

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY,
IN THE ABUJA JUDICIAL DIVISION,
HOLDEN AT COURT NO. 7, APO, ABUJA
BEFORE HIS LORDSHIP: HON. JUSTICE O.A. MUSA**

SUIT NO. CV/2400/2018

BETWEEN:

DR. TAOFEEKAT TAIWO ALI --- CLAIMANT

AND

1. AVASTONE GLOBAL SERVICES LIMITED

2. MR. PETER --- DEFENDANTS

JUDGMENT

DELIVERED ON THE 23RD MARCH, 2022

The Claimant commenced this suit via a Writ of Summons accompanied by a Statement of Claim and Witness Statement on Oath dated 23rd July, 2018. The Claimant claims against the Defendants the following reliefs:

- a. The sum of N8,468,417,04k (Eight Million, Four Hundred and Sixty-Eight Thousand, Four Hundred and Seventeen Naira, Four Kobo) being the total sum paid to the Defendants which sum was had, received and utilized by the Defendants.
- b. The sum of N10, 000,000 (Ten Million Naira) general damages for breach of contract between the Claimant and the Defendants.
- c. 22% interest on the said sum from the 9th of May, 2017 till judgment is delivered in this case.
- d. 10% interest on the judgment sum from the date of judgment till the judgment sum is liquidated.
- e. N1,500,000 (One Million, Five Hundred Thousand Naira) cost of litigation.

In the prosecution of the Claimant's case, the Claimant served the Defendants with its Originating processes, other processes and subsequent hearing notices in this case.

The Claimant called one witness, i.e. the Claimant herself (PW1) and tendered 14 Exhibits marked as Exhibits A -- AA14 and thereby closed her case.

In defence, the Defendants only filed Memorandum of Conditional Appearance dated 9th November, 2018 but choose not to file a defence, Call any witness or cross examine PW1 and did not tender any Exhibit because they obviously have no defence to the Claimant's claims.

The Defendant's Counsel appeared only once in court and neither the Defendants nor the Counsel appeared in court again despite constant several hearing notices served on them.

Due to the Defendants' lack of interest to defend this suit and failure to appear before this Honourable Court even when several notices were issued and served on them, the Claimant through her counsel urged this Honourable Court to foreclose the Defendants from cross examining PW1 as well as foreclosing their Defence, and the Honourable court granted same.

At the hearing the Pw1 testified as follows:

- a. There was a contract of purchase/sale of a 4 Bedroom fully detached duplex apartment at Porsche Terrace, Karmo District, Abuja between her and the Defendants who are in the business of developing Estates known as Porsche Terrace Estates in different districts of Abuja with diverse prices of N20, 000, 000 (Twenty Million Naira) and N25, 000, 000 (Twenty Five Million Naira above.
- b. Having shown interest in one of the Estates (KARMO District) priced at N20, 000, 000 (Twenty Million) she was required by the

- Defendants to pay a non-refundable sum of N20,000 (Twenty Thousand Naira) for purchase of the apartment with the Defendants which she paid to the 1st Defendant's Access Bank Account Number; 0707284976.
- c. The contract between the parties are evidenced by the Client's Registration Form (Exhibit AA4), Offer Letter (Exhibit A A3) issued to the Claimant b} the Defendants and Receipts of Payments respectively (Exhibits AA11 AA12, AA13 and AA14) made by the Claimant to the Defendants via the 1st Defendant's Account stated above.
 - d. Having purchased the Registration Form, the Defendants issued her their Offer Letter dated 15th August, 2016 (Exhibit AA3) for the 4 Bedroom apartment priced at N20, 000, 000 (Twenty Million Naira) which requires Tier to pay a 30% Equity Payment of the total sum within 6 months of receipt of the Offer Letter in order for her to be entitled to an Allocation Letter which payment she made immediately.
 - e. After having complied with all the above stated requirements so she can be issued an Allocation Letter in order to be entitled to an apartment priced at N20,000,000 (Twenty Million Naira) the Defendants never issued her an Allocation Letter nor apartment. Rather, the Defendants came with the excuse of having challenges with the landlord of the plot and thereby offered her another 4 Bedroom apartment in Wuye, priced at N28,500,000 (Twenty Eight Million, Five Hundred Thousand Naira) with Equity deposit of Nil),000,000 (Ten Million Naira) which was above e budget of the Claimant but she accepted because she was extremely interested in owning an apartment in the Estate of the Defendants.

