IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

HOLDEN AT ABUJA

ON FRIDAY THE 22ND MARCH 2022

BEFORE HIS LORDSHIP: HON JUSTICE O. A. ADENIYI

SITTING AT COURT NO. 8 MAITAMA, ABUJA

SUIT NO: CV/212/2019

BETWEEN:

MR. EMEKA .C. OKEKE … … … … … … … … … … … … CLAIMANT

AND

1. HOOGU INVESTMENT INTERNATIONAL LTD.)
2. MR. HENRY GABRIEL } DEFENDANTS
3. MR. CHARLES TORIOLA

JUDGMENT

The Claimant commenced the instant action for breach of contract vide Writ of Summons and Statement of Claim filed in this Court on 25/10/2019, wherein he claimed against the Defendants, the reliefs set out as follows:

1. **A declaration that the contract is valid and subsisting.**
2. **A declaration that the defendants are grossly in breach of the fundamental terms of the contract between the parties.**
3. **A declaration that the defendants have flagrantly breached the contract between the parties.**

4. **An Order mandating the defendants to pay to the claimant his accumulated arrears of bonuses, interest, benefits and/or entitlements also calculated at interests thereof.**
5. **The sum of N4,000,000.00 as accrued arrears of entitlement for the invested capital of N2,000,000.00 and 100% return on investment (ROI) of the invested sum in 4 months contract term from 7/3/2018 to 13/7/2018, and subsequently, the invested capital of N2,000,000.00 and 100% return on investment (ROI) of the invested sum in every 4 months from 13/7/2018 till judgment is delivered and thereafter 10% post judgment sum.**
6. **The sum of N2,000,000.00 invested capital.**
7. **26% interest per 4 months period rate fee of N4,000,000.00 for the capital invested and 100% return on investment (ROI) of the invested sum in every 4 months being bank rate and the actual value of the accumulated arrears of entitlements as at today.**
8. **The sum of N60,000,000 general damages.**
9. **The sum of N40,000,000 aggravated damages.**
10. **10% of all monies recoverable being the legal recovering fee.**
11. **The sum of N500,000.00 being the cost of this suit.**

As with the sister case earlier on decided by this Court in suit No. CV/211/2019 Mr. Hezekiah Okeke Vs. Hoogu Investment International Limited & 2 Ors., it is borne by the record of proceedings in the present suit that on 11/02/2020, the first day that the suit was mentioned in this Court, the Defendant was represented by learned counsel, **M. O. Usuwa, Esq.**, who informed the Court of moves by parties to resolve the disputes in the suit amicably amongst the parties. On that basis, the matter was adjourned for report of settlement. However, the Defendants' learned counsel never showed up in Court again on subsequent dates to which the case was adjourned, apparently

indicating that settlement plans had broken down between the parties. As a result the matter proceeded to trial.

At the trial, the Claimant testified in person and called no other witness. He adopted his statement on oath and tendered in evidence a total of eleven (11) documents as exhibits to establish his case.

In view of the Defendant's failure to file defence to the action, the Court ordered parties to file and exchange their written final addresses as prescribed by the provisions of the **Rules** of the Court.

Expectedly, only the Claimant filed a written address on 30/11/2020, in which his learned counsel, **Michael U. Chukwuemeka Esq.,** raised a sole issue as having arisen for determination, to wit:

> **Whether the Claimant has proved his case on a minimal of proof to be entitled to the reliefs sought in his statement of claim.**

However, considering that the Claimant had claimed declaratory reliefs alongside other reliefs in this action, the law makes it incumbent on him to adduce cogent evidence to support his declaratory claims. As such, it does not matter that the Defendant failed to defend the action. In order to succeed, the Claimant is still duty bound to lead credible and cogent evidence to support his claim. See Kosile Vs. Folarin[1989] NWLR (Pt 107) 1 Monkom Vs. Odili [2010] All FWLR (Pt. 526) 542 563; Dumez Nig. Ltd. Vs. Nwakhoba [2008] 18 NWLR (Pt. 119) 361 @ 373-374.

That being the case, I reckon that the issues that have arisen for determination in this suit, on the basis of the evidence led at the trial, can be distilled as follows:

> **1. Whether the Claimant has by credible evidence proved the existence of a contract between the parties, which contract was breached by the Defendants?**
>
> **2. If issue (1) is answered in the affirmative, whether the Claimant is thereby entitled to the reliefs sought in this action?**

In proceeding to determine these issues, I had carefully considered and taken due benefits of the arguments canvassed by the Claimant's learned counsel in his final address. I shall endeavour to make specific reference to learned counsel's submissions as I deem necessary in the course of this judgment.

