

IN THE HIGH COURT OF JUSTICE OF THE FEDERAL CAPITAL TERRITORY
HOLDEN AT MAITAMA, ABUJA
ON THE 22TH DAY OF MARCH, 2022
BEFORE HIS LORDSHIP: HON. JUSTICE MARYANN E. ANENIH
PRESIDING JUDGE.

SUIT NO. FCT/HC/CV/0219/2017

1. CHRISTLIFE INTEGRATED VENTURES LTD
2. PIUS EMMANUEL ODII } PLAINTIFFS

AND

1. GOEDICKAN NIGERIA LIMITED
2. ROCK OF AGES PROPERTIES LIMITED
3. CHIEF (DR) ALEXANDER CHIKA OKAFOR } DEFENDANTS

JUDGMENT

This suit was originally commenced by writ of summons under the undefended list procedure but was transferred to the general cause list by this Honourable Court on 5th July, 2018.

By Statement of Claim dated 8th October, 2018 consequently filed by the Plaintiffs, the Plaintiffs seek the following reliefs against the Defendants;

- 1. A declaration that the Defendants are in breach of the agreement reached with the Plaintiffs to pay for the goods duly supplied and delivered by the Plaintiffs to the Defendants.*
- 2. An order of this Honourable Court directing the Defendants to pay to the Plaintiffs forthwith the sum of N3,625,936.00 (Three Million, Six Hundred and Twenty Five Thousand Nine Hundred and Thirty Six Thousand Naira) being the outstanding balance of the various building materials the Plaintiffs supplied to the Defendants which balance the Defendants wilfully refused and/or neglected to pay to the Plaintiffs despite repeated demands thereto by the Plaintiffs.*
- 3. 10% interest of the said sum of N3,625,936.00 (Three Million, Six Hundred and Twenty Five Thousand Nine Hundred and Thirty Six*

Thousand Naira)from the date of this action until Judgment is entered in favour of the Plaintiffs and thereafter at the rate of 5% until the final liquidation of the entire Judgment debt.

4. *The sum of Twenty Million naira (N20,000,000.00) as general damages.*
5. *The sum of N750,000.00 (Seven Hundred and Fifty Thousand Naira) being the cost of this litigation.*

Records show that the Defendants were served with the Statement of Claim. They however did not file any statement of defence thereto.

At the trial of this matter, the 2nd Plaintiff i.e. Emmanuel Pius Odii testified as PW1 in support of the Plaintiffs' claim. He was also cross-examined by the 2nd and 3rd Defendants' Counsel. The following documents were admitted in evidence as exhibits at trial and marked as such;

1. Exhibit A:- Photocopy of Application for Direct Payment dated 10th June, 2016 addressed to the 2nd Defendant.
2. Exhibit B1:- Chike Onyali Chambers Receipt No. 0739 dated 28th July 2017.
3. Exhibit B2:- Chike Onyali Chambers Receipt No. 0160 dated 21st November, 2017.
4. Exhibit C:- Photocopy of First Bank Cheque No. 34050083 dated 30th August, 2017.
5. Exhibit D:- Acknowledged copy of letter dated 31st July 2017 from Chike Onyali Chambers to the 2nd Defendant.
6. Exhibit E:- Letter from Rock of Ages Property Ltd dated 30th August, 2016 to the 1st Defendant.
7. Exhibit F:- Letter of Notification/Authorization dated 17th June, 2016 from the 1st Defendant to the 2nd Defendant.

At the close of evidence, the Plaintiffs' Counsel filed their final written address dated 5th November, 2021 in accordance with the Rules of this Court. The Defendants' Counsel did not initially file a final written address.

In his final address, learned Counsel to the Plaintiffs formulated a sole issue for the determination of this case to wit;

“Whether the Plaintiffs have adduced enough evidence and prove its case to be entitled to the reliefs sought/judgment of this court in its favour.”

Testifying in support of the Plaintiffs’ case, the 2nd Plaintiff (who testified as PW1) adopted his written witness statement on oath deposed to on 8th October, 2018 as his testimony.

