

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT COURT NO. 4, MAITAMA ON THE
8TH DAY OF MARCH, 2022

BEFORE HIS LORDSHIP: HON. JUSTICE U. P. KEKEMEKE

SUIT NO. FCT/HC/CV/0333/2017

COURT CLERKS: *JOSEPH ISHAKU BALAMI & ORS.*

BETWEEN:

BARRISTER AMOBI ONUIGBO CLAIMANT

AND

ENGR. OLUSEGUN ERUJA DEFENDANT

JUDGMENT

The Claimant is a Legal Practitioner.

The Defendant is a retired civil servant who engaged the Claimant to provide legal services for him.

The brief was in respect of Defendant's landed property in Dawaki, Abuja which Defendant was seeking to recover the original land title documents from the vendor, Mr. Gabriel Saleh.

The Claimant and the Defendant agreed on a professional fee of One Million Naira (₦1,000,000). The Defendant paid a deposit of Three Hundred Thousand Naira (₦300,000) leaving a balance of seven hundred thousand naira (₦700,000). The Claimant issued a cash receipt marked Exhibit 'B'. The Defendant refused and or neglected to pay the balance despite repeated calls and a demand letter marked exhibit 'C'. The Claimant thereafter filed a suit to recover the balance of his professional fees on the 5th of December, 2017 and Defendant was served by substituted service on 29th October 2021.

In his writ, the Claimant sought the following reliefs.

- 1. A declaration that the Defendant is in breach of the agreement he reached with the Plaintiff upon consultation to represent the Defendant to pursue and recover the original land title document at Dawaki, Abuja from Mr. Gabriel Saleh.**
- 2. A declaration that the Claimant is entitled to the sum of Seven Hundred Thousand Naira (₦700,000) from the Defendant being the agreed outstanding balance of the One Million Naira (₦1,000,000) professional**

fees for the Claimant to pursue and recover Defendant original land title documents in respect of the Defendants landed property at Dawaki, Abuja from Mr. Gabriel Saleh.

3. An order of this Honorable Court directing the Defendant to pay to the Plaintiff the sum of Seven Hundred Thousand Naira (₦700,000) being the balance of the One Million Naira (₦1,000,000) professional fees the Claimant charged the Defendant to pursue and recover the Defendants original land title document in respect of the Defendant landed property at Dawaki, Abuja from one Mr. Gabriel Saleh.

4. 10% interest of the said sum of Seven Hundred Thousand Naira (₦700,000) from the date of filling this suit until judgment is entered in favour of Claimant and thereafter at the rate of 5% of the entire sum until the final liquidation of the entire judgment debt.

5. The sum of Ten Million Naira (₦10,000,000) as general damages.

6. Cost of this litigation.

In proof of his case, the Claimant testified as PWI, and adopted his witness statement under oath.

PWI, stated that sometimes in 2010 a client's daughter came to his Chambers at A17, Abuja Shopping Mall Wuse Zone 3, Abuja with Defendant, Engr. Olusegun Eruja and introduced him as a friend, this is how he got to know the Defendant in the first instance.

Further PWI, stated that subsequently in August 2016, the Defendant in the company of one MR ROTIMI who he introduced as his property manager came back to his office and briefed the Claimant to take out a legal action against one MR GABRIEL SALEH who was in possession of the Defendant's original land title documents in respect of land in Dawaki, Abuja, which MR. Gabriel Saleh has refused to return despite repeated demands to do so.

PWI also stated that he reached an agreement with the Defendant that his professional fees will be One Million Naira (₦1,000,000) in respect of the said brief. The Defendant

thereafter, transferred the sum of Three Hundred Thousand Naira (₦300,000) to the Claimant leaving a balance of Seven Hundred thousand Naira (₦700,000) which Claimant issued a cash receipt for.

PWI stated further that he demanded for at least half of his legal fees but the Defendant pleaded with him to give him some time to make arrangement to pay up the balance.

PWI states further that he went to work and successfully recovered the said original land title documents, which he handed over to the Defendant on Monday 5th December 2016.

PWI also stated that upon successful completion of the brief he demanded orally for the balance of his professional fees and the Defendant pleaded that he should give him time to sell the land. The defendant subsequently sold the land on 30th December 2016.

PWI further stated that despite repeated demands on Defendant to pay his balance of his professional fees, the Defendant failed to do so. He then wrote the Defendant a demand notice on 23rd August 2017 but still the Defendant is yet to make any further payment.

PWI tendered the following documents in proof of his claim.