- f. The Defendants still failed to issue her Allocation Letter but they rather showed her another 4 Bedroom flat apartments at Utako which she rejected and they went ahead to show/offer her an apartment at lintel level in Mabushi which she accepted and she was asked by the Defendants to write to them a letter requesting for a change in the location from Wuye to Mabushi in order to be issued another Offer Letter which she did but was never issued the said Offer Letter, Allocation Letter or an apartment,
- g. When the Defendants were not forthcoming with the earlier agreed 4 Bedroom fully detached duplex priced at N20,000,000, she further made additional payment of N6,468,417.04 (Six Million, Four Hundred and Sixty Eight Thousand, Four Hundred and Seventy Naira, Four Kobo) in installments to the earlier N2,000,000 (Two Million Naira) paid making it the sum total of N8,468,417.04 (Eight Million, Four Hundred and Sixty Eight Thousand, Four Hundred and Seventy Naira, Four Kobo) to the Defendants' Account.
- h. At this point she became frustrated and lost interest in the contract because after all said and done it was obvious that the Defendants were not ready to issue her either Allocation Letter or an apartment as promised, rather they breached the contract and kept on touring her around with excuses that hold no water.
- i. Having lost interest in the contract, she was totally discouraged by the delay occasioned by the Defendants and was unable to pay the complete equity sum of: N10,000,000 (Ten Million Naira) as a result of the Defendants' breach of the contract. She then wrote to the Defendants a Notice of Withdrawal dated 31st October, 2017 (Exhibit AA10) and Demand Letter for the Refund of the total sum of N8,468,417.04 (Eight Million, Four Hundred and Sixty Eight

Thousand, Four Hundred and Seventy Naira, Four Kobo) twice (Exhibits AA6 & AA8) to the Defendants which they received, replied via a letter dated 1st November, 2017 and promised to refund her all the said sum total of N8,468,417.04 (Eight Million Four Hundred and Sixty Eight Thousand, Four Hundred and Seventy Naira, Four Kobo) paid to them by the Claimant within 60 Days from 1st November, 2017, but which they failed and/or refused to pay till date even after several demands from the Claimant to the Defendants.

- j. The Defendants, having breached the contract and refused to refund to the Claimant her money despite several demand; from her to them, have deprived her of a productive investment(s) and occasioned great economic damage on her.

COUNSEL RAISED ONE ISSUE FOR DETERMINATION:

WHETHER By THE FACTS PLEADED AND EVIDENCE LED IN SUPPORT THEREOF, THE CLAIMANT HAS NOT PROVEN BY CREDIBLE AND UNCONTROVERTED EVIDENCE THE DEFENDANTS' BREACH OF THE CONTRACTUAL OBLIGATIONS BETWEEN THE PARTIES AND WHETHER THE CLAIMANT IS NOT ENTITLED TO THE RELIEFS SOUGHT.

ARGUEMENT OF THE SOLE ISSUE:

WHETHER BY THE FACTS PLEADED AND EVIDENCE LED IN SUPPORT THEREOF, THE CLAIMANT HAS NOT PROVEN BY CREDIBLE AND UNCONTROVERTED EVIDENCE THE DEFENDANTS' BREACH OF THE CONTRACTUAL OBLIGATIONS BETWEEN THE PARTIES AND WHETHER THE CLAIMANT IS NOT ENTITLED TO THE RELIEFS SOUGHT.

In arguing it the Claimant counsel submit that the Claimant herein has proved her case against the Defendants, and is thus entitled to all the reliefs sought in this suit. As a threshold point, on the nature and , purport of contract, die Court of Appeal, in the case of F. K. CONSTRUCTION LIMITED & ANOTHER -VS- NIGERIA DEPOSIT INURANCE CORPORA 7ON (NDIC) & ANOTHER (2013) 13 NWLR (PART 1371) PAGE 90 AT 392, held, inter alia that:

"A contract is an agreement between two or more parties creating obligations that are enforceable or otherwise recognizable at law. It is a promise or a set of promises for breach of which the law gives a remedy, or the performance of which the law in some way recognizes as a duty".

