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/0094/2017

DATE: :WEDNESDAY 15TH SEPTEMBER 2021

1. COMPLETE SOLUTION CONSULT
2. MR. TUNDE IBRAHIM } **PLAINTIFFS**
3. MR. FAGBOLU ABIODUN ANTHONY

AND

1. KANO STATE GOVERNMENT
2. ATTORNEY GENERAL OF KANO STATE } **DEFENDANTS**

JUDGMENT

The Plaintiffs commenced this action vide amended writ of summons and statement of claim wherein Plaintiffssought for the following:-

a. A Declaration that the purported termination of the contract of the 1st Plaintiff entered into with the 1st Defendant on the untenable ground that "**the Back Duty Investigation has already been conducted by a consortium of Consultants appointed by the Nigeria Governors Forum"** is unlawful and ultra – vires.

b. A Declaration that the 1st Plaintiff is entitled to the sum of $29,480,504.00 (Twenty Nine Million, Four Hundred and Eight Thousand, Five Hundred and Four United States Dollars),

being/representing 20% honorarium of the sum of USD 147, 402, 520. 22 (One Hundred and Forty Seven Million, Four Hundred and Two Thousand, Five Hundred and Twenty United States Dollars) recovered by the 1st Plaintiff for the 1st Defendant by virtue of the letter of appointment of the Plaintiffs as consultant to the 1st Defendant.

c. An Order directing the 1st Defendant to immediately pay over to the 1st Plaintiff, the sum of $29,480,504.00 (Twenty Nine Million, Four Hundred and Eight Thousand, Five Hundred and Four United States Dollars), being/representing 20% honorarium of the sum of USD 147,402,520.22 (One Hundred and Forty Seven Million, Four Hundred and Two Thousand, Five Hundred and Twenty United States Dollars)

recovered by the 1st Plaintiff for the 1st Defendant by virtue of the letter of Appointment of the 1st Plaintiff as consultant to the Defendant.

d. An Order of this Honourable Court awarding interest of 12% per month on the total judgment sum from the date judgment is delivered in this suit until the judgment debt is finally liquidated by the 1st Defendant.

e. An Order of this Honourable Court awarding the sum of N20,000,000.00k (Twenty Million Naira) only against the 1st Defendant as general damages for the breach of the contract it entered into with the 1st Plaintiff, as well as for failure to pay 1st Plaintiff's 20% honorarium, amounting to the sum of $29,480,504.00 (Twenty Nine Million, Four Hundred and Eight Thousand,

Five Hundred and Four United States Dollars), as and when due, thereby exposing 1st Plaintiff to untold embarrassment and avoidable financial constraint.

Upon service of the writ and statement of claim on the Defendants and after Defendants filed and exchanged pleadings, the suit was set down for hearing. The case of the Plaintiffs as distilled from the witness statement on oath of PW1 (Ibrahim Olatunde) is that by a letter dated 22nd of August, 2016, the Plaintiffs offered to act as consultant to the 1st Defendant, the Kano State Government on back – duty reconciliation/recovering of excess deductions for foreign loans servicing and deduction from statutory agencies of the Federal Government due to state governments.

Plaintiffs further gave evidence that the 1st Defendant, by a letter dated 30th August, 2016, appointed the Plaintiffs as consultant to the Kano State Government for the purpose of back duty reconciliation and recovery of excess deduction of USD 112,293,641.00 on foreign loan, and that the 1st Defendant offered to pay for the professional services of the Plaintiffs by way of 20% honorarium of the amount recovered on behalf of the Defendant, but that to the surprise of Plaintiffs,1st Defendant after having accepted the Plaintiffs' report, and on the basis of which the 1st Defendant subsequently put a claim for the sum of USD147,402,520.22 to the Federal Government of Nigeria, the 1stDefendant strangely madea volte – face to renege and terminate the contract it entered into with the Plaintiffs.

Plaintiffs' sole witness also gave evidence to the effect that upon realizing the impropriety of the termination of the contract it entered into with the Plaintiffs and in a frantic bid to placate the Plaintiffs, 1st Defendant advised the Plaintiffs to "come up with any other appropriate proposal(s) on consultancy services for possible engagement" by the Defendant.