1. Demand letter marked Exhibit “A”
2. Cash receipt marked Exhibit ‘B’
3. Letter to Inspector General of Police (IGP) marked Exhibit “C’
4. Demand letter to Engr. O. Eruja marked Exhibit ‘D

The Claimant closed his case but the Defendant did not defend the suit against himself despite the opportunity to defend or for cross examination of witness. Thereafter, the Claimant filed his final written address wherein he formulated a sole issue for determination.

“Whether the Plaintiff by the totality of evidence adduced in the suit has not proved his case as required by law on the preponderance of evidence and balance of probabilities to be entitled to all reliefs claimed in the suit.”

The record of this court shows that the Defendant was properly served with the originating processes in this suit. There is also proof that all hearing notices were served on

the Defendant. He failed and or neglected to appear in person or through a Counsel to defend the suit against him.

This is a case of liquidated money demand that is undefended. It is trite law that in a case that is undefended the burden of proof on the Claimant is reduced. See **NEW NIGERIAN BANK PLC v. RENCLAG LIMITED & ANOR (2005) 4 NWLR (Part 916) pg. 549.**

The position of the law is that where evidence is unchallenged and uncontroverted as in this case, such evidence will be accepted as proof of a fact it seeks to establish. There is no evidence on the Defendant's side to put on the imaginary scale. The burden to prove is minimal. See **BANK OF WEST AFRICA LTD v. IMANA NIGERIA LIMITED & ANOR (2005) 6 SCNJ pg. 470** and **OKOYE v. TOBECHUKWU & ANOR (2016) LPELR-41543 (CA).**

The Claimant's witness statement on oath is uncontroverted and is sufficient proof of his claim in this suit.

We must distinguish between a pre-judgment interest and a post-judgment interest. A pre-judgment interest must be specifically pleaded 'The general rule at common law is that

interest is not payable on a debt or loan in the absence of express agreement or some cause of dealing to that effect' per Ogbuagu, JSC in **DIAMOND BANK LTD v. PARTNERSHIP INVESTMENT COY LTD. (2009) LPELR-939 SC (Pt. 1172) pg 67.**

The Supreme Court in **A.G FERRERO & CO LTD v. HENKEL CHEMICALS (NIGERIA) LTD (2011) ALL FWLR (Pt. 587), page 647**, held that 'where parties are bound by contractual agreement without a term for pre-judgment interest, they are precluded from claiming such later, as it will be seen as an extraneous post enforcement amendment to the agreement' **On the other hand** a post-judgment interest needs not be specifically claimed before it is awarded. It is statutory, it does not require to be proved. 'A post judgment interest needs not be specifically claimed before it is awarded. It is statutory. The court is empowered by the rules of court to award such interest at the courts discretion it does not require to be proved', per Awotoye, JCA in **NECHIL AGENCIES LTD & ANOR v. VICTOR AGENCIES LTD (2011) LPELR- 4588 (CA)**

General damages are damages which the law implies or presumes to have accrued from the wrong complained of.

They are presumed to flow from the immediate direct and proximate result of the wrongful act. They need not be alleged or proved. It is presumed to be the natural consequence of defendant's act. See **CHIEF ABUDUMAHE ADAMU v. INSPECTOR-GENERAL OF POLICE (2013) LPELR-22812 (CA)** at pg. 10. What will a reasonable person conclude in such circumstances? It is to compensate a person for loss or damages suffered as a result of the wrong.

I am of the view and I so hold that the Claimant has proved his case on the preponderance of evidence and balance of probabilities before me. Judgement is entered in favour of Claimant against the Defendant as follows.

1. The Defendant is hereby ordered to pay the Claimant the sum of Seven Hundred Thousand Naira (₦700,000) being the mutually agreed outstanding balance of the One Million Naira (₦1,000,000) professional fees, the Claimant charged the Defendant.
2. 5% interest of entire sum from the date of Judgment until final liquidation of entire judgement debt.

3. The Defendant is further ordered to pay the sum of ₦1,500,000.00 (One Million, Five Hundred Thousand Naira) only as general damages.
4. ₦200,000.00 (Two Hundred Thousand Naira) as cost of the action.

HON. JUSTICE U. P. KEKEMEKE
(HON. JUDGE)
08/03/2022

Claimant present.

Defendant absent.

Amobi Onuigbo, Esq. appears in person.

CLAIMANT: The Defendant is not in Court. The matter is
for Judgment. We are ready.

COURT: Judgment delivered.

(Signed)

Hon. Judge

08/03/2022