This agreement defines the relationship between the parties, their respective obligations and time lines for the performance of specific components of the project. Counsel further refer the court to the case of SEVEN-UP BOTTLING CO. Vs. MR. OLUMUYIWA PETER AKINWARE (2011) 15 NWLR (PART 1270) PAGE 302 AT 304.

The question then is when does breach of contract arise? A breach of contract is committed when a party to the contract, without lawful excuse, fail or neglect or refuses to perform an obligation the party undertook in the contract or incapacitates himself from performing the same or in any way backs down from carrying out a material terms. See the case of BEST (NIGERIA) LTD -VS- BLACKWOOD HODGE (NIGERIA LTD & 2 OTHERS 2011) 5 NWLR PART 1239 PAGE 95 AT 106.

In view of the above definition, it is trite law that parties to a contract are bound by their agreement. In the case of CAMEROON AIRLINES VS. OTUTUZU (2011) LPELR 827 (SC), the Apex Court held thus:

A breach of contract means that the party in breach has acted contrary to the terms of the contract in the instant case by performing a contract negligently and not in accordance with its terms.

In the instant case, counsel submit that it is glaring, as revealed by the evidence before your Lordship, that the Claimant timeously fulfilled her contractual obligation by paying for the Client Registration form immediately and the first Equity Payment and still went on to pay additional/subsequent Equity Payment which was against her wish and the earlier agreement by parties, at a reasonable time; but the Defendants intentionally reused to fulfill their own contractual obligation and have also refused to refund the Claimant's money after she lost interest due to the Defendants' unending fraudulent/dubious promises and frustration occasioned on her. He humbly refer the court to the Claimant's evidence in paragraphs 5, 6, 7, 9,10,11,12,15,16, 17,18,19, 20,21,23, 25 and 26 of the Claimant's Witness Statement of Oath.

Furthermore, he submit that this case is a classic case of Defendants who entered into a contract with no intention of performing same. It is evidenced that the Defendants without lawful cause failed to perform their obligations in the contract to the Claimant as stated above even after the Claimant hrs performed her obligation in the contract. He humbly urge the Court t o so hold.

It is it the payment of the Equity that the Defendants⁷ were required to issue the Claimant an Allocation Letter and an apartment but they did not till date. That Defendants started breaching and/or frustrating the transaction even before it started as evidenced in the Statement of Claim and evidence led thereon before this Honourable Court.

He argued farther that, when a person by agreement, declaration, act or omission, intentionally caused or permitted another person to believe a thing or contract to be true and to act upon such belief, this will amount to fundamental breach of contract, fraud or deceit.

In the instant case, the Defendants made the Claimant to believe that there is a 4 Bedroom fully detached duplex to be allocated to her thereby causing her to make commitment to the tune of N8, 468, 417.04 (Eight Million, Four Hundred and Sixty-Eight Thousand, Four Hundred and Seventy Naira, Four Kobo) which money was had and utilized by the Defendants since about 5 years ago.

Regardless of the several efforts and perfection c the contract on the side of the Claimant, the Defendants fraudulently refused to perfect the contract by not allocating any apartment to the Claimant who became frustrated and lost interest.

More so, by the evidence of the Claimant, it is obvious that the Claimant was extremely patient and had made serious complaints over the unnecessary delay by the Defendants in the allocation of an apartment to her.

The Claimant's commitment in performance of its obligations and its efforts to see to the success of the project can also be deduced from her evidence before this Honourable Court. The Claimant clearly gave the Defendants all the is necessary support needed to achieve the execution of the contract but the Defendants failed on their part. I so hold.

It on record that the Claimant having lost hope and become discouraged by the obvious lies of Defendants which made her unable to complete the N10, 000,000 (Ten Million) Equity payment, wrote to the Defendants a Withdrawal Letter Exhibit AA10), and setters of Demand to the Defendants (Exhibit AA6 and AA8) to refund all her money to the tune of

N8,468,417.04 (Eight Million, Four Hundred and Sixty Eight Thousand, Four Hundred Seventy Naira, Four Kobo) paid for the 4 Bedroom detached duplex which was not forthcoming, which letter the Defendants acknowledged, replied to on 1st November 2017 and equally agreed to refund the said total sum within 60 days from 1st November, 2017 but have vehemently refused to refund the said sum to the Claimant till date.