Succinctly put, the Plaintiffs’ case as demonstrated by their pleadings and the evidence of the 2nd Plaintiff (PW1) is that the 1st Defendant, an estate developer, had been engaged by the 2nd and 3rd Defendants. That the Plaintiffs had supplied building materials to the 1st Defendant upon the request and consent of the 2nd and 3rd Defendants at a cost of N4, 494, 920.00 (Four Million Four Hundred and Ninety-Four Thousand, Nine Hundred and Twenty Naira) delivered to the Defendants’ construction site. It is the Plaintiffs’ case that the Defendants continued to decline to pay the Plaintiffs’ their cost of the supply despite demands. Exhibit A dated 10th June 2016 was admitted in evidence at trial as the Plaintiffs’ application to the 2nd Defendant for direct payment. It is averred that the 1st Defendant had in a letter dated 17th June 2016 (admitted in evidence as Exhibit F) addressed to the 2nd and 3rd Defendants, admitted the outstanding sum of N4, 494, 920 due to the Plaintiffs while the 2nd and 3rd Defendants also made admission in their response dated 30th August 2016 (Exhibit E).

It is the 2nd Plaintiff’s further testimony that pursuant to a letter of demand (Exhibit D) dated 31st July, 2017 by the Plaintiffs, the Defendants paid the sum of N868,984 to the Plaintiffs via a cheque (Exhibit C) thus leaving an outstanding balance of N3,625,936. That the Defendants have utilized the building materials supplied by the Plaintiffs but have refused to pay the Plaintiffs the outstanding balance of N3,625,936 despite repeated demands. It is the Plaintiffs’ averment that due to the Defendants’ failure to pay the debt, the Plaintiff incurred additional expenses by way of paying

part of their solicitor's fees in the sum of N750,000. Exhibits B1 and B2 were admitted in evidence as solicitor's receipts.

Arguing in support of the grant of the reliefs sought by the Plaintiffs, their Counsel submitted in his written address that the Plaintiffs have adduced enough evidence and have proved their case to be entitled to those reliefs. He referred this Court to the oral and documentary evidence supplied by the Plaintiffs through their witness (the 2nd Plaintiff) which he contended stands unchallenged. He posited that the Defendants have not denied being indebted and liable to the Plaintiffs in the sum of N3,625,936. He argued that the Defendants have admitted liability. Learned Counsel to the Plaintiffs urged this Court to grant the reliefs sought.

Just before this judgment was to be delivered today, the 2nd and 3rd Defendants were allowed to move an application filed on 17th February 2022 after this matter had initially been adjourned for judgment. The said motion was considered and granted by this Court, pursuant to which both parties adopted their final addresses and the matter set down for judgment.

It is in the light of this that this Court has also considered the final address of the 2nd and 3rd Defendants wherein they submit *inter alia* thus;

That the fundamental question left for the Court to determine is whether the Plaintiffs are entitled to the cost of this action assessed at N750,000.00. And that the Cost falls within the realm of special damages which the Plaintiffs have failed to satisfy the Court as to how the sum of N750,000.00 was quantified and calculated. They relied on several authorities including EKEBELU & ORS V. ESIDIKE & ORS(2017) LPELR-42835(CA), ONYIORAH V. ONYIORAH & ANOR (2019) LPELR-49096(SC), MANTEC WATER TREATMENT NIG. LTD V. PETROLEUM(SPECIAL)TRUST FUND(2007) LPELR-9030(CA) and U.B.A PLC V. VERTEX AGRO LTD.(2020) 17 NWLR PT. 1754 P. 467.

They posit that award of Cost of Litigation as special damages for breach of contract runs contrary to the legally recognised principle for award of damages for breach of contract. They concluded their submissions by urging the Court to resolve the issues in favour of 2nd and 3rd Defendants

as the Plaintiffs have not been able to demonstrate that they are entitled to the award of cost of litigation.

I have considered the case of the Plaintiffs before the Court, the entire evidence adduced and the final written and oral addresses of Counsel for both parties. I am of the view that the main issue for determination herein is as formulated by both Plaintiffs and the 2nd and 3rd Defendants in their final written addresses.

For clarity I have distilled the sole issue thus;

Whether the Plaintiffs have discharged the burden of proof placed on them by law to establish their entitlements to the reliefs sought in their Statement of Claim.

In the resolution of the issue for determination before this Court, it is pertinent to note that the Plaintiffs' claim before this Court is essentially one for breach of contract. They seek declaratory relief to this effect in Relief No. 1 of their Statement of Claim.

