidence in proof of its case to the satisfaction of court that the fact sought to be proved has been proven, the burden then shifts to the Defendant. See section 133(2) Evidence Act, 2011. From the state of pleadings, Defendant is contesting that he never asked Plaintiff to supply an additional concrete mixer and other consumables, and that if they did, Plaintiff would have been issued an Local Purchase Orders (LPO) to cover the supply. Defendant admitted issuing Local Purchase Orders (LPO) numbers 886 and 1086 to the Plaintiff which they said were all paid for upon the said supplies, and that they are not in any way indebted to Plaintiff.

Defendant who maintained they have paid Plaintiff their entitlement, said they do not have the hour

monitoring of hired heavy equipment claimed by Plaintiff. Plaintiff was then put in the strictest proof to provide same, duly signed and approved by Defendant's project manager.

I have mentioned the documents tendered by Plaintiff and Defendant in the preceding part of this judgment.

I shall examine the said document one after the another to ascertain their respective value addition to the case of the Plaintiff on the one hand, and that of Defendant on the other hand. I need to observe that apart from Exhibit "A" i.e the two Local Purchase Orders (LPO) numbers 886 and 1086 which Defendant admitted it issued Plaintiff for the supply of the items therein mentioned, the only Local

Purchase Orders (LPO) left is the scanned copy of Local Purchase Orders (LPO) No. 381.

At the time the said Local Purchase Orders (LPO) Nos. 886 and 1086 were issued to Plaintiff by Defendant, parties clearly had a valid contract for the supply of the items mentioned therein.

PW1 under cross – examination admitted that he was always given Local Purchase Orders (LPO) from the previous transactions and that there was no written agreement between them for the supply of any consumables. Plaintiff however insists that he is been owed the amounts mentioned in the reproduced statement of claim.

I shall consider the said Exhibit “B” i.e Local Purchase Orders (LPO) 381 and the other documents which were tendered and admitted in evidence.

The said Exhibit “B” is the Local Purchase Orders (LPO) 381. The said document is a scanned copy without any explanation by the witness as to where the original was moreso the witness confirmed in his words that he was given original copy. Failure to lead foundation on the whereabouts of original copy is fundamental..for want of compliance with Sections 85 and 86 of the Evidence Act, said document is hereby expunged. I rely on the case of ***OBATUGA & ANOR. VS OYEBOKUN & ORS (2014) LPELR 22344 (CA).***

Exhibit “C” is the “Hour Monitoring of Hired Heavy Equipment”. I have seen the hour monitoring of hired heavy equipment for the 12th – 18th May, 2012, 1st – 7th September, 2012, 8th – 14th September, 2012, 22nd – 28th September, 2012, 29th September – 5th October, 2012, 6th October – 12th October, 2012, 13th

October – 19th October, 2012, 20th October – 26th October, 2012, 27th October – 2nd November, 2012, and 3rd November – 9th November, 2012.

A careful scrutiny of the said document which was admitted as Exhibit “C” shows clearly that one Melvin Nomos who’s project supervisor and Rexter Amoroso who is also project manager have both not signed their signature columns to give live and legitimacy to the said document.

Three of the columns meant to be signed by the project manager were signed for him by an unknown person since the signature bears no name. Nine columns meant to be signed by the construction manager/BP Manager were signed for him except one copy by an unknown person in view of the fact

that there is no name to identify the owner of the signature.

A person's name or mark written by the person or at the person's direction, is termed signature.

I find solace for above in Black's Law Dictionary 7th edition at page 1387.

The importance of stating the name of the signatory cannot be over emphasized, signature is only identifiable by the name of the signatory. See ***AKINSANYA & ANOR VS FMFL (2010) LPELR – 3687 (CA)***.

Plaintiff is under an obligation, legally speaking to take every steps necessary to call all those who partially executed the said Exhibits "C" and "D" to give evidence more so that Defendant contends the

said Exhibits “C” and “D” and insists everything was wrong with the said Exhibits “C” and “D”.

Arising from the fact that the said Exhibits “C” and “D” was partially signed by ‘faceless’ persons who only signed – for the construction manager/BP manager in nine places and project manager in four places, and coupled with the fact that project manager never signed his column on Exhibits “C” and “D” at all, it can safely be concluded that the said Exhibits “C” and “D” eventhough admitted in evidence despite the objection of Defendant’s counsel cannot be given the desired probative value in view of the inherent contamination by those faceless persons who merely appended signatures without their names, on the one hand, and complete absence of signature of persons who were meant to

give live to the said Exhibits “C” and “D” on the other hand.

