IN THE HIGH COURT OF JUSTICE OF THE FEDERAL CAPITAL TERRITORY
HOLDEN AT MAITAMA ABUJA
ON THE 13th DAY OF DECEMBER, 2022.
BEFORE HIS LORDSHIP; HON JUSTICE MARYANN E. ANENIH
(PRESIDING JUDGE)

SUIT NO:CV/511/2014

BETWEEN

1. SONRIS INVESTMENT LTD

2. MR JOHNSON AGBOOLA ……. PLAINTIFFS

AND

1. **TRINACRIA STAR LTD**
2. **CGO GLOBAL NIGERIA LTD**
3. **DR. NICHOLAS BUSACCA …… DEFENDANTS**

JUDGMENT

This suit was originally commenced by a Writ of Summons and Statement of Claim filed on the 27th day of February 2015 and subsequently amended on the 18th day of February 2016.

By an Amended Writ of Summons dated the 18th of February 2016 the Plaintiff's Claim against the Defendants as follows:

1. AN AWARD of the sum of N26, 566,500.00 (Twenty Six Million, Five Hundred and sixty six Thousand, Five Hundred Naira) to the Plaintiff being the balance owed by the Defendants for the supply of 12,600 bags of cement as evidenced by six local purchase orders (LPOs).

2. AN AWARD of interest at the rate of 10% per Annum on the judgment sum to be paid by the Defendants jointly and severally starting from the day judgment is delivered to the day the judgment sum is fully liquidated by the Defendants.

3. The sum of N2, 656,000.00 (two million six hundred and sixty six thousand naira) as cost of this action.

4. AND any other Order or Orders this Honourable Court may deem fit to make in the circumstances of this case.

The PW1, 2nd Claimant adopted his Witness Statement on oath as his evidence in this suit. PW1 in his evidence testified that the defendants under the hand of Mr. Ephraim Itodo, their procurement manager, issued him four Local Purchase Orders (LPOs) for supply of cement at the cost of #15,876,000.00.

And that two of the said four LPOs were upgraded with the consent of parties to read 900 bags and 2700 bags because a truckload of Dangote Cement usually contains 900bags.

That they were subsequently issued two more LPOs for a further supply of 5,400 bags at the cost of #12,190,500.00.

That all the bags of cement requested were supplied via Dangote Transport Company LTD trucks to the designated sites.

And that the claimants duly issued and sent invoices to the Defendants for the supplies.

That the Defendants failed to pay for the supplied bags of cement within sixty days as stipulated in the LPOs.

That the Claimants caused a demand letter dated 24th October, 2012 to be served on the defendants requesting for payment of the total accrued sum of #28,066,500.00.

When they failed to accede to the demand of 24th October, 2012, the Claimants served them another letter of demand dated 04th January,

2013. That despite several visits to the defendants who had become antagonistic, they failed to make payment for the supply of the bags of cement.

That because of the antagonism and violence exhibited by the Defendants staff, Claimants caused their solicitors to write two petitions to the EFCC and I.G.P respectively. It was in the cause of the resultant investigation that Dr. Nicholas Busacca transferred the sum of #1,000,000.00 and issued cheque for #500,000.00 to Claimants with a promise to ensure that the defendants fully liquidate the entire debt sum owed.

He concluded his testimony by stating that the Defendants are yet to pay the sum of money owed the Claimants and prayed the Court to order them to pay same with interests and costs as they have suffered loss and damage as a result.

The Claimants adopted their final written address where they raised two issues.

1. ‘‘*Whether or not the supplies of the Dangote bags of cement by the Claimants on the strength of the local purchase Orders issued in their favour by the Defendants does not constitute a binding contract and if so Whether the failure of the Defendants to pay the contract sum does not constitute a fundamental breach of the said contract*.’’
2. ‘*’Whether it can be affirmed from the facts and quantum of evidence adduced at the trial Court that the Claimants have proved their claim and if so Whether the conduct of the Defendants at the trial does not amount to admission and / or acceptance of the Claimant’s claim’’*

   On issue one, they argued that, the Local Purchase Order is the document which constitute the contract and invariably morphed into binding contract upon delivery of the goods to the defendants and that the defendants are in breach of the contract

it entered into with the Claimant by the textual tenor of the L.P.O.

On issue two, the Claimants argued that, the refusal of the defendants to attend Court and defend this suit despite repeated service of hearing notice during trial creates no doubt that the Defendants admitted and accepted all facts, evidence and Claims of the Claimant. This is because, it is the principle of law that Evidence and facts not denied or challenged are deemed admitted as the truth of what they contain by the Court and such facts need no further proof.

I have considered the claims before the Court, the evidence adduced and the Final Address of Counsel. The main issues arising for determination in my view are quite straightforward and simple. They are distilled below as follows:

1. Whether the Claimants have discharged the burden placed on them by law to prove their claim for recovery of outstanding payment for supply of 12,600 bags of cement.