The law is that the general burden of proof in civil cases lies on the party against whom judgment would be entered if no evidence was adduced by either party. – see **EZINWA V. AGU (2003) LPELR-7238(CA) AT P. 14 PARAS. A – B.** Thus, the general burden of proof principally lies on the plaintiff as the initiator of a claim – see **IYAMU V. ALONGE(2007) LPELR-8689(CA) AT PP. 45 – 53 PARAS. D–C.** It is also elementary principle of law that he who asserts must prove – see **ACTION ALLIANCE & ORS V. INEC (2019) LPELR-49364(CA) AT PP. 27 – 28 PARAS. F – D.**

Having sought declaratory relief from this Court, the law requires that the Plaintiffs must succeed on the strength of their own case and not on the weakness of the defence as a declaratory relief is not to be granted to a party on the admission or default of defence of the other party. – see the cases of **ALAO V. AKANO (2005) LPELR-409(SC) AT P. 9 PARAS. B–C** and **OKONJO V. NWAUKONI (2018) LPELR-44839(CA) AT PP. 15 – 16 PARAS. D–B.**

It is also trite law that a party whose claim is based on contractual rights (such as the Plaintiffs in the instant case) should plead and prove the contract, the term which gave the right or created the obligation and what constituted the breach. – see the cases of **S.P.D.C.N. LTD. V. NWAOKA (2003) 6 NWLR PT. 815 P. 184 AT P. 208 PARAS. D-E** and **KLM ROYAL DUTCH AIRLINES V. IDEHEN (2017) LPELR-43575(CA) AT PP. 22 – 23 PARAS. F-C.**

In the instant case, aside of cross-examining the 2nd Plaintiff on amounts supposedly paid by the Defendants during the course of these proceedings, the Defendants neither discredited the Plaintiffs' case and evidence nor did they adduce contrary evidence to dispute same. In fact, the Defendants did not file any statement of defence.

It therefore follows that the Plaintiffs' evidence stands unchallenged that there was a contract for the supply of building materials by which the Plaintiff supplied building materials to the Defendants. Exhibits E and F are letters between the Defendants which appear to admit the fact of the supply of building materials to them by the Plaintiffs at the cost of N4,494,920.

The fact thus remains unchallenged that after demand for the payment of the cost of the supply of N4,494,920 was made by the Plaintiffs on them vide Exhibit D, the Defendants only paid the sum of N868,984 leaving an outstanding sum of N3,625,936 unpaid till the date of commencement of the instant suit.

The law is well settled that where there is a contract by which one party undertakes to supply the other with goods at a stipulated price, the seller is bound to deliver the goods, and the buyer, upon accepting the delivery of the goods, is bound to pay the purchase price of the goods. – See **ONYEKWELU V. ELF PETROLEUM (NIG.) LTD (2009) 5 NWLR PT. 1133 P. 181 AT P. 200 PARA. F.**

The Defendants thus breached the terms of the contract for supply of building materials by failing to pay the full sum of the supply to the

Plaintiffs at the material time (i.e. upon delivery of the building materials to them).

Consequent on the above finding of this Court, the Plaintiffs are entitled to the declaration sought vide Relief Number 1 of the Statement of Claim.

Relief Number 2 of the Statement of Claim is for an ancillary relief i.e. an order directing the Defendants to pay to the Plaintiffs the sum of N3,625,936 being the outstanding balance of the supply of building materials by the Plaintiffs to the Defendants.

It has been stated by this Court that it is established that out of the N4,494,920 cost of supply made by the Plaintiffs to the Defendants, the Defendants only paid the sum of N868,984 leaving an outstanding balance of N3,625,936 due to the Plaintiffs at the material time. Ordinarily, the Plaintiffs ought to be entitled to an order of this court directing the Defendants to pay this outstanding balance to them. There are however some events which occurred in the course of the proceedings in this case which this Court, being a court of equity as well as of law, cannot possibly close its eyes to in the interest of justice.

In the course of the proceedings in this matter, parties to this case were afforded opportunity at exploring amicable settlement at their request. At the proceedings of this Court on 5th July 2019, the Plaintiffs' Counsel informed in open Court that the Defendants paid the sum of N3,475,936 to the Plaintiffs. He therefore sought judgment in respect of the sum of N750,000 cost of the suit sought in the Statement of Claim. At the proceedings of 21st January 2020, the 2nd and 3rd Defendants' Counsel also stated for the record that the Plaintiffs had received about N3.7 Million from the Defendants and the Plaintiffs' Counsel again admitted this while emphasizing that the Plaintiffs have other claims against the Defendants. On the same date, while answering questions fielded to him (as PW1) by the 2nd and 3rd Defendant's Counsel, the 2nd Plaintiff admitted under cross-examination that he had received the sum of N150,000 from the 2nd Defendant's Chief Operating Officer at one time in the course of the instant proceedings.