Plaintiffs gave evidence that in executing the contract it entered with the 1st Defendant,Plaintiffs had expended/committed enormous financial and personnel resources, which culminated into the production of the report.

PW1 tendered the following document in evidence;

1. Letter dated 22nd August, 2016 tendered and marked Exhibit "A".
2. Letter dated 30th August, 2016 tendered and marked Exhibit "B".

3. Document titled claims of refunds on foreign loans tendered and marked Exhibit "C".

4. Document titled "Re-appointment as contractor date 25th October, 2016 tendered and marked Exhibit "D".

PW1 was then cross – examined and subsequently discharged and later recalled to adopt his additional witness statement on oath. Plaintiffs then closed its case at the conclusion of the evidence of PW1.

Salihu Ado was led in evidence as DW1 and a sole witness for the Defendants. The case of the Defendants as distilled from the witness statement on oath of DW1 is as thus;

That sometime in 2016, the 1st Defendant appointed the Plaintiffs as Consultant to Kano State Government for Back Duty Reconciliation and

recovery of excess deduction of $112,293,641.00 USD on foreign loans deductions.

That on 25th October, 2016 the first Defendant wrote a letter of termination of the offer of contract to the Plaintiffs stating that, the said contract was already awarded and conducted by a consortium of consultants appointed by the Nigeria Governors Forum.

Defendant aver that since the letter of the appointment of the Plaintiffs, the Plaintiffsdid not write any formal letter to the Office of Accountant General of the Federation intimating his appointment as contained in the letter of appointment dated 30th August, 2016, hence could not have performed or discharged any contractual obligation as contained in the letter of appointment dated 30th August,

2016.DW1 gave further evidence that Plaintiffs never recovered the excess deduction of $147,402,520.22 USD on foreign loan as claimed and are therefore not entitled to the payment of 20% honorarium since they have not discharged the obligation as contained in the letter of appointment. Court was urged to dismiss the claims.

DW1 was cross – examined and accordingly discharged.

Defendants closed their case to pave way for filing and adoption of final written addresses.

Defendants' Counsel filed and formulated the following issues in their final address for determination:-

1. Whether the Plaintiffs have performed or discharged his obligation as contained on the letter of appointment to warrant his claimed?

2. Whether the Plaintiffs in this suit has fulfilled condition precedent contained on the letter of appointment to warrant his claimed in this suit?

3. Whether the documents claimed and relied upon was a document produced by the Plaintiffs?

4. Whether the court can expunge document wrongfully admitted?

On issue 1, learned counsel argued that throughout the proceedings in this matter, there was no place or any evidence placed by the Plaintiffs to show that they have discharged their obligation as contained on their letter of appointment and therefore, they have not perform their obligation. ***ACHONU VS***

OKUWIBI (2017) 14 NWLR (Pt. 1584) 142 was cited.

On issue 2, learned counsel submit that, the Plaintiffs in this suit have not fulfilled the condition precedent to warrant the commencement of this action. ***ATOLAGE VS AWANI (1997) 9 NWLR (Pt. 522) 536 was cited.***

On issue 3, learned counsel argued that the existence of a document can only be proved by the production of its original copy and that the primary evidence of a public document is its original. ***ERNEST NZEKU & 2ORS VS MADAM CHRISTIANA NZEKWU (1989) 3 SC (Pt. 11) page 76 was cited.***

Counsel further submit that public documents relied upon at trial must meet the requirements of certification before they can be admissible in law.

KWARA STATE WATER CORPORATION VS. A.I.C. NIG. LTD (2009) 47 WRN (Pt. 90) at page 121; and CHIEF GANI FAWEHNIMI VS I.G.P. (2000) (Pt. 12) (2012) at 2044 paragraph G.H 2045 were cited.

Learned counsel argued on issue 4 that the court can expunge documents wrongfully admitted. ***ENWEREM VS ABUKAR & ANOR (2016) LPELR – 40369 (CA); OKAFOR VS OKPALA (1995) NWLR (Pt. 374) 749 at 758; I.B.W.A VS. IMANO LTD (2001)3 SCNJ 160 at 177 were cited.***

It is further the submission of counsel that the Plaintiffs in this suit has not placed any evidence to prove that they have discharged and performed their obligations as contained on their letter of

appointmentand the court was urge to dismiss the case of the Plaintiffs.