2. Whether the Claimants are entitled to the reliefs sought as per their Writ of Summons.

The first issue is whether the claimants have discharged the burden placed on them by law to prove their claim for recovery of outstanding payment for supply of 12,600 bags of cement.

As earlier observed, although the PW1 was initially cross examined by the then 3rd Defendant's counsel, the current Defendants abandoned their Statement of Defence and entered no defence against the Claimants' Claim.

In the circumstance therefore the evidence of the Claimants essentially remains uncontroverted, unchallenged and uncontradicted. The position of the law on the course to be taken by a court in instances such as this is very clear. The evidence of the claimants would have to be deemed admitted by the defendants. The case of

MEKWUNYE V.IMOUKHUED (2019) LPELR-48996 (SC) is instructive on this, particularly @ PP 72 PARA C. where the Supreme Court held that:

> ‘‘*The trite principle of pleading is: facts not disputed, challenged or controverted are taken as admitted. That is, that the defendant who fails to traverse or join issues with the claimant on his averments is deemed to admit the facts pleaded against him’’.*
>
> See also the case of **BAYELSA STATE GOVT & ANOR V. EGEMZE & ORS (2019) LPELR-49088(CA) PP 24 PARA F.**

Having deemed the evidence of the claimants admitted the court has a duty to act on it accordingly. See the case of **INEC V. APGA & ORS (2015) LPELR-40672 (CA) (PP 21 PARA D)** where the Court of Appeal held that:

> *‘‘The law is settled that unchallenged or uncontroverted evidence which is not incredible or unbelievable should be accepted and acted upon by the Court’’*

See also the case of **OKAFOR V. OKAFOR & ORS (2014) LPELR-23561 (CA) (PP-43-44 PARA D)**

The claimants claim is for recovery of debt owed her by the Defendants. And the position of the burden of proof thereof is that the claimant must establish inter alia that a demand has been made for the debt and that it remains unpaid by the Defendant.

The Claimants have successfully established that they have a cause of action by their evidence before the Court. In particular to support accrual of their cause of action are the letters of demand, Exhibits **BN, BQ**, **BF**, and Exhibit **BG** the reply from Dr. Nicholas Busacca’s Counsel who did not deny the debt demanded.

It is a well settled position of the law that a cause of action for recovery of debt accrues when a demand is made and the debtor fails to pay. See the case of :

HUNG & ORS V. E.C. INVESTMENT CO. (NIG) LTD & ANOR (2016) LPELR-42125 (CA) PG. 14 PARA B-C

The PW1 testified that demand has been made severally for payment and supported this testimony with documentary evidence. See Exhibits **BN, BQ**, and **BF**.

The claimant has also supported her evidence on the Local Purchase Orders issued, receipts for purchase of Cement from Dangote Cement and Waybills showing supply of same to defendants with documentary evidence by Exhibits BH, BM,and BJ.

The defendants as earlier observed have admitted the entire evidence of the Claimants.

The question that arises at this point therefore is whether the unchallenged evidence of the Claimants before the court is sufficient to establish their claims.

It is trite that the requirement of the law where the evidence of the Claimant is neither challenged nor controverted is that of minimal proof. See the case of **MILITARY GOV OF LAGOS STATE & ORS V.ADEYIGA & ORS (2012) LPELR-7836 SC (PP 46-47 PARA G-A).** where the Supreme Court held that:

> *''The position of the law where evidence is unchallenged or uncontroverted is that such evidence will be accepted as proof of a fact it seeks to establish. A trial Court is entitled to rely and act on the uncontroverted or uncontradicted evidence of a plaintiff or his witness. In such a situation, there is nothing to put or weigh on the imaginary scale of justice. In the circumstance the onus of proof is naturally discharged on a minimal proof."*

See also the case of **UNITED MICRO-FINANCE BANK EKPAN & ANOR V.EKUWEM (2018) LPELR-44159 CA (PP-18 PARA D)**

Essentially, minimal proof is where the minimum or least evidence called by a party satisfies the requirement of proof by it in a civil case, where the other party fails to call evidence. Refer to the case of

UNITY BANK PLC V. ADAMU & ORS (2013) LPELR-22047 CA (PP-40-41 PARA D).

See also the case of SOSAN V. HFP ENGINEERING NIG LTD (2004)3NWLR (PT 861)546

In the light of the unchallenged evidence of the Claimant before the Court, my opinion is that the Claimants have satisfactorily established their entitlement to their claim for recovery of payment for the bags of cement supplied to the defendant.

Issue number one is therefore resolved in favour of the Claimants.

Issue two is, whether the claimants are entitled to the reliefs sought as per their Writ of Summons.

The first relief is for #26,566,500.00 being the alleged balance payment owed the Claimants by the Defendants for bags of cement supplied.