The importance of signature cannot be over-stated. A document without signature is worthless and void. Such a document commands no judicial value before the court. See ***GARUBA VS KWARA INVESTMENT CO. LTD & 2ORS (2015) 5 NWLR (Pt. 917) 160, GBADAMOSI & ANOR VS BIALA & ORS (2014) LPELR 24389 (CA).***

The other argument is that the said exhibits “C” and “D” are internal documents of Defendant used for the preparation of the Hour Monitoring of Hired Heavy Equipment as stated earlier. Even though the said document does not prove agreement between parties, I am tempted to state that the proper person to tender the said documents is the maker

i.e. Defendant and not Plaintiff could not and was not cross – examined efficiently on the document..where, as in this case, a witness who never made a document tenders a document, the court shall not give any probative value to such a document. See ***7UP BOTTLING COMPANY PLC. VS EMMANUEL (2013) LPELR – 21104 (CA).***

Defendant who mentioned that they are not indebted to Plaintiff, tendered Exhibit “D1” i.e statement of account of First Continental Properties Limited on the account of the Plaintiff ARA GBADUMEH & SONS which shown that the sum of N113,723,821.68 (One Hundred and Thirteen Million, Seven Hundred and Twenty Three Thousand, Eight Hundred and Twenty One Naira, Sixty Eight Kobo) was paid to the Plaintiff for all their business dealings.

Learned counsel for the Claimant urged the Court to discountenance with the said Exhibit 'D1' for the reason that same was not signed by the maker. Learned counsel cited the case of *OMEGA BANK (NIG.) PLC. VS. O.B.C LTD. (2005) LPELR 2636 – SC*. In urging the court not ascribe any probative value to the said document.

I have considered the said document tendered, admitted and marked Exhibit 'D1'. This is a document generated electronically with accompanied Certificate of Compliance duly signed by one Bassey Agabi who doubles as the account Officer of First Continental Properties Limited and who in law is deemed to have generated the said statement of ledger account of the Claimant (ARA Gbadumeh & Sons). I have also looked at the said statement which bears the receipt stamp of

Churchgate dated 1st June, 2017. Claimant sued First Continental Properties Limited which does business under the name “Churchgate”. The said account officer is staff of Defendant.

The said document therefore is an internal document which came from proper custody and signed by the maker. The argument of Uguajamma Esq. to the contrary is most academic and is hereby overruled.

Exhibits “E”, “F”, and “G” tendered by Plaintiff are cash invoice of Defendant predicated upon Local Purchase Orders (LPO) No. 886 i.e one of Exhibit “A”, which Defendant maintained it had also paid Plaintiff and Plaintiff’s delivery invoice Nos. 1551 and 1601.

Defendant clearly denied Plaintiff’s claim with respect to the consumables which Plaintiff’s witness

admitted no Local Purchase Orders (LPO) was given to the Plaintiff for the supply of the alleged consumables.

Another issue I have discovered with the said Exhibits “F” and “G” is that the said supplied consumables were never received by the Defendant as the “received” column meant to be signed by Defendant remained all blank casting a huge cloud of invalidity on the said invoice especially that Defendant denied such claims. The other observation I have also made with respect to the same Exhibit is that figures on the carbonated pages of the invoice were mostly re-written thereby casting elements of criminal tremor on the said documents which are also mostly not readable. The sole witness for Plaintiff did not equally speak to the document thereby dumping same on the court. See *PDP*

&ANOR VS INEC & ANOR (2012) LPELR – 8369 (CA).

Exhibits “F” and “G” clearly have been undermined in credibility and no value can be ascribed to the said entries contained in Exhibits “F” and “G” in law.

May I also state, with humility and all sense of modesty that a contract must not always be in writing. The conduct of parties, as well as words and deeds or by documents that have passed between parties could establish contract. See ***MUDIAGA – ODJE VS YOUNES POWER SYSTEM NIGERIA LTD (2013) LPELR – 20306 (CA).***

Plaintiff who seeks the aforementioned declaration is under a legal obligation to lead evidence in proof of its claim or risk having all the reliefs refused.

Arising from the monumental deficiencies associated with the Exhibits tendered by Plaintiff's sole witness, and coupled with the admission of PW1 that he was not given any such Local Purchase Orders (LPO) for the supply of the third concrete mixer consumables claimed, it becomes very difficult for the court to situate the claim of the Plaintiff in law since there would not be evidence in support of same. Pleadings without evidence is worthless. See ***GENERAL VS AFRIBANK NIGERIA PLC. (2013) LPELR – 20662 (SC)***.

Flowing from above, therefore, I need to make a point that on the totality of the evidence of PW1, there is clearly then no basis to place an enforceable contract between Plaintiff and Defendant which clearly is the basis of Plaintiff's claim as endorsed

on the face of the writ of summons and statement of claim.

Plaintiff who asserts a fact has the burden of proving all his assertion. I am most satisfied that Plaintiff's sole witness failed to lead any such admissible evidence in support of Plaintiff's claim thereby leaving the burden of proof unproven, hence undischarged Pursuant to Section 134 Evidence Act 2011. See ***ZENITH BANK PLC. VS UMOM (2013) LPELR – 22001 (CA)***.