On their part, the Plaintiffs formulated the following issues for determination to wit:-

1. Whether by the testimony of PW1 and the admission of DW1 at trial, the 1st Plaintiff has established breach of contract by the 1st Defendant.

2. Whether by the preponderance of evidence led at trial by the PW1 and the DW1, as well as the documents tendered by the Plaintiffs at trial, the Plaintiffs are not entitled to Judgment as per the reliefs sought before this Honourable Court, particularly, reliefs 2 and 3 thereof.

3. Whether the Plaintiffs are not entitled to be paid the sum of $29,480,504.00 (Twenty Nine

Million Four Hundred and Eighty Thousand, Five Hundred and Four United State Dollars), being/representing 20% honorarium of the sum of USD 147,402,520.22 (One Hundred and Forty Seven Million, Four Hundred and Two Thousand, Five Hundred and Twenty United States Dollars) recovered by the 1st Plaintiff for the 1st Defendant by virtue of the letter of appointment of the 1st Plaintiff as consultant to the 1st Defendant.

4. Whether the Plaintiffs' claim for damages will not succeed as a result of the breach of contract on the part of the 1st Defendant.

On issue one, learned counsel submit that 1st Plaintiff has therefore established, by preponderance of evidence, that the 1st Defendant did breach the

contract between the two parties. The termination of the said contract by the 1st Defendant is ultra vires as 1st Plaintiff had already performed/executed the contract in consonance with the terms of the contract.

Counsel argued further that the admission of the Defendants vide their amended Defendants' statement of defense as well as the amended witness statement on oath of Shehu Ado is resounding. ***CAPPA & D' ALBERTO LTD VS.AKINTILO (2003) LPELR –829 (SC) AND OGUNNAIKE VS. OJAYEMI (1987) 1 NWLR (Pt. 53) 760*** were cited.

On issue three, learned counsel contended that document (Exhibit 'B') speaks for itself, and that the duty on a trial court is to properly evaluate the contents of documentary exhibits. In this regard,

when any contract has been reduced to the form of a document or series of documents, no evidence may be given ofthe terms of such contract except the document itself, and the contents of any such document cannot be contradicted, altered or varied however. ***EZENWA VS K.S.H.S.M.B (2011) 9 NWLR (Pt. 1251) at Page 89; IHONWO VS.IHUNWO (2013) 8 NWLR (Pt.1357) 550; TANGALE TRADITIONAL COUNCIL VS. FAWU (2001) 17 NWLR (Pt. 742) 293*** were cited.

On issue four, learned counsel submit that Exhibit 'D' is the letter terminating the contract and same speaks for itself. There is no contention as to whether or not the contract was terminated by the 1st Defendant as Exhibit "D" speak for itself.

On the whole, counsel urged the court to decide where the scale of justice preponderates by qualitative evidence adduced at trial by the parties.

Court:-

I have carefully gone through the oral and documentary evidence adduced on the part of Plaintiffs on the one hand and Defendants on the other hand.

It is most instructive to state from the outset that reliefs 21(a) and (b) sought by Plaintiffs against the Defendants on the amended statement of claim are declaratory in nature,thereby predicating the success of the other reliefs on the success of the said reliefs.

It is therefore imperative to note that the law with respect to declaratory reliefs is settled per-adventure in the anals of our jurisprudence. When a declaratory

relief is sought by a party, it is to make the Court declare as established a legal and factual state of affairs in respect of the cause of action.

Thus, the Courts will not readily without good and sufficient evidence exercise its discretion to grant such declaratory order or reliefs.

This is why declaratory relief or order cannot be granted without oral evidence even where Defendant admits liability in pleadings. See ***A.G CROSS RIVER VS.A.G FEDERATION (2005)6 SCNJ 152; OGOLO VS.OGOLO (2006)2 SCNJ 235; NZUKIKE VS.OBIOHA & ANOR (2011) LPELR – 4661 (CA).***

Declaratory reliefs are not only a form of relief, they are statutory/rights as well as constitutional rights.

