

IN THE HIGH COURT OF JUSTICE OF THE FEDERAL CAPITAL TERRITORY  
HOLDEN AT MAITAMA, ABUJA  
ON THE 27<sup>TH</sup> DAY OF JANUARY, 2022  
BEFORE HIS LORDSHIP: HON. JUSTICE MARYANN E. ANENIH  
PRESIDING JUDGE.

SUIT NO. FCT/HC/CV/1504/2016

1. SAMLAJ CONSTRUCTION LIMITED  
2. OLAYINKA BOLAJI ] .... CLAIMANT

AND

1. ASO RENOVATION AND BUILDING  
TECHNOLOGY LIMITED  
2. KOMOTI ENGINEERING SERVICES LIMITED  
3. PASTOR ABRAHAM KOLA OLOWE ] 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 11<sup>th</sup> December, 2017. Pleadings were thereat ordered by this Court to be filed and exchanged by parties.

The Claimants consequently filed their Joint Statement of Claim on 3<sup>rd</sup> May, 2018 wherein they sought the following reliefs against the Defendants;

1. *A Declaration that the Claimants are entitled to the sum of N3,756,560 (Three Million, Seven Hundred and Fifty-six Thousand, Five Hundred and Sixty Naira) being the sum outstanding from work done and materials supplied to the Defendants for construction of housing units at Jedo Housing Units Lugbe, Pengassen Housing Estate Phase II, Lokogoma; Pengassen Housing Estate Phase III, Lokogoma, all situated in Abuja.*

2. *An Order of this Honourable Court directing the Defendants to pay forthwith the sum of N3,756,560 (Three Million, Seven Hundred and Fifty-six Thousand, Five Hundred and Sixty Naira) being the outstanding balance due to the Claimants from the Defendants.*
3. *N1,000,000 (One Million Naira) as cost of litigating this suit in favour Claimants.*
4. *10% (Ten Percent) post-judgment interest on the total Judgment sum due to the Claimants pursuant to the Order(s) of this Honourable Court from the date of judgment until final liquidation by the Defendants.*

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

At the trial of this matter, the 2<sup>nd</sup> Claimant i.e. Olayinka Bolaji testified as PW1 in support of the Claimants' claim. The Defendants failed to cross-examine the witness despite adjournments for that purpose and were thus foreclosed. Seven booklets containing invoices were admitted in evidence through PW1 and marked Exhibits A–enbloc, B–enbloc, C–enbloc, D–enbloc, E–enbloc, F–enbloc and G–enbloc while a letter of demand dated 2<sup>nd</sup> March, 2016 from Babalakin & Co was admitted in evidence as Exhibit H.

At the close of the Claimants' case, their Counsel filed his Final Written Address on 12<sup>th</sup> April, 2019 and thereafter adopted same on 9<sup>th</sup> October, 2021 as his oral arguments in support of their case. The Defendants did not file any final written address.

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

*“Whether or not the Defendants are liable to the claims or reliefs sought in the writ of summons?”*

Now the records show that the Claimants, in line with the order of this Court, filed a Statement of Claim after the matter was transferred to the general cause list for trial. The reliefs sought in the Statement of Claim are slightly different from those sought in the Writ of Summons originally placed on the undefended list by this Court. The general position of the law is that a statement of claim supersedes the writ of summons and as such the reliefs sought in the statement of claim supersedes those set out in the writ of summons. – see the cases of **GARAN V. OLOMU (2013) LPELR-20340(SC) AT P. 33 PARAS. C – D** and **JAURO & ANOR V. DANMARAYA (2016) LPELR-40328 P. 24 PARAS. A-D**.

It therefore follows in this case that it is the Statement of Claim before this Court that contains the proper reliefs which this Court ought to consider. Not the Writ of Summons which contains slightly different reliefs. That being the case, the issue formulated by the Claimants in their address purporting to determine the instant case based on the reliefs set out in the Writ of Summons is improper and does not bring to fore the real issues before this Court.

Consequently, the proper issue before this Court upon which the instant suit shall be considered is as follows;

**Whether the Claimants have established their case to be entitled to the reliefs sought against the Defendants in the Statement of Claim.**

The Claimants' case is presented to this Court vide their Statement of Claim and the evidence of their witness PW1 (the 2<sup>nd</sup> Claimant). While testifying in support of the Claimants' case, the 2<sup>nd</sup> Claimant (PW1) adopted his written witness statement on oath deposed to on 3<sup>rd</sup> May, 2018 as his oral testimony.

