

**IN THE HIGH COURT OF JUSTICE OF THE
FEDERAL CAPITAL TERRITORY ABUJA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT MAITAMA - ABUJA**

BEFORE: HON. JUSTICE O. C. AGBAZA

COURT CLERKS: UKONU KALU & GODSPOWER EBAHOR

COURT NO: 6

SUIT NO: FCT/HC/CV/2618/2018

BETWEEN:

ARC. NEHEMIAH OGBAJI IHUMAH

(Trading under the Name & Style of **METROMARK SERVICES**).....**CLAIMANT**

VS

ATLAS MICROFINANCE BANK LTD.....DEFENDANT

JUDGMENT

By a Writ of Summons dated 23/8/2018, but filed on 24/8/2018, the Claimant seeks the following reliefs;

- (a) Judgment of this Honourable Court in favour of the Claimant against the Defendant in the sum of ₦24,623,778.00 (Twenty-Four Million, Six Hundred and Twenty-Three Thousand, Seven Hundred and Seventy-Eight Naira) Only being the liquidated sum due and payable to the Claimant.
- (b) Judgment of this Honourable Court directing the Defendant to pay the sum of ₦384,535.7 calculated at 19% interest per month from 29th May, 2018 till the day of Judgment.

- (c) 10% interest on the Judgment sum from the date of Judgment till final liquidation of the entire Judgment sum.
- (d) Cost of action and engagement of Solicitor in the sum of ₦2,500,000.00.
- (e) General damages in the sum of ₦5,000,000.00 flowing naturally from the breach of contract.
- (f) Any other additional or incidental relief(s) this Honourable Court may deem appropriate to grant in the circumstances of this suit.

The Writ of Summons and other processes was served on the Defendant, did not file any Defence to the claim of the Claimant, rather on the 19/3/2019, filed a Motion on Notice for joinder of one Adamu Mary as 2nd Defendant. In a Considered Ruling of the Court delivered on 9/12/2019, the Court dismissed the application for joinder and caused this case be set down for hearing.

Despite services of hearing notice on the Defendant, the Defendant failed to react, consequently the case proceeded to hearing.

On 28/9/2020, Ihumah Ogbaji Nehemiah, testified as PW1 and called no witness. PW1 adopted his Statement on Oath of 20 Paragraphs sworn to on 24/8/2018.

The case of the Claimant, through PW1, is that the Claimant entered a contract with the Defendant on 18/5/2016, wherein the sum of ₦20,000,000. and was fixed for a term of 365 days at 19% interest rate per annum and on the 29/11/2016 fixed another sum of ₦10,000,000.00 for 210 days at 19%

interest rate. That on maturity, the Claimant made demand for the said sums due, but the Defendant failed to pay despite several demand letters written.

The PW1, further stated that on further demands the Defendant paid the sum of ₦3,000,000.00 in respect of the 1st fixed deposit of ₦20,000,000.00 with an outstanding of ₦17,000,000.00 and rolled over the said balance, unilaterally for another one year at the same interest rate of 19%. The Defendant also made payment of ₦6,307,750 on the second deposit, with an outstanding of ₦3,692,250.00 which the Defendant, unilaterally roll-over at the same rate for another year. Despite repeated demand letters, to the Defendant, the Defendant failed and refused to pay the outstanding balance due to the Claimant, hence this suit.

The PW1, in course of evidence, tendered the following documents in evidence;

- (1) Two (2) fixed deposit certificate (originals) dated 4/4/2016 with No. 010624 and 010282 dated 18/5/2016 is Exhibit "A1-A2".
- (2) Two (2) copies of letters dated 18/5/2016 and 15/6/2017 to the M. D of the Defendant, titled Funds Transfer Instruction is Exhibit "B1-B2".
- (3) A letter dated 21/6/2017 titled "Breach of Contract under Banker Customer Relationship" is Exhibit "C".
- (4) A letter dated 28/6/2017 from the Defendant is Exhibit "D".

- (5) A copy of letter dated 3/7/2017 from the Claimants to the Defendant is Exhibit "E".
- (6) Original receipt of payment of legal fees by the Claimant is Exhibit "F".
- (7) A copy of letter from Claimants dated 9/7/2018 to the Defendant is Exhibit "G".
- (8) A copy of letter dated 12/9/2017 titled "Demand for the Payment of Outstanding Fees" is Exhibit "H".