Its judgment (declaratory judgment) broadly speaking, is just a pronouncement of the legal state of affairs.

The kernel of Plaintiffs' claim rests squarely on a contract awarded it as **Consultant to Kano State Government for Back Duty Reconciliation and Recovery of Excess Deductions of $112,293.641 USD on Foreign Loan**vide letter dated the 30th August, 2016 which was later withdrawn vide letter dated the 25th October, 2016 which were tendered, admitted and marked Exhibits 'B' and 'D' respectively.

The said withdrawal of Exhibit 'B' vide Exhibit 'D' necessitated the present action by Plaintiffs. For the purposes of clarity, I shall reproduce the said

contents of Exhibits ‘B’ and ‘D’ respectively, as follows:-

<u>Exhibit ‘B’</u>

“The Managing Consultant,

Complete Solution Consult,

Tax Revenue and Management Consultants,

No. 82, Bank Authority KolawoleOdunsi Street,

Ikeja, Lagos.

<u>APPOINTMENT AS CONSULTANT TO KANO STATE GOVERNMENT FOR BACK DUTY RECONCILIATION AND RECOVERY OF EXCESS DEDUCTIONS OF $112,293.641 USD ON FOREIGN LOAN</u>

Reference to your firm’s application and subsequent screening to serve as a Consultant to Kano State Government on Back Duty Reconciliation and Recovery of Excess Deductions

of $112,293,641 on Foreign Loan, I am directed to communicate His Excellency's approval for your firm to be appointed as debt recovery Consultant for the State, in respect of the Foreign Loan Deductions.

By this appointment, you are expected to approach the relevant Government Agency (Office of the Accountant General of the Federation) for discussion and collection of a sum of $112,293,641 on foreign deductions owed Kano State Government over the period June 1995 – March, 2006.

Your honorarium for the successful discharge of this assignment is 20% of the amount recovered.

The amount recovered is to be paid into the account with the following details:

Bank Name:- Access Bank Plc.

Account Name:- Kano State Foreign Loan Interest Recovery Account

Account Number:- 0711194308

Address:- Kano Zonal Office, No. 12B Post Office Road, Kano State."

<u>Exhibit 'D'</u>

"The Managing Consultant,

Complete Solution Consult,

Tax Revenue and Management Consultants,

No. 82, Bank Authority KolawoleOdunsi Street,

Ikeja, Lagos.

<u>RE: APPOINTMENT AS CONSULTANT TO KANO STATE GOVERNMENT FOR BACK DUTY RECONCILIATION AND RECOVERY OF EXCESS DEDUCTIONS OF $112,293.641 USD ON FOREIGN LOAN</u>

I wish to refer to the letter of appointment No. S/FED/ADM/20/165 dated 30th August, 2016 on the above subject matter and to inform you that the said appointment has now been terminated in view of the fact that the back Duty investigation has already been conducted by a consortium of Consultants appointed by the Nigeria Governors Forum (NGF).

However, I hereby advise you to come up with any other appropriate proposal(s)on consultancy services for possible engagement by the Kano State Government.

Please accept the assurance of my highest regards."

The law is settled on the importance of documentary evidence, except where fraud is pleaded,

documentary evidence is the best form of evidence. No oral evidence therefore shall be allowed to discredit or contradict the contents thereof. See ***OLAWOYE VS. BELLO (2015) LPELR – 24475; EGHARERA VS.OSAGIE (2009)18 NWLR (Pt. 1173) 299 (SC).***

A cursory consideration of the afore-reproduced Exhibit 'B' clearly represents the embodiment of the terms and conditions of the contract between the Plaintiffs and Defendants.

Supreme Court defined burden of proof in ***KALA VS. POTISKUM (1998) 3 NWLR (540) 1 at Page 17 as follows:-***

"The phrase burden of proof" has three meanings namely:-

a. The persuasive burden.