Counsel also submit that this is a confirmation that the Defendants do not intend to perform the contract at all which amounts to breach of contract, the Claimant having made several demands which were not willfully fulfilled or perfected by the Defendants.

Equally submit that the Defendants' behaviour towards the Claimant from inception of the contract is nothing but an act of approbating and reprobating which is not permissible in our legal jurisprudence as reflected in the instant case as stated above, where the Defendants kept approbating and reprobating on the fulfillment of their contractual obligation to the Claimant.

In the case of PINA -VS- MAI-ANGW A (2018) 15 NWLR PART 1643 PAGE 431, the Supreme Court held that:

"A man is not allowed to blow hot and cold, to affirm at one time and deny at the other, or as it is said, to approbate and reprobate. He cannot be allowed to mislead another person into believing a state of affairs and then turning around to say that person's disadvantage that the state of affairs which he had presented does not exist at all or as represented by him..... It is against natural justice and fairness for a person to approbate and reprobate.'

See also MAB AMIJE -VS- OTTO (2016) 13 NWLR PART 1529 PAGE 171.

The learned counsel argued that haven established above that there is a breach of contract in the case at hand and, it is a settled law that wherever there is breach, there must be a remedy. In the case of BILANTE INTL. LTD -VS- N.D.I.C (2011) LPELR 781 (SC), the Supreme Court, per Rhodes-Vivour, J.S.C (P. 31, paras. E-F), held that:

"He argued as to the issue of damages follow breach of contract and is payable by the party responsible for the breach...."

How then can he access the damages? It is trite that contracts are concerned with the mutual rendering of benefits. If one party makes default in performing his side of the contract, then the basic loss to the other party is the market value of the benefit of which he has been deprived through the breach. Put shortly, the Claimant is entitled to compensation or the loss of her investments.

In the case of NEKA B.B.B MANUFACTURING. CO, LTD, -VS- A,C,B. LTD (2004) 2 NWLR (PT. 858) 521, the Supreme Court held thus:

It is trite law that a contract of the kind under consideration is concerned with rendering benefits, if one party defaults in performing, the other party is entitled to compensation for loss of profit or the expenses incurred.

The essence of payment of damages to the injured party by the party who breached the contract is to restore the Claimant to the position she would have been, had the Defendants not breached the contract. See the case of MTN-VS- CORPORATE COMMUNICATION INVESTMENT LTD (2019) LPELR 47042 (SC) (PT. 50-51, PARA. D-F) where it was held that;

"...the object of an award of general damages is to compensate the plaintiff, as far as money can do so, for the damages, loss or injury he has suffered. The guiding principle is restitution. It envisages that a party which has been deminified by the act which is called in question must be put in the position he would have been if he had not suffered the wrong which he is now being compensated for. In other words, the loss inevitable and unavoidably flowing from the breach."

Counsel submit that the Claimant is entitled to the reliefs sought as endorsed in her Writ of Summons. The Claimant has proved her case on balance of probabilities through documentary and uncontradicted documentary and oral evidence that the Defendants breached their contractual obligations and made her suffer great economic loss. In the case of TITUS & ORS. -VS- BADO (2018) LPELR 44002 (CA), the court of Appeal held that;

"Declaratory reliefs are not granted as matter of course and on a platter of gold. They are only granted when credible evidence has been led by the plaintiff or person seeking the declaratory reliefs. A declaratory relief will be granted where the plaintiff is entitled to the reliefs in the fullest meaning of the word. The plaintiff must plead and prove his claim for a declaratory relief without relying on the evidence called by the defendant. Such declaratory relief is not granted even on admission by the defendant, see ANYORU -VS- MANDELA LTD I 007 4 SCNJ 28; CHUKWUMAH-VS-SPDC (NIG.) LTD (993) LPELR 864 SC, MATANMI & ORS. -VS- DADA & ANOR. (2013) LPELR 19929 SC and AKINBONI

With special and/or specific regard to Claimant's relief (a), he urged the Court to compel the Defendants to refund the Claimant the entire sum of N8,468,417.04 (Eight Million, Four Hundred and Sixty-Eight Thousand, Four Hundred and Seventy Naira, Four Kobo) paid to the Defendants by the Claimant under the contract, which money was had, received and utilized by the Defendants. Hence the Claimant is entitled to the refund of the money because the contract was not executed by the Defendants. See the case of DANTATA & ANOR. -VS- MOHAMMED (2000) LPELR 925 (SC), where the court held thus;

