IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

HOLDEN AT ABUJA ON TUESDAY 22ND MARCH 2021

BEFORE HIS LORDSHIP: HON. JUSTICE O. A. ADENIYI

SITTING AT COURT NO. 8 MAITAMA, ABUJA

SUIT NO: CV/211/2019

BETWEEN:

MR. HEZEKIAH OKEKE … …. …. … …. …. … …. …. … …. …. CLAIMANT

AND

1. HOOGU INVESTMENT INTERNATIONAL LTD.
2. MR. HENRY GABRIEL } DEFENDANT
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. **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, interests, benefits and/or entitlements calculated at accrued interests thereof. also**

5. **The sum of N10,000,000.00 as balance of the accrued arrears of entitlements for the 25% of invested sum of N4,000,000.00 at a 6- weekly interval of 18 months form 20/12/2017 to 24/05/2019 and subsequently 25% of invested sum of N4,000,000.00 at a 6-weekly interval of 18 months form 24/05/2019 till judgment is delivered and thereafter 10% post judgment sum.**

6. **The sum of N4,000,000.00 invested capital.**

7. **7.26% interest per 6- weekly interval rate fee of N1,000,000.00 for the 25% of the invested sum of N4,000,000.00 at a 6- weekly interval of 18 months being bank rate and the actual value of accrued arrears of the entitlements as at today.**

8. **The sum of N50,000,000.00 general damages.**

9. **The sum of N35,000,000.00 aggravated damages.**

10. **10% of all monies recoverable being the legal recovering fee.**

11. **The sum of N5,000,000.00 being the cost of this suit.**

It is borne by the record of proceedings in this suit that the Defendants were duly served with the originating processes and hearing notices for

the scheduled hearing dates but failed to file any processes in defence of the suit.

However, on 11/02/2020, when the matter came up for the first time, the Defendants were represented by **M. O. Usuwa, Esq.,** of counsel, who informed the Court of the willingness of parties to explore possibilities of an amicable resolution of the suit. However, at subsequent hearing dates, learned counsel stopped attending Court. The Claimant's learned counsel also informed the Court that parties were unable to resolve the suit amicably. As a result, the suit 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 04/12/2020, in which his learned counsel, **Michael U. Chukwuemeka Esq.**, raised a sole issue as having arisen for determination in this suit, 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 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 by entered the into an investment agreement with the 1st Defendant, as shown in **Exhibit C5**. By the agreement, executed on 20/12/2017, the Claimant invested the

sum of **N4,000,000.00** with the 1st Defendant for a period of eighteen **(18) months,** commencing from the date of the agreement, to terminate on 24/05/2019.

According to **Exhibit C5**, executed by the 2nd and 3rd Defendants as Director and Company Secretary respectively of the 1st Defendant, parties agreed that the Claimant shall receive return on his investment (ROI) of an amount representing 25% of the invested sum at every **six (6) weeks** for the duration of the period of investment; which, according to the Claimant, translated in effect to him receiving the sum of **N1,000,000.00 every six (6**) for the **eighteen (18)** months period of the investment, totaling the sum of **N13,000,000.00.**

The case of the Claimant is further that he indeed paid the said investment sum of **N4,000,000.00** into the 1st Defendant's account as agreed, on 20/12/2017; and as shown in his Statement of Account tendered as **Exhibit C4**; that the 1st Defendant acknowledged receipt of the payment vide the invoice tendered as **Exhibit C2**; that throughout the duration of the agreement, the Defendant only paid him the agreed 25% return on investment (ROI) on three occasions, on 12/02/2018, 23/03/2018 and 11/05/2018, respectively, totaling the sum of **N3,000,000.00**; that apart from this sum, the Defendant failed and refused to pay him any more returns on his investment, for the remaining period of the duration of the investment until its expiry on 24/05/2019.

The Claimant's case is further that upon the 1st Defendant's refusal to make any more payments to him on the return on his investment, he

engaged 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 admitted breaching the investment agreement between the parties, but attributed it to cessation of business by the 1st Defendant in June, 2018, which created a lot of backlogs in meeting her obligations to her customers; and further pleaded with the Claimant for more time to resolve the issues.

