

**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/1039/2018**

**BETWEEN:**

**POLARIS BANK LIMITED.....CLAIMANT**

**VS**

- 1. NEW FOUNDATION PRIVATE SCHOOL LIMITED**
- 2. HEPHZIBAH INTERNATIONAL SCHOOL**
- 3. AKUKWE EUCHARIA.....DEFENDANT**

**JUDGMENT**

By an Amended Writ of Summons and Statement of Claim dated 1/11/2018 but filed on 8/11/2018, the Claimant claim against the Defendant as follows:-

- i. ₦4,000,000.00 (Four Million Naira) being the loan sum collected from the Claimant by the Defendant.
- ii. 27% interest on the principal from the 6<sup>th</sup> April 2016 until the Judgment and also 27% judgment interest until liquidation of this Suit.

The Writ and other processes were duly served on the Defendant who responded by filing Statement of Defence with leave of court on 11/12/2018. Pleadings having being filed and exchanged, the matter went into trial on 9/2/2019 with Osagie Perkins Igah who testified on behalf of Claimant as PW1. He adopted the deposition in his Witness Statement on oath sworn to on 8/11/2018 as his evidence in this case. He stated that around the first quarter in 2016, the Defendant approached Claimant for a loan of N4,000,000.00 to enable her pay her Teachers and it was Akukwe Eucharia, the 3<sup>rd</sup> Defendant, who stood as guarantor to 1<sup>st</sup>/2<sup>nd</sup> Defendant and signed a "Personal Guarantee" Form for 1<sup>st</sup>/2<sup>nd</sup> Defendant. He stated that the Defendant was given terms and conditions required before such loan could be granted to her in April 2016. Further that the Defendant executed the offer letter and forwarded to Claimant Resolution to borrow money on behalf of Defendant and an irredeemable undertaking to domicile her school fees to Claimant. That on 7/3/2017, Claimant expressed its displeasure on the attitude of Defendant by their inability to pay their debt and several letters were written to Defendant but to no avail. He also stated that the Defendant also wrote letters of undertaking to pay its indebtedness and while efforts is being made to see how the loan is to be paid, the Defendant wrote a letter informing Claimant that she has changed her name to Hephzibah International School. That despite repeated demands, the Defendant have failed and or refused to settle its debt.

In the course of the evidence of the PW1, the following documents were tendered and admitted in evidence.

1. A letter dated 25/5/2016 issued by the 1<sup>st</sup> Defendant- New Foundation Private Schools to the Claimant Branch Manager – In Re-Application for N40,000,000 CBN Intervention Loan – Exhibit “A”.
2. Letter dated 28/11/2017 from New Foundation School, 1<sup>st</sup> Defendant, to Claimant – Exhibit “B”.
3. Letter dated 10/3/2017 from 1<sup>st</sup> Defendant to Claimant – Exhibit “C”.
4. Letter dated 15/8/2017 from 1<sup>st</sup> Defendant to Claimant – Exhibit “D”.
5. Letter dated 13/1/2017 from 1<sup>st</sup> Defendant to Claimant – Exhibit “E”.
6. A handwriting letter of undertaking from 1<sup>st</sup> Defendant to Claimant dated 5/9/2016 – Exhibit “F”.
7. A letter from Claimant dated 1/3/2017 to the Director of 1<sup>st</sup> Defendant – Invitation for meeting with attached letter of 1<sup>st</sup> Defendant dated 11/3/2017.
8. Letters dated 30/8/2017, 8/9/2016, 11/11/2017. 17/5/2017, 22/2/2017 issued by Claimant to 1<sup>st</sup> Defendant - Exhibit “H<sup>1-6</sup>”
9. Letter dated 15/7/2017 issued to 1<sup>st</sup> Defendant by Ilukholo Philip & Co (Eramhe Chambers) – Exhibit “i”
10. A Skye Bank letter titled “Offer Letter” dated 6/4/2016 between

Claimant and Defendant – Exhibit “J”.