TREATMENT OF ISSUES

I shall proceed to determine the two issues together. The case put forward by the Claimant is straightforward. He entered into an investment agreement with the 1st Defendant, as shown in **Exhibit C4.** By the agreement, executed on 07/03/2018, the Claimant invested the sum of **N2,000,000.00** with the 1st Defendant for a period of four (4) months, commencing from the date of the agreement, to terminate on 13/07/2018.

According to **Exhibit C4,** parties agreed that the Claimant shall receive return on his investment (ROI) of an amount representing 100% of the invested sum at the expiration of the tenor of the investment. It is further stated in **Exhibit C4**, that the Claimant shall receive both his capital investment and the agreed ROI at the expiration of the four months duration of the investment.

According to the Claimant, what the agreement translates to, in real term, is that by the expiration of the investment term, he shall be entitled to receive a total sum of **N4,000,000.00** from the 1st Defendant.

The case of the Claimant is further that he indeed paid the said investment sum of **N2,000,000.00** into the 1st Defendant's account as agreed, on 07/03/2018; and as shown in his Statement of Account tendered as **Exhibit C3;** that the 1st Defendant equally acknowledged receipt of the payment vide the invoice tendered as **Exhibit C2**.

The Claimant further testified that upon the expiration of the investment, the 1st Defendant, failed and refused to honour her obligations under the agreement to pay him both the principal sum of

N2,000,000.00 and the accrued ROI, being 100% of the investment sum, being another **N2,000,000.00.**

The Claimant's case is further that upon the 1st Defendant's refusal to honour her obligations under the agreement after the expiration of the investment package, he caused his Solicitors to write letters of demand to the 1st Defendant, as shown in **Exhibits C6, C6A**, and **C6B** respectively, tendered by him. He further tendered in evidence letters written by the 1st Defendant's Solicitors, in response to his Solicitors' letters, as **Exhibits C7, C7A and C7B** respectively. In these letters, the 1st Defendant, through her Solicitors, admitted breaching the investment agreement between the parties, but attributed the breach to issues had with her trading portal which affected her business and her customers; and further pleaded with the Claimant for more time to resolve the issues.

However, after a series of back and forth in letter exchanges between Solicitors of both parties and the Claimant made no headway, he proceeded to institute the present action.

It is pertinent to state that the Claimant's testimony,. summarized in the foregoing, remained sacrosanct, unchallenged and uncontroverted. The Court therefore has no difficulty in believing the same, more so that no aspect thereof appeared incredible.

Now, the position of the law is elementary, that by the doctrine of sanctity of contract, where parties have entered into a contract or an agreement voluntarily and there is nothing to show that same was obtained by fraud, mistake, deception or misrepresentation, they are bound by the provisions or terms thereof. This is because a party cannot ordinarily resile from a contract or agreement just because he later found that the conditions of the contract or agreement are not favourable to him. See Larmie Vs. Data Processing Maintenance & Services (D.P.M) Ltd. [2005] 12 SC (Pt. 1) 93 @ 103; Baba Vs. Nigerian Civil Aviation Training Centre, Zaria [1991] 5 NWLR (Pt. 192) 388; Union Bank of Nigeria Ltd. Vs. B. U. Umeh & Sons Ltd. [1996] 1 NWLR (Pt. 426)

565; S.C.O.A. Nigeria Ltd. Vs. Bourdex Ltd. [1990] 3 NWLR (Pt. 138) 380 and Koiki Vs. Magnusson [1999] 8 NWLR (Pt. 615) 492 at 514.

In the instant case, the Claimant has by **Exhibit C4** Successfully established the existence of the said contract agreement which expressed the clear intention of both parties; and which, without any evidence challenging the same, remain valid and enforceable as between the two parties.

In the circumstances, failure of the 1 Defendant to repay the Claimant the capital sum of **N2,000,000.00** invested; together with the ROI, being sum of **N2,000,000.00** representing 100% of the sum invested totaling the sum of **N4,000,000.00**, after the expiration of the 4 months period, as agreed by both parties, constituted a flagrant breach of the fundamental terms of the contract between the two parties. I so hold.

A breach of contract is said to occur when a party to a contract, without lawful excuse fails, neglects or refuses to perform an obligation he undertook in the contract or either performs the obligation defectively or incapacitates himself from performing the contract. See Best (Nig.) Ltd. Vs. Blackwood Hodge Nigeria Ltd. [2011] LPELR-776(SC); Tsokwa Oil Marketing Company Vs. B.O.N. Ltd. [2002] 11 NWLR (Pt. 777) 163.