At the close of evidence of the Claimant – PW1 case on 28/9/2020, case was adjourned for Cross-examination of PW1 by the Defendant. On the said adjourned date, the Defendant who was duly served with Hearing Notice, failed to appear in court, nor represented by Counsel, consequently, upon application of the Claimant Counsel, the case was adjourned for Adoption of Final Address, upon the foreclosure of the Defendant from Cross-examination and Defence.

On 13/1/2022, the Claimant Counsel adopted the Claimant Final Written Address dated 10/1/2022 but filed on 11/1/2022. In the said Address settled by Charles Uche Ezechukwu Esq. formulated one (1) issue for determination;

"Whether in view of the circumstance of this case, the Claimant had led credible, cogent and believable evidence so as to be entitled to the grant of the reliefs sought?"

Submits that in line with the Provisions of Section 131, 132, 133 and 134 of the Evidence Act, 2011, the Claimant has by credible evidence prove their entitlement to all the reliefs sought in this claim. To support this contention, referred this court to several judicial authorities and Exhibits, in assuaging this court to find in favour of the Claimant. Also that the Defendant who were duly served with the processes, failed to react to it, despite repeated service of Hearing Notices on each adjourned date. That the consequent of all of these is that the case is unchallenged and uncontroverted and that it is trite that the court can act on that unchallenged and uncontroverted evidence before it. Referred the court to several judicial authorities on this point.

Having carefully given an insightful consideration to the evidence of the Claimant, the Exhibits and judicial authorities cited, which remained unchallenged and uncontroverted, the court finds that only one (1) issue calls for determination, which is;

“Whether the Claimant has established its case by credible evidence, thus entitling its judgment as claimed”

Firstly, the Defendant through their Counsel, filed a Motion on Notice for joinder and in a considered Ruling, the application was refused and case was adjourned for hearing, thereafter, the Defendant nor their Counsel, failed to take further steps in the matter, consequently, the case proceeded as undefended. The implication of this is that the evidence adduced by the Claimant in support of its case is deemed as true and correct, and the court can act on them. See CBN Vs Igwilo (2007) 14 NWLR (PT. 1054) 393 @ 406; CBN & Ors Vs Okojie (2015) LPELR – 24740 (SC), the Apex held thus;

“Evidence that is not challenged or discredited should be accepted and relied on if such evidence is adduced to establish a relevant fact” Per Olabode Rhodes – Vivour (JSC) PT. 34 (Para E-F).

I am, however, quick to add that for such unchallenged evidence to be accepted by the court, it must be credible enough for the court to act on it. See *Zeneca Pharma Ltd Vs Jagal Pharm Ltd* (2007) All FWLR (PT. 387) 938 @ 950 (Para F-G).

In the discharge of that burden of proof imposed on it by Section 131 – 134 of the Evidence Act, 2011, the Claimant led oral evidence that the parties entered into a contract vide Exhibit “A1-A2” and at its Maturity to be paid back the principal and interest sum at the agreed rate, rather than complying with the Term of the Agreement, the Defendant failed, hence this action for breach of the said Contractual Agreement.

The standard of proof in matter of this nature is on the balance of probabilities and on the preponderance of evidence. In this instant case, there is nothing on the other side by which this court can assess the balance of probabilities but only left with the unchallenged and uncontroverted evidence of the Claimant through PW1. The questions are, these pieces of evidence credible enough to support the Claim of the Claimant? I have considered the testimony of PW1, and the Exhibit “A1-A2” “H” tendered in proof of the Claimant’s case and I find them credible and supportive of the Claimants case. I come to this conclusion, anchoring on the judicial position of the court, “that the most reliable, if not the best evidence, is documentary

evidence and where documentary evidence supports oral testimony, such oral testimony becomes more credible". See the case of Arise Vs Adetunbi (2011) All FWLR (PT. 558) 941 @ 968 – 969 Para E – A.

Having found the evidence of the Claimant which remained unchallenged and uncontroverted and supportive of Claimant suit, the question which follows, is whether they are sufficient to ground the claims of the Claimant?

On relief (a) the Claimant is seeking for;

"Judgment of this Hon. Court in favour of the Claimant against the Defendant in the sum of ₦24,623,778.00 (Twenty-Four Million, Six Hundred and Twenty-Three Thousand, Seven Hundred and Seventy-Eight Naira only being the liquidated sum due and payable to the Claimant"

To determine this relief, the court must find if there is a binding contractual relationship between the parties.