It is thus not in dispute amongst parties that the Defendants have paid the Plaintiffs about N3.7 Million in the course of the proceedings in this suit. By their own admission, the Plaintiffs received N3,475,936 and N150,000 from the Defendants in the course of proceedings. It therefore follows that the sum of N3,625,936 being sought by the Plaintiffs vide Relief Number 2 in their Statement of Claim as outstanding balance from the supply of building materials to the Defendants has already been paid in the course of this proceedings by the Defendants. The Plaintiffs themselves confirmed this. It therefore follows that Relief Number 2 of the Statement of Claim has been overtaken by events and has become academic in nature. See the cases of **BOB V. THE COUNCIL, ABIA STATE UNIVERSITY UTURU & ANOR (2015) LPELR-25611(CA) AT PP. 64 – 65 PARAS. B-C** and **A.P.C. & ORS V. ENUGU STATE INDEPENDENT ELECTORAL COMMISSION & ORS (2020) LPELR-50817(CA) AT PP. 22 – 23 PARAS. A-A.**

Relief Number 2 is therefore liable to be refused.

Part of Relief No. 3 of the Statement of Claim is for interest on the said sum of N3,625,936 at 10% rate from date of the action until Judgment.

The award of pre-judgment interest can be made where it is contemplated in the agreement between the parties, under a mercantile custom and under the principle of equity such as breach of a fiduciary relationship. When actions are brought on Commercial matters the Courts usually find that money ought to have been paid some time ago. In such cases it ought to carry interest and that is pre-judgment interest. The time and rate pre-judgment interest runs depends on evidence. The basis of such an award is that the defendant had kept the plaintiff out of his money, and the defendant has had the use of it for himself, so he ought to compensate the plaintiff accordingly. The party claiming pre-judgment interest must plead the facts and grounds upon which the claim for pre-judgment interest is predicated. He must plead and adduce credible evidence to prove the rate of interest claimed before he can be entitled to the award of pre-judgment interest. See the cases of

EGBOR & ANOR V. OGBEBOR (2015) LPELR-24902(CA) AT PP. 31 – 33 PARAS. C-F;

PETROLEUM (SPECIAL) TRUST FUND V. WESTERN PROJECT CONSORTIUM LTD & ORS (2006) LPELR-7719(CA) AT PP. 21 – 25 PARAS. E-C;

and

IDAKULA V. RICHARDS & ANOR (2000) LPELR-6785(CA).

In the instant case, the Plaintiffs neither pleaded nor proved any fact relating to the rate of interest being claimed aside of the fact that the Defendants failed to pay the outstanding sum for the supply when it was demanded. The Plaintiffs have thus failed to establish their entitlement to pre-judgment interest at the rate of 10% on the erstwhile outstanding sum of N3,625,936.

The other part of relief No. 3 of the Statement of Claim, which is for post-judgment interest of 5% on the sum of N3,625,936 from date of judgment till finally liquidated, has also been overtaken by the event of the payment of said sum by the Defendants to the Plaintiffs in the course of proceedings (i.e. before this Judgment). This part of relief No. 3 for post-judgment interest has become otiose and is thus liable to be refused by this Court.

By relief No. 4 of the Statement of Claim the Plaintiffs seek general damages in the sum of N20 Million.

It is necessary to reiterate that the Plaintiffs' cause of action in this action against the Defendants is for breach of contractual agreement.

The principles for award of damages for breach of contract is that the damages awarded are those damages for the ordinary consequences which follow in the usual course of things from the breach, or those consequences which may reasonably be supposed to have been within the contemplation of the parties at the time they entered into the contract. They are damages for loss which may be fairly and reasonably considered to arise naturally from the breach. Such loss must be such that can be said

to have been in the contemplation of the parties as the probable consequence of its breach. The classification of damages, in an action for breach of contract, into special or general damages is therefore unnecessary as a party who claims damages for breach of a contract must establish that such damages were reasonably contemplated by parties at the time of entering the contract or are the natural consequences of the breach. See collectively the cases of

HADLEY V. BAXENDALE (1854) 9 EX 341;

UNION BANK V. KOLEOSO (2019) LPELR-47965(CA) AT PP. 5 – 6 PARAS. D–E;

and

UBA PLC V. SALMAN (2018) LPELR-45698(CA) AT PP. 46 – 57 PARAS. D-B.