11. Overdraft facility Agreement between the Defendant and the Claimant dated 6/4/2016 – Exhibit “K”.

12. The personal Guarantee Form signed by the Defendant in favour of Claimant dated 6/4/2016 – Exhibit “L”.

Under Cross-examination by Defendant, he stated that 1<sup>st</sup>/2<sup>nd</sup> Defendant are one and same entity. When shown Exhibit “J”, he confirmed that the offer was made to 1<sup>st</sup> Defendant. He stated, however, that it is incorrect to say 2<sup>nd</sup>/3<sup>rd</sup> Defendant were not granted loan or overdraft extended to them and also not correct that Exhibit “J” gave rise to Exhibit “K”. He stated that ~~₦~~4,000,000 was inserted therein in Exhibit “K” and said the Statement of Account pleaded is contained in the system with Claimant and can be retrieved. He also stated that between 8<sup>th</sup> April 2016 to date several sums of money have been paid to the account because its school fees account, therefore, there are inflows into the account. He further stated that because of internet banking, cheques are not mostly used, therefore, cannot produce any cheque system, rather a Statement from the system. He, however, stated that in whatever form, payments or withdrawal made on the account are reflected in the account. When shown Exhibit “L”, stated that ₦4,000,000.00 is stated therein.

At the close of Claimant’s case on 6/7/2021, the matter was adjourned to 30/9/2021 for the Defendant to open its defence. On 30/9/2021 when the matter came up, the Defendant stated that they are resting their case on

the evidence of Claimant and therefore apply for a date for adoption of Final Written Addresses.

In the Written Address of Claimant dated 201/10/2021 but filed on 21/10/2021, counsel for Claimant, Musa A. Adamu Esq formulated two (2) issues for determination namely;

- (1) Whether the Claimant by virtue of the evidence as canvassed before the court had proved their case to warrant judgment to be entered in their favour in this suit.
- (2) Whether the Defendant who rested its case on the Claimant's case have not conceded to the Claimant's case.

On issue 1, submits by virtue of the evidence before court, Claimant has proved its case as required by law for judgment to be entered in its favour. That by the evidence and document tendered it becomes unassailable that a binding and enforceable contract has come into existence. That in view of the various documents executed, the only duty left to court is to enforce the sanctity of the contract. Counsel refer the court to the testimony of Claimant's witness – the PW1 and submits Claimant have met the requirement of law by demonstrating through evidence and documents how Defendant liability was arrived at. Commended the court to Section 137 of Evidence Act and several judicial authorities; *Famurati Vs Agbeke* (1991) 5 NWLR PT 189; *Amodu Vs Amode* (1990) 5 NWLR PT 150, 356, *Adegoke Vs Adibi* (1992) 5 NWLR PT 242, 410, *Olaiya Vs Olaiya* (2002) 12 NWLR PT. 782, 652, *Akinyemi Vs Uduo Inv. Co Ltd* (2012) 17 NWLR, 209, *Mikano Int'l Ltd Vs Ehnmadu* (2014) 1 NWLR PT 1387, 100, *Lawal Vs UBN*

(1995) 2 NWLR PT 378, 407, Afrotech Services (Nig) Ltd Vs M.I.A. & Sons Ltd (2000) 15 NWLR PT 692, 730, Owoniboy Technical Services Ltd Vs UBN Ltd (2003) 15 NWLR PT. 844, 545, S.E Co Ltd Vs N.B.C.I. (2006) 7 NWLR PT 978, 198, Omega Bank (Nig) Plc Vs O.B.C. Ltd (2005) 8 NWLR PT 928, 547, Bilante Int'l Ltd Vs NDIC (2011) 15 NWLR PT. 1270, 1.

On issue 2, submit where Defendant abandoned and rest his case on Claimant's evidence, he is deemed in law to have completely accepted both pleadings and evidence of the case presented by Claimant. Commended the court to several judicial authorities on the point; Alapa & Anors Vs INEC & Anor (2015) LPELR – 41767 (CA), Owner of M.V. Gongola Hope & Anor Vs Smurfit Cases Nig Ltd & Anor (2017) LPELR – 284 (SC), Onwabuoko Vs Ottoh (1961) 2 SCNLR, 232, Oguma Vs IBWA (1988) 1 NWLR, PT 73. 658 at 682, Balogun Vs UBA Ltd (1992) 6 NWLR PT 247, 336 at 354, Iyiola Ogunjumo & Ors Vs Murtala Ademolu & Ors (1995) 4 NWLR PT 389, 286.

In the Written Address of Defendant dated 30/11/2021 but filed on 1/12/2021, Counsel for Defendant, Adebayo Eniwaye Esq submitted same two issues the Claimant formulated for determination as issues for determination namely;

1. Whether the Claimant by virtue of the evidence as canvassed before the court had proved their case to warrant judgment to be entered in their favour in this Suit.
2. Whether the Defendant who rested its case on Claimant's case have not conceded to the Claimant's case.