A careful perusal of the evidence of PW1 and the Exhibit "A1-A2", establishing a contractual relationship, of Banker/Customer Relationship, clearly reveals that there is indeed a relationship between the parties which is subsisting and binding. Also Exhibit "C" - a letter to Defendant of the breach of contract pursuant to failure to honour Exhibit "B" request, Exhibits "D-A" - letter from the Defendant acknowledging the said breach, but asking for time to overcome constraints and Exhibit "E" response from the Claimant's Counsel, are all pointers to the fact there was indeed a contractual relationship which subsist this facts were never challenged, rather by the

Exhibit "D" of the Defendant is tantamount to admission of the Liability to the Claimant.

And it trite that facts admitted need no further proof. See Haske Duniya Comm. Ltd & Ors Vs Diamond Bank (2015) LPELR – 25695 (CA).

In the absence of any controverting evidence from the Defendant, the court finds that this relief (a) should succeed in favour of the Claimant.

On the relief (b), which is;

"Judgment of this Honourable Court directing the Defendant to pay the sum of ₦384,535.7 calculated at 19% interest per month from 29th May, 2018 till the day of Judgment"

The award of interest is in two categories;

- (a) As of right; and;
- (b) Where there is a power conferred by statute to do so in exercise of the courts discretion. See Dange Shuni L.G.C Vs Okonkwo (2008) FWLR (PT. 415) 1757 @ 1761 Ratio 6.

Grant that the Claimant, through PW1 relied on Exhibit "A1-A2" as the basis of this claim, however, failed to lead evidence to show how this claim came about, more so especially if it is within the contemplation of the parties, this the court did not find from all of these, consequently, hold that this relief (b) fails.

On relief (c) which is;

“10% interest on the Judgment sum from the date of judgment till final liquidation of the entire Judgment Sum”

Consequent the grant of Relief (a), in this instant case, the Claimant is entitled to this relief (c). This has the support of Order 39, Rule 4 of the Rules of Court, which gives the right to court to exercise this discretion in this award, accordingly, this relief succeed in favour of the Claimant.

On the relief (d), cost of the action in the sum of ₦2,500,000.00.

It is trite that cost follows event. A successful party in any event is entitled to cost through at the discretion of the court. See case of Adalakun Vs Oruku (2006) All FWLR (PT. 308) 1360 @ 1363 Ratio. Accordingly, the Claimant is entitled to this relief.

On relief (e)- General Damages in the sum of ₦5,000.00 flowing naturally from the breach of contract. The Claimant submits that consequent upon the breach of contract by the Defendant, failing to repay the principal sum and interest as per the Agreement in Exhibit “A1-A2”. Relied copiously on several judicial to assuage this court to grant this relief and also Exhibit “H”, that is the result of the breach by the Defendant.

In all of these, the Defendant did not file any response to this claim.

It is settled law that damages will succeed where the breach or damages flow from the natural or probable consequences, see case of Agu Vs General Oil Ltd (2015) LPELR – 24613 (SC) per Okoro JSC @ Pg. 20-22 Para B-C. The grant or otherwise is at the discretion of the court. The Claim of the Claimant

is akin to Banker/Customer Relationship; and it is trite that where there is a breach on failure to honour a Customer Cheque, as in this case payment of monies fixed a deposit with the Defendant is a breach which should attract damages. See case of MAI Vs S.T.B Ltd (2008) All FWLR (PT. 399) 552 @ 564 Para F – A. In line with the unchallenged evidence of the Claimant and in exercise of the courts discretion I hold that this relief enures in favour of the Claimant. I awards the sum of ₦2,000,000.00 (Two Million Naira) only as damages.

From all of these and having proven to the satisfaction of the court by the testimony of PW1 and Exhibits, which remained unchallenged and which court find credible, the court hereby hold that the Claimant's. Case succeeds in parts and judgment is hereby entered accordingly.

- (1) The Defendant is hereby ordered to pay the Claimant, the sum of ₦24,623,778.00 (Twenty-Four Million, Six Hundred and Twenty-Three Thousand, Seven Hundred and Seventy – Eight Naira) only being the liquidated sum due and payable to the Claimant.
- (2) The relief (B) fails and is hereby refused.
- (3) Defendant is hereby ordered to pay 10% interest on the Judgment sum of ₦24,623,778.00 until final liquidation.
- (4) The Defendant is also ordered to pay the sum of ₦2,500,000.00 (Two Million Five Hundred Naira only) being cost of action.

(5) The Defendant is ordered to pay the sum of ₦2,000,000.00 (Two Million Naira) only as damages for breach of contract.

This is the Judgment of the court.

HON. JUSTICE O. C. AGBAZA

Presiding Judge

5/4/2022

APPEARANCE:

CHARLES .U. EZEUKWU FOR THE CLAIMANT

NO REPRESENTATION FOR THE DEFENDANT