The Claimants' case is that the 2<sup>nd</sup> Claimant, who is the Chief Executive Officer of the 1<sup>st</sup> Claimant-company, initially conducted business under the name and style of 'Omobolaji Concepts'. The 2<sup>nd</sup> Claimant (PW1)

testified that the 3<sup>rd</sup> Defendant, who is the alter ego of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants-companies and acting on their behalf, approached the 1<sup>st</sup> and 2<sup>nd</sup> Claimants to supply building materials for the purpose of constructing housing units at Jedo Housing Units Lugbe; Pengassan Housing Estate Phase II, Lokogoma; Pengassan Housing Estate Phase III, Lokogoma(all in Abuja).

It is the 2<sup>nd</sup> Claimant's evidence that the Claimants supplied the following building materials to the Defendants for construction of Jedo Housing Units, Lugbe between 16<sup>th</sup> February and 24<sup>th</sup> March 2010:

- 280 tons of Granite totalling the sum of N910,000. A breakdown of this particular supply is provided as 120 tons at N390,000, 80 tons at N260,000 and another 80 tons at N260,000.
- 42 lorry loads of Sharp Sand totalling the sum of N792,000 i.e. 8 loads at N160,000, 10 loads at N200,000, 12 loads at N216,000 and another 12 loads at N216,000.
- 43 lorry loads of Hardcore totalling the sum of N430,000. The breakdown is 10 loads N100,000, 27 loads at N270,000, 3 loads at N30,000 and another 3 loads at N30,000.
- 36 lorry loads of Filling Sand totalling the sum of N360,000 i.e. 22 loads at N220,000, 10 loads at N100,000, 2 loads at N20,000 and another 2 loads at N20,000.
- 2 lorry loads of Plaster Sand totalling the sum of N30,000 i.e. each load at N15,000 each.

Copies of invoices were admitted in evidence at trial in proof of the foregoing as Exhibits A-embloc and B-embloc.

It is the Claimants' case (and the 2<sup>nd</sup> Claimant's testimony) that the cost of the above building materials supplied by them to the Defendants for

construction at Lugbe amounted to N2,522,000 out of which the Defendants only paid N1,336,000 leaving an outstanding balance of N1,186,000 yet unpaid.

It is further the 2<sup>nd</sup> Claimant's testimony that the Claimants also supplied the following building materials to the Defendants for construction of Pengassan Housing Units at Phase II and Phase III, Lokogoma between 24<sup>th</sup> March 2010 and 16<sup>th</sup> June 2011:

- 925 tons of Granite amounting to a totalsum of N3,059,750. The breakdown of this supply is given as 80 tons at N260,000, 115 tons at N373,750, 80 tons at N272,000, 120 tons at N408,000, another 120 tons at N408,000, 60 tons at N204,000, 40 tons at N136,000, 80 tons at N260,000, 40 tons at 136,000, 10 tons at N34,000, 20 tons at 68,000 and 160 tons at N500,000.
- 208 lorry loads of Sharp Sand amounting to a totalsum of N2,941,000. The breakdown of this supply is given as 20 loads at N70,000, 30 loads at N360,000, 3 loads at N36,000, 14 loads at N168,000, 5 loads at N60,000, 30 loads at N360,000, 2 loads at N24,000, 5 loads at N60,000, 12 loads at N300,000, 4 loads at N100,000, 8 loads at N200,000, 20 loads at N240,000, 5 loads at 125,000, another 5 loads at 125,000, 1 load at 12,000, 3 loads at 75,000, 2 loads at 50,000, 6 loads at 72,000, 5 loads at 60,000, 10 loads at 120,000, 6 loads at 72,000, and 12 loads at 252,000.
- 28,931 blocks amounting to a total sum of N3,422,680. The breakdown is given as 5,717 blocks at N686,400, 500 blocks at N60,000, 439 blocks at N52,680, 5000 blocks at N600,000, 1,500 blocks at N180,000, 376 blocks at N37,600, 1,000 blocks at N120,000, 7,500 blocks at N900,000, 100 blocks at N10,000, 200 blocks at N20,000, another 200 blocks at N20,000, 400 blocks at N40,000, 1,300 blocks at N156,000, 1,200 blocks at N120,000, 1,000 blocks at N120,000 and 2,500 blocks at 300,000.

- 300 bags of Cement amounting to the sum of N525,000.
- 20 tons of Stone Dust amounting to the sum of N55,000.
- 60 lorry loads of Hardcore amounting to a total sum of N558,000 the breakdown of which is given as 18 loads at N180,000, 20 loads at N200,000, 1 load at N10,000 and 21 loads at N168,000.
- 65 lorry loads of Plaster Sand amounting to a total sum of N455,000. The breakdown is given as 1 load at N7,000, 6 loads at N42,000, another 6 loads at N42,000, yet another 6 loads at N42,000, 10 loads at N70,000, 5 loads at N35,000, 10 loads at N70,000, another 10 loads at N70,000, 4 loads at N28,000, 2 loads at N14,000 and 5 loads at N35,000.
- 23 rolls of Lyon amounting to the sum of N20,700.
- 18 rolls of BRC Wire amounting to the sum of N117,000.