On issue 1, submit that the Claimant has failed woefully to prove its case to entitle it to Judgment. Refer the court to Para 11 and 12 of the Amended Statement of Claim and submits no evidence whatsoever in Claimant's Witness Statement on oath on the said Para 11 and 12. Submit no Statement of Account was tendered and failure of Claimant to tender Statement of Account of 1<sup>st</sup> Defendant is fatal to this case. That it is only when Statement of Account of 1<sup>st</sup> Defendant is tendered and Claimant is able to show accurately how the figure being claimed against Defendant was arrived at that the success of its claim can be guaranteed. Further that the bare assertion that Defendant are indebted to Claimant is far below the standard of proof required in a matter of this nature. Commended the court to Sections 134, 167 (d) of Evidence Act 2011 and several judicial authorities, Dabue Vs Nomshuwan (1991) 8 NWLR PT 212, 696; Odofin Vs Magaji (1978) 11 N.N.C.C, 275 at 277, Military Governor of Lagos State Vs Adeyiga (2012) 5 NWLR PT 1293, 291, Oyediran Vs Alebiosu II (1992) 6 NWLR PT 249, 530, UBA Plc Vs Gbadepo (2003) FWLR PT 186, 644, Fumudoh Vs Aboro (1991) 9 NWLR PT. 214, 210, Wellington Vs Registered Trustee (2000) 3 NWLR PT 647, 130.

On issue 2, submit that the Defendant resting its case on Claimant's evidence is not and cannot be regarded as an admission. That the Claimant isto succeed on the strength of its own case and not the weakness of the Defendant. Further that the evidence of theClaimant before the court has not proved this case against the Defendant as evidence required to prove how the debt was arrived at bythe production of 1<sup>st</sup> Defendant's Statement of Account is absent in this case. Refer to

Section 132, 133 of the Evidence Act 2011 and the following judicial authorities; Bello Vs Iweka (1981) 1, SC 101, Pairo Vs Tenalo (1976) 12 SC, 31, Haruna Vs Salau (1988) 7 NWLR PT 599, 653.

In his reply on point of law to Defendant' Written Address filed on 1/12/2021, submit that the Claimant was never put on notice to produce any document, therefore, Section 167 (d) of Evidence Act, 2011 relied on by the Defendant is inapplicable. That when facts are admitted by parties to the trial, the failure to tender any document will have no adverse effect of the case and refer to case of Lead Capital Ltd Vs Onokurhefe (2021) EPLR, 150, Godwin Ugwuanyi Vs Nikon Insurance Plc (2017) LEPLR, 28 – 29 (SC). Urge the court to invoke Section 123 of Evidence Act, 2011 to the effect that facts admitted needs no further proof and refer to case of Abubakar Vs Joseph (2008) LPELR – 48 (SC) and Apostolic Church Vs Olowolemi (1991) 3 NWLR, PT 3, 16.

I have given an insightful consideration to the pleadings, the testimonial and documentary evidence, the written submission of learned Counsel for the parties as well as the judicial authorities cited and find that only one (1) issue calls for determination and that is;

“Whether or not the Claimant has established a case against the Defendant and entitled to the grant of the reliefs sought in the Amended Statement of Claim”

First, the Defendant, although filed pleadings, it did not call or lead evidence in support of its pleadings and the law is trite that pleadings not supported with evidence goes to no issue and is deemed abandoned. See



the case of *Ofem & Ors Vs Usang* (2017) LPELR – 43606 (CA). The Defendant did not call or lead evidence in support of its pleadings but elected to rest its case on that of the Claimant. The legal implication of a Defendant who elected not to call or lead evidence and relies on the case of the Claimant as presented, as in the instant, is that he will be bound by the evidence led by the Claimant and the case must be decided on the evidence as it stands. See the case of *PDP Vs Nwankwo & Ors* (2015) LPELR – 40668 (CA). See also *Mobil Oil Producing (Nig) unlimited Vs Monokpo* (2003) 18 NWLR PT 852, 346. However, the fact that a Defendant elected not to call or lead evidence in proof of his case but rest his case on that of Claimant, as in the instant, will not automatically lead the court to grant the claim of the Claimant as the Claimant has the onus and indeed the legal burden to prove his case and not rely on the weakness of the Defendant. See Section 131, 132 of Evidence Act, 2011. See also *Ngaro Vs Kaduna State Urban Planning Development Authority & Ors* (2015) LPELR-2574 (CA) and *Lawal Vs Akande* (2009) 2 NWLR PT. 1126, 425.