This is the burden of proof as a matter of law and pleadings, the burden of establishing a case whether by preponderance of evidence or beyond reasonable doubt. This is also referred to as the legal burden of proof.

b. The evidential burden.

This is the burden of proof in the sense of adducing evidence.

c. The burden of establishing the admissibility of evidence.

See also ***NWARU VS. OKOYE (2008) 18 NWLR (118) 29 at 64 – 5.***

The onus or burden of proof is merely an onus to prove or establish an issue, there cannot be a burden of proof where there are no issues in dispute

between the parties and to discover where the burden lies in any given case, the Court has a bounden duty to critically look at the pleadings.

See ***OKOYE & ORS VS. NWANKWO (2014) LPELR 23172 (SC).***

The gravement of Plaintiffs' action from the state of pleadings and documents tendered lies on Exhibits 'B' and 'D' i.e**the letter appointing the 1st Plaintiff as Consultant by Kano State Government for the Back Duty Reconciliation and Recovery of Excess Deductions of $112,293.641 USD on Foreign Loan** and the subsequent termination of the said letter of appointment based on the reason given therein in the said Exhibit 'D' by Kano State Government.

The law is very clear on when a contract is deemed to have been established. There must be offer,

acceptance, intention to create legal relationship, consideration and capacity to contract. See ***OJO VS. ABT ASSOCIATES INCORPORATED LTD. (2014) LPELR – 22860 CA.***

There is no gain saying that Plaintiffs vide Exhibit 'B' was awarded contract by the 1st Defendant (Kano State Government) as Consultant for back duty reconciliation and recovery of excess deductions of $112,293.641 USD on foreign loan.

It is equally spentthat the said contract was terminated vide Exhibit 'D' for the reason given therein which necessitated the action of the Plaintiffs.

Plaintiffs' sole witness (Ibrahim Olatunde) who gave evidence as the managing partner of 1st Plaintiff maintained in paragraphs 9 and 10 that they carried-

out the assignment as Tax and Revenue Management Consultant and reconciled the excess deduction for foreign loans servicing and deduction from statutory agencies of Federal Government due to the 1st Defendant.

PW1 who tendered Exhibit 'C' i.e claim of refunds on foreign loans further stated that it was on the strength of the said Exhibit 'C' that 1st Defendant then put up a claim for the sum of $147,402,520.22 USD to the Federal Government of Nigeria.

PW1 also stated in his evidence that Plaintiffs had expended/committed enormous financial and personnel resources, which culminated into the production of the said Exhibit 'C' and that there was no basis terminating the contract, whereof, Plaintiffs then insist that they are entitled to the payment of

20% honorarium amounting to the sum **$29,480,504 (Twenty Nine Million, Four Hundred and Eighty Thousand, Five Hundred and Four United States Dollars).**

I need to observe that when a contract is reduced into writing, the writing gives the terms agreed upon. Before the parties come to a binding contract they usually enter into negotiations. It is the certainty of the terms the parties arrived at that determines their intentions and whether there is a binding contract.

I find solace for above in the following authorities; ***MANDILAS & KARABERIS LTD. VS. OKITIKI (1963)1 ALL MR 22 at 26; OLAMYAM & ORS VS.UNILAG (1985) 2 NWLR (Pt.9) 599; A.A MACAULAY VS.NAL MERCHANT BANK LTD.***

(1990) 6 SCNJ 117 at 133 and OMEGA BANK NIGERIA PLC. VS. O.B.C LTD. (2005) 1 SCNJ 150 at 170 Lines 14 to Page 171.

PW1 who tendered Exhibits 'A', 'B', 'C' and 'D' was asked the following questions under cross-examination:-

XXX:- Have a look at Exhibit 'B' i.e letter of appointment as Consultant by Kano State Government. Were you given any condition by Kano State Government?

Ans:- No.

XXX:- Have you written to the office of the Accountant General of the Federation as contained in Exhibit 'B'?

Ans:- Yes.

XXX:- Have you recovered the money?

Ans:- Yes.

XXX:- Were the monies recovered paid into the account mentioned in Exhibit 'B'?

Ans:- Yes.

XXX:- Do you have any evidence to show that the money in question was paid into the account in Exhibit 'B'?