"A party who has wholly or in part performed his side of the contract and not received the agreed counter-performance in full may sometimes be entitled to restitution in respect of his own performance. Where this consists of a payment of money, the payor will simply seek to get it back; where it consists of some other benefits, he will claim recompense (or a quantum meruit) in respect of it. It is clear that where a contract is avoided for breach, the innocent party is entitled to restitution where there is claim of total failure of consideration. As stated in Halsbury's (op. cit) para. 1129, a complete failure of consideration in a contract occurs where one of the contracting parties fails to receive the benefits of valuable consideration which springs from the roots, and is the essence, of the contract."

On the relief of general damages, relief (b), occasioned by the breach of the Defendants, He submit that this Honourable Court has the powers award damages in breach of a contract particularly where it is shown

that the Defendants were found wanting in handling of their own obligation under the contract.

The Court of Appeal held in the case of BELLMEW AIRLINES LTD VS FADAHUSSI & ORS. (2015) LPELR-25915 (CA) that:

"It is settled principle that once breach of contract is established, damages follow. General damages are losses that flow naturally from the adversary and it is generally presumed by law, as it need not be pleaded or proved. See U.B.N Ltd VS ODUSOTE (1995) 9 NWLR (PT. 421) P. 558 and CAMEROON AIRLINES VS. OTUTUIZO (2011) NWLR PT. 1238) P. 512 AT 541." Per UWASI MUSA ABBA AJI, J, CA (P. 16, PARAS. C-D).

On reliefs (c) and (d), he submit that this Honourable Court has the inherent powers to award interest on the Judgment sum as sought in our reliefs.

In the case of Sterling Bank Plc Vs Falola (2015) ALL FWLR (PT 774) 1 @ pages 31-35, the Court of Appeal, per Amina Augie, JCA, (as she then was) succinctly captured the position thus:

"... In that case-Ekwunife VS Wayne (W/A) Ltd (supra), see also Ekwunife VS Wayne West Africa Ltd. (1989) 5 NWLR (Pt. 122) 422, the Supreme Court per Nnaemeka-Agu JSC held that: "interest may be awarded in a case in two distinct circumstances- (i) As of right; and (ii) Where there is a power conferred by statute to do so, in exercise of the court's direction. Interest may be claimed as a right where it is contemplated by the agreement between the parties, or under a mercantile custom, or under a principle of equity, such as breach of a fiduciary relationship... Where interest is being claimed as a matter of right, the proper practice is to

claim entitlement to it on the writ and plead facts, which show such an entitlement in the statement of claim. In Nigeria, as the law is that a statement of claim supersedes the writ... even if it was not claimed on the writ but facts are pleaded in the statement of claim and evidence given, which show entitlement thereto, the court may, if satisfied with the evidence, award interest. Adjudication on the plaintiff's right to interest in such a case is, like on any other issue in the case, based on the evidence placed before the court. The evidence called at the trial in such a case will also establish the proper rate of interest and the date from which it should begin to run - whether from the accrual of the cause of action or otherwise".

In his own judgment in that same case, *Agbaje JSC*, explained as follows:

"For a claim for interest to properly exist for determination.... it must be stated in the endorsement of the claims to the writ of summons or in the statement of claim, whether the claim for interest is based on contract or statute and the grounds upon which the claim is based. A defect in this regard in the endorsement to the writ can be cured in the statement of claim since the latter supersedes the writ"

It is settled that in case brought on commercial a party holding onto the funds of another for a time, ought to pay compensation for so doing- see *Nigerian General Superintendence Co. Ltd Vs. The Nigerian Ports Authority* (1990) 1 NWLR (Ft. 129)741, wherein it was explained:

"In certain cases, even failure to claim interest in the writ of summons or statement of claim will not preclude a successful plaintiff from praying for and being awarded

interest after judgment had been entered for an amount. In the case of A.B. Kemp Ltd. & Ors. VS Tolland (1156) 2 Lloyd's List Law Report 681 after.... Judgment had been pronounced in favour of the plaintiff with costs, counsel for the plaintiff then asked for 5% interest as 'it is three years since these events occurred' and 'bearing in mind the high rates of interest which had been prevailing for some little time now'. The opposing counsel objected saying that 'there is no claim for this in the writ. It is certainly not my client's fault that the action has taken so long to come on'. In awarding interest, Devlin, J., had this to say at page 691: I think that where the case has been brought on commercial matters and where in ordinary commercial practice money would, if the facts, which I have now adjudged to exist had been established, have been paid some time ago, it ought to carry interest.....'