Apparently, the 1st Defendant's consistent refusal to make good her promises constrained the Claimant to institute the instant action.

It is pertinent to state that the aspect of 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 C5** successfully established the existence of the said contract agreement between him and the 1st Defendant; 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.

This means that failure of the 1st Defendant to honour her obligations under the investment agreement, by failing to pay the Claimant the agreed sum representing 25% of the **N4,000,000.00** invested, in the manner as set out in the contract, that is, the sum of **N1,000,000.00** on a 6-weekly interval for the duration of the investment period, clearly amounted to a flagrant breach of the fundamental terms of the contract. 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 or breached, 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 for both the refund of the sum of **N10,000,000.00** which is the balance of the accrued arrears of his entitlements at a 6-weekly interval of 18 months from 20/12/2017 to 24/05/2019, and the principal sum of **N4,000,000.00** invested. He further claimed 25% of **N4,000,000.00** from 24/05/2019 till judgment is delivered and thereafter at 10% post-judgment sum. Amongst other claims, he also claimed the sum of **N50,000,000.00** as general damages. and **N35,000,000.00**, as aggravated damages

Now, considering the uncontroverted evidence before the Court, and the settled position of the law, I find the Claimant's calculations of the sum of **N13,000,000.00** being 25% of the invested sum of **N4,000,000.00** accrued arrears of entitlements due to him at a 6 weekly interval of 18 months, itemized and particularized in his oral evidence to be accurate especially in the absence of a contrary figure. The Court therefore holds that the Claimant having been paid only N3,000,000.00 out of the **N13,000,000.00** agreed as return on investment for the investment period, his claim for the balance of **N10,000,000.00** accrued arrears is well made out in the circumstances. In other words, if the contract had not been breached, the Claimant would have been entitled to that sum in line with the agreement between the two parties. I so hold. However, with regards. to his claim for the **N4,000,000.00** capital sum invested, the provision of **clause 2(6)** of **Exhibit C5** is clear enough. It states that:

> **"6. The Subscriber shall not be entitled to receive capital on the last month of the investment term but shall receive his due ROI as provided in Clause 2(2) of this agreement."**

My understanding of this clause of the agreement, **Exhibit C5**, is that at the expiration of the tenor of the investment, the subscriber shall not be entitled to be paid back the capital sum invested; but will only be entitled to receive the ROI due to him in the manner already agreed to by parties. This means, in effect, that the capital sum of **N4,000,000.00** invested has already been incorporated and subsumed in the periodic returns on investment, which in the instant case amounted to a total of **N13,000,000.00** for the eighteen (18) months investment period, which further means that at the end of the day, the Claimant would in actual

fact, have earned the sum of **N9,000,000.00** as return on the sum of **N4,000,000.00** he invested with the 1st Defendant.

As such, I hold that the Claimant is not entitled to the claim for the investment capital sum of **N4,000,000.00**, in view of the provision of **clause 2(6)** of **Exhibit C5.**

In the same vein, the other heads of claims for pre judgment interests, general and aggravated damages and legal recovery fees are clearly not maintainable in that such heads of claim are not in tandem with an action in breach of contract. The objective of compensation in breach of contract actions, as I had earlier on stated, is captured in the Latin maxim - 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 instant case, should the 1st Defendant not have breached the contract, the Claimant would have garnered total of **N13,000,000.00** from the investment portfolio with the 1st Defendant, inclusive of his capital investment; which, undoubtedly, is still a good deal for him. Having therefore been paid only **N3,000,000.00**, he cannot claim more

than the **N10,000,000.00** balance on the principle of restitution in integrum. I so hold.

In the circumstances, I am bound to and I hereby refuse the Claimant's reliefs (4), (6), (7), (8), (9) and (10) as 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 3rd0 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. 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, I 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 N10,000,000.00 (Ten Million Naira) only is hereby awarded to the Claimant as balance of the accrued arrears of the agreed 25% return on investment, pursuant to the agreement entered into between the two parties on 23/12/2017.**

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. ADENIYI

(Presiding Judge)

22/03/2022

Legal representation:

Michael U. Chukwuemeka, - for the Claimant

M. O. Usuwa, Esq. for the Defendant