The trite position of the law is further that in an action of this nature, where breach of contract is established, the only remedy available to the Claimant, is in damages. In other words, where two parties have

made a contract which one of them has broken, the damages which the other party ought to receive in respect of such breach of contract should be such as may fairly and reasonably be considered either as arising naturally, that is, according to the usual course of things from such breach of contract itself, or such as may reasonably be supposed to have been in the contemplation of the parties at the time they made the contract, as the probable result of the breach of it.

In such circumstances, having established that the 1st Defendant breached the contract had with the Claimant, it becomes apparent that

the Claimant is entitled to damages, which is to restore him, in so far as monetary compensation can do, to the position he would have been had the contract not been breached, as depicted in the maxim restitutio in integrum. See Okongwu Vs. NNPC [1989] 4 NWLR (Pt. 115) 295;Orji Vs. Anyaso [2000] 2 NWLR (Pt. 643) 1; Adekunle Vs. Rockview Hotel Limited [2004] 1 NWLR(Pt. 853) 161; Cameroon Airlines Vs. Otutuizu [2011] 4 NWLR (Pt. 1238) 512.

In the instant case, the Claimant has claimed a refund of both the capital sum invested and the expected 100% return on investment (ROI) as agreed to in the contract. He further claimed 100% of the expected profit on the contract on a pro-rata basis from the date of the breach until the Defendants finally liquidates the debt. He equally claimed the sum of **N60,000,000.00** as general damages; the sum of **N40,000,000.00** as aggravated damages, legal fees and costs.

Now, considering the uncontroverted evidence before the court, and the settled position of the law, it will be appropriate, in the circumstances of the present case, to grant the Claimant's claim for refund of the capital sum he invested together with the expected 100% return on investment (ROI) as agreed by both parties; in order to return the Claimant to the position he would have been if the contract had not been breached.

However, with regards to the other heads of claims for pro-rata and pre-judgment interests; general and aggravated damages and legal recovery fees, I hold that that these claims are clearly not maintainable in that such heads of claim are not in tandem with an action in breach of contract and the agreement between the parties on record. The objective of compensation in breach of contract actions, as I had earlier on stated, is captured in the Latin principle - *restitutio in integrum*; that is to restore the Claimant to the position he would have been if the breach had not occurred, in so far as money can do so. Therefore, the essence of compensation in an established case of breach of contract is not meant to serve as a windfall of extraneous monetary claims for the Claimant but to put his just in the position he should have been had the contract not been breached. I so hold. See Chevron Nig. Ltd. Vs. Titan

[2013] LPELR-21202; Arisons Trading & Engineering Company Ltd. Vs. The Military Governor of Ogun State & Anor. [2009] 6 SCNJ 141 @ 178.

In the circumstances, I am bound to and hereby refuse the Claimant's reliefs (4), (5), (7), (8), (9) and (10) claimed in this action.

In concluding this judgment, let me quickly state that I consider it needless for the Claimant to have joined the 2nd and 3rd Defendants as parties in this case. The investment agreement in issue in this case is strictly between the Claimant and the 1st Defendant alone. There is nothing in the agreement that transfers the obligations and liabilities of the 1st Defendant thereunder to the 2nd and/or 3rd Defendant. The fact that it was the 2nd and 3rd Defendants that introduced the Claimant to the 1st Defendant cannot be enough ground to cause them to be liable for the 1st

Defendant's breach of the investment agreement had with him. As such, pursuant to the provisions of **Order 13, Rule 18(2)** of the **Rules** of this Court, I hereby suo motu strike out the names of the 2nd and 3rd Defendants from this action.

In the final analysis, hereby resolve the two issues set out in the foregoing substantially in favour of the Claimant. For the avoidance of doubts and abundance of clarity, I hereby enter judgment in favour of the Claimant against the Defendant as follows:

1. It is hereby declared that the Defendant is grossly in breach of the investment agreement she executed with the Claimant.

2. The sum of **N4,000,000.00** (Four Million Naira) only being the investment capital and 100% Return on Investment (ROI) as agreed to between the two parties pursuant to the investment agreement of 07/03/2018.

3. The Defendant shall pay the judgment sum in (2) above at the rate of 10% per annum from the date of judgment up until the same is finally liquidated.

4. I award costs of this action, in the sum of N200,000.00 (Two Hundred Thousand Naira) only, in favour of the Claimant against the Defendant.

OLUKAYODE A.CADENIYI

(Presiding Judge)

22/03/2022

Legal representation:

Michael U. Chukwuemeka, - for the Claimant

M. O. Usuwa, Esq.- for the Defendant