Ans:- Yes.

The essence of cross examination cannot be over emphasized. It is to enable the cross examining party to demolish or weaken the case of the party being cross-examined. See ***OKE & ANOR VS. UBA PLC. & ANOR (2015) LPELR – 24827 (CA).***

It is the law that all elicited answers under cross-examination form part of the evidence of such a witness.

From the ensuing evidence of PW1, Plaintiffs gave evidence and argued clearly that they carried-out the contract as contained in Exhibit 'B' and had paid the recovered sum of monies on behalf of 1st Defendant i.e Kano State Government into the account supplied by the Kano State Government as provided in Exhibit 'B' which had earlier been reproduced in the preceeding part of this Judgment i.e**Bank Name:- Access Bank Plc.;Account Name:- Kano State Foreign Loan Interest Recovery Account; Account Number:- 0711194308; Address:- Kano Zonal Office, No. 12B Post Office Road, Kano State,** and that they indeed had the evidence.

It is therefore settled from the evidence of PW1 before the Court that Plaintiffs are claiming for work done based on Exhibit 'B' and not breach of contract. These are two different issues all together in law.

Assuming this was an action for breach of contract, a contract for service; the Plaintiffs' remedy lies only in damages for such a breach of contract. Where there is a total repudiation of contractual obligation the only remedy is an action for breach of contract and not for the party complaining of the breach to insist that the contract subsists. See ***COMMISSIONER FOR WORKS, BENUE STATE VS. DEVCON LTD. (1988) 3 NWLR (Pt. 83) 407 at 422; NWAOLISAH VS. NWAFUFOH (2011) LPELR – 2115 (SC)***

Defendants on their part, contended that the said contract as per Exhibit ‘B’ had not been carried-out at the time same was withdrawn vide Exhibit ‘D’.

DW1 in his evidencestated that Plaintiffs never carried-out any such contract as claimed and that Exhibit ‘C’ i.e**Claim ofRefunds on Foreign Loan** was made available to the Plaintiffs by the Defendants and that Kano State Government equally was the one that submitted same to the Debt Management Office.

Justice has never been a one way traffic. Justice has two scales and the case of either party is put in one or other of the scales and weighed.

It is instructive to state that Plaintiffs who have the onerous duty to establish their claim by leading credible evidence, admitted under cross-examination

to have carried-out the job as contained in the afore-reproduced Exhibit 'B' which was recovery of the said sum on behalf of Kano State Government and paid same into the account provided in the said Exhibit 'B'. PW1 further admitted also that Plaintiffs had evidence of the said payment and that they had liaised with Attorney General of the Federation Office.

Reliefs 21(a) and (b) of Plaintiffs as contained in the amended statement of claim are declaratory in nature and the law which I have stated in the preceeding part of this Judgment imposes a duty and responsibility on the Plaintiffs to establish the fact that they are entitled to the reliefs based on evidence and not on admission by the Defendants or weakness or absence of defence.

PW1 who admitted the fact that it recovered monies on behalf of Kano State Government based on Exhibit 'B', failed to show any such evidence of recoveries by tendering any such bank statements showing the account number and bank agreed in the said Exhibit 'B' which Defendants argued they had long terminated vide Exhibit 'D'.

What more.. Exhibit 'C' i.e Kano State Government claim of Refunds on Foreign Loan which was tendered by PW1 which Plaintiffs said was their effort is a collation of first line deductions from June 1995 – April, 2002 which DW1 under cross-examination stated Defendants made available to the Plaintiffs and Debt Management Office. DW1 maintained Plaintiffs never carried-out any part of the contract in Exhibit 'B' before same was

withdrawn vide Exhibit 'D' to warrant any such claim.

Upon a calm consideration of all evidence and legal argument, ***the issue, would it be alright in the eyes of the law for Plaintiffs to claim for work done or breach of contract, from the state of pleadings and evidence has been formulated for determination by the Court.***

Permit me to state the position of the law first and foremost with respect to termination, cancellation or repudiation of contract which to my mind and understanding is the same.