The case of Claimant, in brief, is that the Defendant, around first quarter in 2016, approached her for loan of ₦4,000,000.00 to enable her pay teachers and signed "Personal Guarantee" Form and was given Terms and Conditions. That the Defendant executed the offer letter and forwarded to Claimant Resolution to borrow money and irredeemable undertaking to domicile her school fees to Claimant. That Claimant expressed displeasure on the attitude of Defendant on its inability to pay its debt and wrote several letters to Defendant all to no avail. That Defendant wrote letters of

undertaking to pay. That despite several demands, Defendant have failed and/or refused to settle its debt. In proof of its case tendered the Exhibits "A", "B", "C", "D", "E", "F", "G", "H<sup>1-6</sup>", "I", "J", "K", "L".

The Defendant, on the other hand, did not call or lead evidence and did not controvert the evidence of the Claimant, rather choose to rest its case on that of the Claimant. I have earlier stated the legal implication of this in the course of the Judgment and need not repeat same.

From the evidence before the court, the Defendant did not controvert the claim of Claimant that she took loan of ₦4,000,000.00 from the Claimant or that they are not indebted. The only issue the Defendant contend is that the Defendant's Statement of Account which was pleaded in Paras 11 and 12 of Amended Statement of Claim was not tendered by Claimant and no evidence was lead to that respect. That it is only when the Statement of Account of the Defendant is tendered that Claimant is able to show accurately how it arrived at the sum being claim against Defendant. This contention by the Defendant is untenable and cannot be sustained. I say this because the Defendant copiously, from the Exhibit "B", "D", admitted being indebted to the Claimant in the sum being claimed by the Claimant and never denied. Interestingly, the Defendant, from the Exhibits "C", "F", even under took to liquidate the said sum of ₦4,000,000.00 with the accrued interest which they never did. What's more, the Defendant by the Exhibits "D' requested for suspension by interest on the loan facility, a request that was turned down by Claimant via their Exhibit "H1-6" and wherein also the Claimant exhibited copies of letters of Demand earlier served on them to settle its indebtedness to Claimant. Quere: Is the

failure to tendered the Statement of Account of the Defendant fatal to the case of the Claimant as contended by the Defendant, or can it be said that the Claimant has not proven its case that the Defendant is indebted to her in the sum claim because the Defendant's Statement of Account was not tendered? My answer is a clear No. The Defendant clearly by the Exhibits "B", "D" admitted being indebted to the Claimant in the sum claimed. The law is well settled that facts admitted need not be proved. See Section 123 of the Evidence Act, 2011. See also case of Barau & Ors Vs Consolidated Tin Mines Ltd & Ors (2019) LPELR – 46806 (CA) and FBN Vs M.O. Nwadialu & Sons Ltd & Ors (2015) LPELR-24760 (CA).

From all of these, it is the finding of the court that the Claimant has established a case against the Defendant. I therefore, resolve the issue distilled for determination in the affirmative and in favour of the Claimant.

Accordingly, Judgment is entered in favour of the Claimant as follows:

- i. It is hereby ordered that the Defendant pay the sum of ~~N~~4,000,000.00 (Four Million Naira) being the loan sum collected from the Claimant by the Defendant.
- ii. On the relief ii, claim of 27% interest on the principal from the 6<sup>th</sup> April 2016 until the Judgment, this is granted in consonance with Letter of Offer, the Exhibit "J", which was accepted by the Defendant.

However, on the 27% of Judgment interest until liquidation of this Suit. In line with Order 39 Rule 4 of the Rules of this Court, I hereby order the Defendant to pay 10% interest until liquidation.

- (iii) On relief iii, for cost, cost follows event, events have passed therefore the Defendant is hereby ordered to pay Claimant sum of ₦60,000.00 (Sixty Thousand naira) only as cost of this Suit.

This is the Judgment of the court.

**HON. JUSTICE O. C. AGBAZA**

Presiding Judge

29/4/2022

**APPEARANCE:**

MUSA A. ADAMU ESQ - FOR THE CLAIMANT

ADEBAYO ENIWAYE ESQ FOR THE DEFENDANT