The 2<sup>nd</sup> Claimant further testified that the Claimants incurred transportation cost of ~~N~~N7,500 for transporting the BRC Wires, Lyon and off-loading same at the construction site. That the Claimants also paid the sums of N12,000, N9,000 and N62,000 for compacting the materials, arrangement of Hardcore and as cost of hiring labourers for getting water and to fix planks and nails respectively.

It is the Claimants' claim that they further incurred the following costs;

- N56,000 for supplying plumbing materials to the Defendants and for engaging labourers to fix the plumbing materials at the construction sites.
- N3,000 as wages paid for engaging labourers to break hardcore.
- N3,000 as wages paid for engaging labourers to lay BRC wires.

- N105,000 as wages paid for engaging labourers for the process of casting the foundation.
- N26,000 for refreshment/snacks for labourers.

Copies of invoices were admitted in evidence at trial in proof of the foregoing as Exhibits C-embloc, D-embloc, E-embloc, F-embloc and G-embloc.

The 2<sup>nd</sup> Claimant testified that the cost of building materials supplied by the Claimants to the Defendants for construction at Phase II and Phase III, Lokogoma thus amounted to N11,437,630 while the Defendants only paid the sum of N8,867,070 out of this sum leaving an outstanding balance of N2,570,560 yet unpaid.

The Claimant contends that the Defendants defaulted in paying the outstanding balance and have refused to pay up their indebtedness to the Claimants despite demands for payment by the Claimant. Exhibit H is the Claimants' letter of demand dated 2<sup>nd</sup> March, 2016 from Babalakin & Co.

In his address, learned Counsel to the Claimants submitted that the Claimants' case falls within the scope of payment of sum due to them by the Defendants. He contended that the Claimants pleaded and led evidence to sustain the assertion that the Defendants truly owe the sum being claimed based on the invoices i.e. Exhibits A to H. He argued that this was neither contradicted nor controverted by the Defendants and this Court's discretion to grant the relief sought has thus been activated. He relied on the case of ATTORNEY GENERAL OF OYO STATE V. FAIRLAKES HOTELS LTD (1989) 5 NWLR PT. 121 P. 255.

It is Counsel's position that the Claimants have proved their case and are entitled to reliefs claimed. He argued that the relief for cost is borne out of the cumulative effect of the Defendants' failure to pay the outstanding sum

thus resulting in the instant action. He relied on the case of **REWANE V. OKOTIE-EBOH (1960) NSCC (VOL. 1) 135.**

On the relief for post-judgment interest, Counsel posited that same requires no special proof of entitlement and referred this Court to Order 39 Rule 4 of the High Court of the Federal Capital Territory Abuja (Civil Procedure) Rules 2018. He submitted that the Claimants are entitled to the reliefs sought and urged this Court to grant same.

In the resolution of the issue before this Court, it is pertinent to note the position of the law 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.** The general burden of proof principally therefore 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.**

The first relief sought by the Claimants in their Statement of Claim is declaratory in nature. The position of the law is that a party seeking a declaratory relief must succeed on the strength of his 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.**

As observed earlier, the Defendants did not participate at the trial of this matter. Even though they were afforded the opportunity, the Defendants did not file any defence to the Statement of Claim and as such did not call any evidence in rebuttal of the Claimants' case. The onus of proof on the Claimants has therefore been watered down and they are bound to succeed on minimal proof adduced in support of their claims in the circumstances.

– see the case of **BILLIE V. MULTI- LINKS TELECOM LTD (2017) LPELR-41862(CA) AT P. 24 PARAS. C–D.**

See also **OGUNJUMO& ORS V. ADEMOLU& ORS(1995) LPELR-2337(SC) AT PP. 23 – 24 PARAS. E-A** where the Supreme Court held that it is indisputable that where a defendant took no part in a proceedings or offered no evidence in his defence, the evidence before the court goes one way and there would be nothing to put on the other side of the imaginary scale or balance as against the evidence for the plaintiff. The onus of proof in such a case is therefore discharged on a minimal of proof. See also the case of **ASAFA FOODS FACTORY LTD V. ALRAINE (NIG.) LTD.(2002) LPELR-570(SC) AT PP. 28 – 29 PARAS. F-D.**