Even though a breach of contract has been established by the Plaintiffs against the Defendants, the Plaintiffs did not prove exactly what injury they suffered that is a direct consequence of the breach occasioned by the Defendants. The law is that where in an action for breach of contract the plaintiff proves the breach but fails to prove actual damages he suffered as a consequence of that breach, such a plaintiff would only be entitled to a meagre amount as nominal damages. This is because the violation or infraction of his legal right *per se* will entitle him to nominal damages without proof of any loss incurred by him as a consequence of the breach. – See the cases of **SPDC LTD V. NWABUEZE (2013) LPELR-21178(CA) AT P. 33 PARAS. C-G** and **UBA PLC V. SALMAN (SUPRA)**.

In the circumstances therefore, the Plaintiffs are only entitled to nominal damages.

Relief No. 5 of the Plaintiffs' Statement of Claim is for the sum of N750,000 being the cost of litigation.

The facts and evidence in support of this relief can be found in paragraph 17 of both the Statement of Claim and the Witness Statement on Oath of the Plaintiffs. The 2nd Plaintiff (PW1) testified therein that;

“17. That the failure of the Defendants to pay off the debt has further subjected the Plaintiffs to incur additional expenses by way of paying parts of the solicitor’s fees to Chike Onyali Chambers in the deposit sum of N750,000.00 (Seven Hundred and Fifty Thousand Naira) in two instalments. The receipt of payment is hereby attached and marked as Exhibit G and H respectively.”

Two solicitor’s receipts of payment were further tendered and admitted in evidence as Exhibits B1 and B2.

It is therefore apparent from the foregoing that what the Plaintiffs claim against the Defendants as cost of litigation is actually their solicitor’s fees.

The general position of the law that has been held over time is that it is unethical and an affront to public policy for a litigant to pass his solicitors fees in an action to his opponent. This is because solicitors’ fees do not form part of the cause of action. Therefore, the current state of the law is that a claim for Solicitors fees which does not form part of the claimant’s cause of action cannot be granted. Where however the obligation to pay the solicitors fees is contractual, such contractual term would be enforced under the law. – see the cases of **BLUENEST HOTELS LTD V. AEROBELL (NIG) LTD (2018) LPELR-43568(CA) AT PP. 61 – 66 PARAS. B-C** and **MICHAEL V. ACCESS BANK (2017) LPELR-41981(CA) AT PP. 48 – 49 PARA. E.**

Granted, the fact has been established before this Court that there was a contract to supply building materials between the Plaintiffs on one hand and the Defendants on the other hand. It has also been established that the Defendants breached this contract by failing to pay the Plaintiffs as at when due for the supply made. These two facts alone do not however entitle the Plaintiffs to recover their solicitor’s fee from the Defendants. Nothing has been placed before this Court by the Plaintiffs to show that

the contract of supply between parties contained a term which obliged the Defendants to be liable for the Plaintiff's Counsel's fees for litigation. Such term is not implied and cannot therefore be inferred.

In the circumstances, the Plaintiffs have failed to establish their entitlement to the sum of N750,000 solicitor's fees claimed as cost of litigation via Relief No. 5 of the Statement of Claim, and I so hold.

Pursuant to all the forgoing, the issue for determination is hereby resolved partly in favour of the Plaintiffs. The Plaintiffs' instant action thus succeeds in part.

Consequently, Reliefs numbers 2, 3 and 5 as earlier observed have become otiose, they therefore fail and are accordingly refused.

Relief Number 1 is granted and it is hereby declared that the Defendants are in breach of the agreement reached with the Plaintiffs to pay for the goods duly supplied and delivered by the Plaintiffs to the Defendants.

The Defendants are consequentially hereby directed to pay the sum of N100,000.00 (One Hundred Thousand Naira) only to the Plaintiffs as nominal damages.

There is no further order as to cost.

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Honourable Justice M. E. Anenih

APPEARANCES:

A.C. Nwosu Esq appears for the Plaintiffs.

Emmanuel Oni Esq appears with M.E. Ugwu Esq for the 2nd and 3rd Defendants.

1st Defendant unrepresented.