The court cannot speculate or guess on the fact that parties have agreed to confer rights and liabilities on themselves. A contract is not a game of chess where speculation is allowed. Courts are precluded from speculation. Plaintiff has failed, and woefully so, to establish existence of any consensus ad idem thereby

leaving the entire claims of Plaintiff compromised. I resolve the sole issue formulated against Plaintiff.

Accordingly and in consequence of all I have stated in the preceeding part of this judgment, the said reliefs 1, 2, 3 and 4 are as follows:-

1. A Declaration that the failure of the Defendant to pay the contract debt sum of N17,216,718.80 (Seventeen Million, Two Hundred and Sixteen Thousand, Seven Hundred and Eighteen Naira, Eighty Kobo) only, for rentage/hire of Plaintiff's transit/concrete mixer, in accordance with the terms of Local Purchase Order (LPO) No. 381, constitutes a breach of contract.
2. A Declaration that the failure of the Defendant to pay the contract debt sum of N7,794,695 (Seven Million, Seven Hundred and Ninety Four

Thousand, Six Hundred and Ninety Fifty Naira) only, for the Plaintiff's supplies/deliveries of River Sand, Granite and Quarry Dust, in accordance with the terms of Local Purchase Order (LPO) No. 886, constitutes a breach of contract.

3. A Declaration that the failure of the Defendant to pay the contract debt sum of N4,135,465.43 (Four Million, One Hundred and Thirty Five Thousand, Four Hundred and Sixty Five Naira, Forty Three Kobo) only, for the Plaintiff's supplies/deliveries of Granite and Quarry Dust, in accordance with the terms of Local Purchase Order (LPO) No. 1086, constitutes a breach of contract.

4. A Declaration that the failure of the Defendant to pay the contract debt sum of N1,871,297 (One Million, Eight Hundred and Seventy One Thousand, Two Hundred and Ninety Seven Naira) only, for the Plaintiff's supplies/deliveries of consumable building materials, constitutes a breach of contract; fails and accordingly hereby dismissed.

The success of reliefs 5, 6, 7, 8, 9, 10, 11, 12 and 13 are as follows:-

5. The sum of N5,000,000.00 (Five Million Naira) only, as damages for breach of contract.

6. The sum of N17,216,718.80 (Seventeen Million, Two Hundred and Sixteen Thousand, Seven Hundred and Eighteen Naira, Eight Kobo) only, being the outstanding cost of Defendant's

rentage/hire of Plaintiff's Transit/Concrete Mixer.

7. The sum of N7,794,695 (Seven Million, Seven Hundred and Ninety Four Thousand, Six Hundred and Ninety Fifty Naira) only, being the outstanding cost of Plaintiff's supplies deliveries of River Sand, Granite and Quarry Dust to the Defendant, in respect of Local Purchase Order (LPO) No. 886.
8. The sum of N4,135,465.43 (Four Million, One Hundred and Thirty Five Thousand, Four Hundred and Sixty Five Naira, Forty Three Kobo) only, being the outstanding cost of Plaintiff's supplies/deliveries of Granite and Quarry Dust to the Defendant, in respect of Local Purchase Order (LPO) No. 1086.

9. The sum of N1,871,297 (One Million, Eight Hundred and Seventy One Thousand, Two Hundred and Ninety Seven Naira) only, being the outstanding cost of Plaintiff's supplies/deliveries of numerous Tanks of Water and/or consumables, to the Defendant.
10. 10% pre-judgment interest per month, from 1st February, 2013 till date of Judgment.
11. 10% Post Judgment interest per month, from the date of Judgment till the Judgment sum is wholly defrayed.
12. The sum of N93,054,528.6 (Ninety Three Million, Fifty Four Thousand, Five Hundred and Twenty Eight Naira, Sixty Kobo) only, as Plaintiff's loss, due to the Defendant's delayed

payment, resultant from devaluation of Naira from 2012 till date.

13. The sum of N3,000,000.00 (Three Million Naira) only, being the cost of Prosecuting this suit; are reliant on the success of the dismissed reliefs.

You cannot put something on nothing and expect it to stand. See *UAC VS MCFOY (1961)3 ALL ER*. The said reliefs have no leg to stand on. They are similarly and accordingly dismissed.

The plight of Plaintiff clearly, has been left in limbo to wither away as a judicial gate – crasher that has by provisions of law and established judicial authorities been consigned to a forlorn heap of legal fossil.

Consequently, the suit of Plaintiff shall be dismissed. Same is hereby dismissed.

Justice Y.Halilu
Hon. Judge
27th September, 2021

APPEARANCES

A.U.S Oguajamma Esq. – for the Plaintiff.

George O. Esq. with G. Edeche Esq. – for the Defendant.