A contract duly entered-into by contracting parties can be terminated by either of the parties to the contract with or without notice. Repudiation occurs where a party by words or conduct conveys to the

other party that he no longer intends to honour his obligation in the agreement.

Repudiation operates as an immediate breach and discharges the person repudiating from his obligation in the contract.

The remedy is always damages for the breach of contract.The authority of ***COMMISSIONER FOR WORKS BENUE STATE VS.DEVCON LTD. (1988) 3 NWLR (Pt. 83) 407.***

On above score therefore, seeking a declaration that the termination of the contract between Plaintiffs and 1st Defendant is unlawful and ultra-vires, is not just unattainable, but spurious,misleading self-deceiving and shows a manifest misunderstanding of the law as it were. Relief A is refused and dismissed accordingly.

Next is Relief B.

Plaintiffs are claiming payment of the agreed honorarium of what they have recovered and therefore are under an obligation to satisfy the Court that they are so entitled to the said reliefs. It is solely the duty of Plaintiffs to prove that they are entitled to the said declaratory reliefs. It is not the weakness or admission of the Defendants that will make the Court grant the reliefs sought as declaratory reliefs are not granted as a matter of course. This position of the law is spent.

Exhibit 'B' which is the embodiment of the contract has in it two conditions which Plaintiffs were mandated to carry-out.

Plaintiffs were mandated to liaise with the Office of the Accountant General of the Federation on the

recoveries and to pay the recovered sums into the provided account as contained in Exhibit 'B'.

PW1 who tendered the said Exhibit 'B' admitted complying with all the conditions but failed to tender any such evidence in Court for the Court to ascertain whether any such job was carried-out before the termination or after the termination of the said Exhibit 'B' vide Exhibit 'D', especially that Defendants have debunked the claims of the Plaintiffs.

The law cannot command an impossibility. The essence of justice is to do what is true and correct.

Plaintiffs have clearly failed to lead evidence in support of their claim to warrant this Court making any such declaration with respect to Relief 'B' under consideration.

Plaintiffs who were given Exhibit 'B' i.e the contract to recover monies on behalf of Kano State Government which 1st Defendant by Exhibit 'D' terminated had the option of approaching the Court for breach of contract and not for claim of work done when clearly no such work was ever carried out by Plaintiffs from the available evidence before the Court. Even the Exhibit 'C' which Plaintiffs claimed it carried-out was rebutted by DW1 under cross-examination as document 1st Defendant made available to the Plaintiffs. Supposing without conceding that Plaintiffs did carry-out the said exercise in Exhibit 'C', why was same not authored and signed by Plaintiffs!

There is clearly no nexus between Plaintiffs and the said Exhibit 'C'.

I have also read with interest the legal arguments of both counsel for the Plaintiffs and Defendants touching on the same Exhibit 'C' on the position of the law with respect to photocopy of original official documents and when same ought to be certified in compliance with Section 102 and 104 of the Evidence Act 2011 as amended.

Whereas Defendants'counsel argued that Exhibit 'C' which emanated from them and drew the attention of the Court to the last document in the bundle of Exhibit 'C' i.e letter dated the 25th October, 2016, which he contends is photocopy of official document hence the need to certify same in compliance with Section 104 Evidence Act 2011for the purposes of admissibility, learned counsel for the Plaintiffs, DejiMorakinyo Esq., vehemently argued and contested that the whole of Exhibit 'C' which was

the product of Plaintiffs' effort is original copy and not photocopy, hence needless for any certification for same to be admissible in evidence.

I have considered the said Exhibit 'C' and closely looked at the said document dated the 25th October, 2016 without much ado, the said document which is official which formed a bundle of other documents is a photocopy of original copy of Exhibit 'D' already tendered in evidence by the Plaintiffs' PW1.

If indeed the said original copy is already in evidence, the copy which formed the bundle of Exhibit 'C' is certainly a photocopy.

A further perusal of the other documents from the bundle of the documents tendered as Exhibit 'C' shows summary of deductions from State Government from Debt Management Office which is

an Agency of the Federal Government and therefore any such documents emanating from such an Office is official and shall, comply with Section 104 Evidence Act 2011, once same is not original for the purposes of admissibility.The bundle of documents from the Debt Management Office are all photocopies and uncertified.