A Judgment for the return of money is usually accompanied by an award of interest for the period for which it is claimed. In appropriate cases, when interest is awarded, though not on the writ, it is in the nature of a consequential order. In the case of Horbutt's "Plasticine" Ltd. VS Wyane Tank and Pump Corp. (1970) 1 Q.B. 447 at page 468, Lord Denning, M.R., expressed his views thus:

" it seems to me that the basis of an award of interest is that the defendant has kept the plaintiff out of his money and the defendant has had the use of it himself. So he ought to compensate the plaintiff accordingly". (Underlining supplied for emphasis).

Counsel submit further that the High Court of the Federal Capital Territory (Civil Procedure) Rules, 2018 empowers the court to award post sum as provided in Order 39 Rules 4 of the Rules of this Court:

"The court at the time of making any Judgment or order or at any time afterwards, may direct the time within which the payment is to be made or order act is to be done, reckoned from the date of the judgment or order, or from some other point of time, as the court may deem fit and may order interest at a rate not less than 10% per annum to be paid upon any judgment."

This was Affirmed in the Court of Appeal decision in IFEMESLA -VS- ECOBANK (2018) LFELR-46589 (CA) that:

"On the granting of ten percent (10%) post judgment interest, I agree that same is grantable in the circumstances of the case.

That trial Court has the power to award 10% post judgment interest as permitted by the Rules of Courts For instance, in FBN PLC -VS- EX 7EL PLASTIC LTD (2003) 13 NWLR (PT. 837) P. 412 @417."

On issue of cost, Claimant Counsel submit that the award of cost are matters within the discretionary power of the court and it must be made judiciously and judicially. A successful party in an action is entitled to costs as of right. The Claimant herein has proved her claim before your Lordship and is thus deserving of the award of cost. He urge the Court to a o hold. In OJIEGBE -VS- UBANI (1961) LPELR 25060, Ademola JSC (of blessed memory) held that:

"Cost are matters within the discretion of the trial Judge."

In HACO LTD -VS- BROWN (1973) LPELR 1347, Irikefe JSC held inter alia:

"Now it is settled law that costs normally follow the event, unless there are circumstances warranting the contrary. The award of costs involves a judicial discretion which must be exercised on fixed principles that is according to Rules of reason and justice, not according to private opinion. Similarly, the exercise of this discretion must not be affected by questions of benevolence or sympathy."

He therefore submit that the Claimant has proven her entitlement to all these reliefs. He urge the Court to so hold.

He equally submit that parties to a contract are bound by the terms of that contract and it is the duty of the court to give effect to the terms of the contract entered into by parties to protect the sanctity and the autonomy of contracts in the interest of justice.

From the record throughout the trial the Defendants failed to appear or file its defence to the suit defiled all the hearing notice. As such, I adopt all the submission of the Claimant counsel and grant all the reliefs sought in the statement of claims. A, B, C, D and E. I so hold.

- a. That the sum of N8,468,417,04k (Eight Million, Four Hundred and Sixty-Eight Thousand, Four Hundred and Seventeen Naira, Four Kobo) being the total sum paid to the Defendants which sum was had, received and utilized by the Defendants.
- b. That the sum of N1, 000,000 (One Million Naira) general damages for breach of contract between the Claimant and the Defendants.

- c. 10% interest on the said sum from the 9th of May, 2017 till judgment is delivered in this case.
- d. 10% interest on the judgment sum from the date of judgment till the judgment sum is liquidated.
- e. N100,000 (One Hundred Thousand Naira) cost of litigation.

APPEARANCE

Charity C. Ibezim Esq. with
Amina Abdullahi Esq. for the Claimant.
The respondent are absent.

Sign
Hon. Judge
23/03/2022