The Claimants’ evidence in support of their claim was neither challenged nor subjected to discredit under cross-examination. In the circumstances, this Court must believe and act on their evidence. It has been held that an uncontradicted or unchallenged evidence must be used against the party who ought to have contradicted or challenged the evidence but failed to do so. – see the cases of **EGBUNIKE V. A.C.B LTD(1995) LPELR-1039(SC) AT P. 31 PARAS. B-D** and **OKEREKE & ANOR V. ABA NORTH LGA (2014) LPELR-23770(CA) AT PP. 38 - 39 PARAS. A-B.**

I am not unmindful of the position of the law that uncontradicted and unchallenged evidence must itself be credible and not one fraught with inconsistencies and contradictions or is insufficient to sustain the claim. – see the case of **ARCHIBONG V. UTIN (2012) LPELR-7907(CA) AT P. 19 PARAS. A-F.**

I have perused the Claimants’ claim before this court. I have also examined the evidence which they adduced in support of same. The oral testimony of the 2<sup>nd</sup> Claimant (PW1) is credible and is supported by documentary evidence i.e. Exhibits A, B, C, D, E, F, G and H. I have particularly considered the invoices Nos. 0012, 317, 320 and 339 of Exhibits A and B which support the fact of supply of building materials worth N2,522,000 to the Defendants by the Claimants.

I have also considered the Invoices Nos. 0162, 0166, 0168, 0170, 0171, 0183, 0187, 0197, 0201, 0208, 0215, 0220, 0225, 0229, 0230, 0231, 0232, 0237, 0243, 0247, 0013, 0047, 0048, 0109, 0118, 0139, 0140, 0142, 0146 and 0098. These invoices support the fact of another supply of building materials worth N11,437,630 to the Defendants by the Claimants.

The unchallenged and credible fact before this Court is that the Defendants only paid N1,336,000 out of the N2,522,000 and only paid the sum of N8,867,070 out of the N11,437,630. Balance of N1,186,000 and N2,570,560 respectively were thus left outstanding and unpaid by the Defendants who did not liquidate these outstanding sums despite the Claimants' letter to them vide Exhibit H demanding for payment.

Together, the outstanding sums of N1,186,000 and N2,570,560 come to a total sum of N3,756,560 which the Defendants are liable to pay the Claimants for the supply of building materials. The Claimants have thus established their entitlement to the declaration sought by them in the first relief of the Statement of Claim.

They are therefore also entitled to the second relief which is for an order of this Court directing the Defendants to pay the said sum of N3,756,560.

The third relief of the Statement of Claim is for the sum of N1,000,000 as cost of litigating this suit. The law is settled that cost follow the event. The Claimants who are the successful parties in this action are therefore entitled to cost to be awarded at the discretion of this Court. – see the case of **OKAFOR V. LEMNA CONSTRUCTION CO. LTD & ANOR (2018) LPELR-46001(CA) AT P. 13 PARAS. B-D**. In the circumstances, the Claimants are entitled to an amount as cost under the third relief of their Statement of Claim.

**Order 39 Rule 4 of the High Court of the FCT, Abuja (Civil Procedure) Rules 2018** provide for post-judgment interest of not less than 10% per annum. Thus, all a litigant has to do to be entitled to post-

judgment interest is simply to be successful in his main claim. Consequently, being the successful party in this case, the Claimants are entitled to post-judgment interest of 10% per annum sought on the total Judgment Sum as per the fourth relief of the Statement of Claim.

In sum, the Claimants are entitled to the reliefs sought and the sole issue for determination is thus resolved in favour of the Claimants against the Defendants.

After a careful consideration of the oral and documentary evidence in this case, it is my view that the Claimants' claim is with merit and it thus succeeds against the Defendants.

Pursuant to the entirety of the foregoing, the following declaration cum orders are hereby made by this Court;

1. The Claimants are entitled to the sum of N3,756,560 being the sum outstanding from work done and materials supplied to the Defendants for construction of housing units at Jedo Housing Units Lugbe, Pengassen Housing Estate Phase II, Lokogoma; Pengassen Housing Estate Phase III, Lokogoma, all situated in Abuja.
2. The Defendants are directed to pay forthwith to the Claimants the said sum of N3,756,560 being the outstanding balance due to the Claimants from the Defendants.
3. The Defendants shall pay to the Claimants the sum of N50,000.00 as cost of this action.
4. The Defendants shall pay to the Claimants 10% post-judgment interest on the total Judgment sum from the date of this judgment until final liquidation of the entire sum.

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Honourable Justice M. E. Anenih

APPEARANCES:

O. I. Arasi Esq appears with C. J. Alufa Esq for the Claimants.

Defendants unrepresented.