The argument of learned counsel for the Defendants, Mustapha Imam Esq.,(Chief State Counsel) on the issue of non-compliance with Section 102 and 104 of Evidence Act 2011 is richer in content and character and therefore upheld.

Having admitted a document that ought not to have been admitted in evidence, now that I am satisfied with the argument against admissibility, the proper thing to do is to expunge the said document.

Accordingly, the said Exhibit 'C' for the reasons advanced is hereby expunged.

I find solace for above in the case of ***OLAYINKA VS. STATE (2007) 4 SC. (Pt. 1) 210.***

What then is the fate of Plaintiffs!

As stated in the preceeding part of this Judgment, Plaintiffs who alluded to the fact that they carried-out the contract in Exhibit 'B' and now claim for payment in accordance with the terms of the contracts stated in Exhibit 'B' have failed and woefully so to lead any evidence in prove of their claim. Plaintiffs are not entitled to the said sum of $29,480,504 (Twenty Nine Million, Four Hundred and Eighty Thousand Five Hundred and Four United States Dollars).

What more.. Plaintiffs' sole witness alluded to the fact that they have incurred expenses on personnel, excetera, but have not shown how and when such expenses were incurred and no evidence at all.

I am minded to make such observation because had Plaintiffs led any evidence to lead the Court on how, when, how much was expended on account of the withdrawn or terminated contract, which the Court views as a wrong or injurious, there shall then be a remedy.

That was why ***DENNING, M.R in PACKER VS PACKER (1954) Page 15 at Page 22*** was able to assert:

> ***"What is the argument on the other side? Only this that no case has been found in which it had been done before. That argument does not***

appeal to me in the least.If we never do anything, which has never been done before, we shall never get anywhere. The law will not stand still whilst the rest of the world goes on and that will be bad for both. The law is an equal dispenser of justice, and leaves none without a remedy for his right. It is a basic and elementary principle of common law that wherever there is a wrong, legal or injuria that is, there ought to be a remedy to redress that wrong.Ubiiusibiremedium is the common law principle".

Instead of leading credible and reliable evidence in support of its pleadings, Plaintiffs' counsel, DejiEsq, made tremendous academic effort in their final written address to create holes in the case of the Defendants.

It is settled position of law that address of counsel form part of the case and failure to hear the address of one party, however overwhelming the evidence on one side vitiates the trial. See ***OKOEBOR VS. POLICE COUNCIL (2003) 5 SC 1.***

I however must be quick to add that no matter how brilliant the address of counsel is, it cannot be a substitute for pleadings or evidence.

See ***OKWEJIMINOR VS. GBAJIKE (2008) 5 NWLR (Pt. 1079) 172 at Page 223, Para B.***

Plaintiffs' Counsel also made futile effort when he made heavy weather on the evidence of DW1 touching on admission against self. That piece of evidence cannot be read in isolation even if it were so to warrant this Court entering Judgment in favour of the Plaintiffs especially when Plaintiffs have

failed to establish the fact that they are entitled to any of the declaratory reliefs sought for the reason adduced in the body of this Judgment.

Plaintiffs who have not claimed for breach of contract but for payment of workdone and who have failed to so lead evidence must carry their cross. I therefore resolve the issue formulated against the Plaintiffs. There is no merit in Plaintiffs' claims.

Plaintiffs are gold diggers on a gold digging mission.

Reliefs C, D and E which all are reliant on the success of reliefs A and B are equally refused and dismissed since you cannot put something on nothing and expect is to stand.

The plight of Plaintiffs clearly has been left in limbo to wither away as a judicial gate-crasher that has by

a long line of decided and settled authorities been consigned to a forlon heap of legal fossil.

I shall on the whole, for the reasons advanced, make an order dismissing the suit of the Plaintiffs. Said suit No. **FCT/HC/CV/0094/2017** is hereby and accordingly dismissed.

Justice Y. Halilu
Hon. Judge
15th September, 2021

APPEARANCES

Fatima R. for the Plaintiffs.

Mustapha Imam (State Counsel) with C.G Okafor for the Defendants.