Now it is clear from the above resolution of issue one that the Claimants are entitled to the said sum claimed. This is even more so in the circumstance when there is no contrary evidence to their entitlement to same.

The Defendants failed to respond to the demand for payment by the Claimants. In the circumstance therefore the failure to respond shall be deemed as their having acquiesced to the debt owed. I find support for this position of the law by the decision of the Court of Appeal in:

FIRST CONTINENTAL PROPERTIES LTD V. DIVINE TRIOP LTD (2017) LPELR-42869 (CA) PG. 22-23 PARA A-E

See also the case of:

DURUMUGO RESOURCES LTD V. ZENITH BANK (2016) LPELR- 40487 PG. 19-20 PARA E-C

There is also no evidence before the court that the defendants made the payment as demanded by the Claimant. In the circumstance therefore, the defendants have a duty to defray the debt as claimed. See the case of **FCMB V. ROPHINE (NG) LTD & ANOR (2017) LPELR-42704 CA (PP-17 PARA 17)**

The claimants have thus satisfactorily proved this relief and same ought to be granted.

The second relief is for post judgement interest. The Civil Procedure Rules of this Court supports the order for interest upon judgement sum at a rate not less than 10% per annum. See

ORDER 39 RULE 4 OF HIGH COURT OF THE FEDERAL CAPITAL TERRITORY, ABUJA (CIVIL PROCEDURE) RULES 2018

See also the case of **TRANSMISSION COMPANY OF (NIG) PLC V.MOBANK SERVICES LTD (2021) LPELR-55723 CA (PP-25 PARA D-B)**

> *''Order 39 Rule 4 of the Rules of the lower Court provides for post-judgment interest at a rate "not less than 10% per annum", which means that the interest rate should not be less than 10% per a period of twelve calendar months. By the use of the phrase "not less than 10%" per annum, by the framers of the Rules, a learned Judge of the lower Court has been given the discretion to award post-judgement interest on a judgment debt or sum at a rate more than 10% per annum. This is so because the said Rule of the lower Court places the lowest or minimum at which a post-judgment interest can be awarded without specifying the*

highest or maximum post-judgment interest rate that can be awarded.

Put differently, while by Order 39 Rule 4 of the Rules of the lower Court the minimum post-judgment interest rate which can be awarded is 10% per annum, there is no corresponding provision for the maximum post-judgment interest rate which the Court can award.''

See also the case of **ULI MICRO FINANCE BANK (NIG) LTD V. OKWUCHUKWU (2018) LPELR-44956 CA (PP 107 PARA B)**

In the case of **AFRICAN INTERNATIONAL BANK LTD V. INTERGRATED DIMENSIONAL SYSTEM LTD & ORS (2012) 17 NWLR PT. 1328 PG. 1 or LPELR-9710 (SC) PG. 67 – 69 PARA D-A** it has been held in effect "that in purely commercial transactions a party who holds on to the money of another and keeps it for a long time without any justification and thus deprives that other of the use of funds for the period should be liable to pay compensation by way of interests." Per ARIWOLA JSC (as he then was)

This second relief has also been successfully proved and ought to be granted.

The third relief is for cost of this action in the sum of #2,656,000.00.

The Claimants have not led any evidence with regard to cost of this action.

However this court is empowered to award cost at the end of trial as in the instant case. Such award of cost may also be determined at the discretion of the court. See

ORDER 56 OF HIGH COURT OF THE FEFDERAL CAPITAL TERRITORY, ABUJA (CIVIL PROCEDURE) RULES 2018

See also the case of**:**

TOBIN V. IDIABITIBERESIMA & ANOR (2019)LPELR-49023 CA (PP 28 PARA B-E) and the case of HIGH PERFORMANCE

DISTRIBUTION LTD V. SAMSUNG ELECTRONICS COMPANY LTD & ANOR (2021) LPELR-52708 CA (PP 38-39 PARA F)

The award of cost would therefore be determined at the discretion of the court.

Suffice to say, issue two is also hereby resolved mainly in favour of the Claimants.

Consequently and in the light of the foregoing, the claimant's claim before the court succeeds and orders are accordingly made as follows:

1. The Defendants shall pay forthwith the sum of N26, 566,500.00 (Twenty Six Million, Five Hundred and Sixty Six Thousand, Five Hundred Naira) to the Plaintiffs being the balance owed by the Defendants for the supply of said 12,600 bags of cement.

2. The Defendants shall pay to the Claimant interest on the Judgement sum at the rate of 10% per annum from the date of this judgment till the entire judgment sum is fully liquidated.

3. The sum of N100, 000 .00 is hereby awarded as cost of this action to be paid by the Defendants to the Claimant.

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Honourable Justice M. E Anenih

APPEARANCES

Ayodeji Ademola for the Plaintiff

Defendants unrepresented