

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT MAITAMA ON THE 13TH DAY OF DECEMBER, 2022

BEFORE HIS LORDSHIP, HON. JUSTICE U. P. KEKEMEKE

SUIT NO.FCT/HC/CV/1555/2019

COURT CLERK: JOSEPH ISHAKU BALAMI & ORS.

BETWEEN:

- 1. OLUSOLA BELLO**
- 2. OLAWALE SAHEED ADEBAYO**
(Carrying on business under the name).....CLAIMANTS
And style Ojuelegba Restaurant and
Outdoor Services)

AND

- 1. MRS. OLAYINKA FAYOMI**
- 2. RED SPARROW LTDDEFENDANTS**
- 3. MESSRS. KAFE DANTAMAR GARDENS LTD**

JUDGMENT

The Claimants' Writ of Summons and Statement of Claim against the Defendants is dated and filed on the 5th day of April 2019.

It prays the Court for the following:

- (1) A declaration that the business arrangement between the Claimants and the Defendants constitutes a partnership.

- (2) A declaration that the 1st and 2nd Defendants having defaulted in liquidating their partnership equity contribution are not entitled to any share of profit from the partnership business being entitled only to the quantum of equity contribution made in the partnership business.
- (3) An order of Court terminating the partnership between the Claimants and the Defendants.
- (4) N15 Million general damages for breach of contract and false imprisonment.

The Defendant were served with the Writ of Summons, Statement of Claim and all other Originating Processes. The Defendants entered appearance vide a Memorandum of Appearance dated 26/11/19 and filed a Statement of Defence and Counterclaim on 26/06/19. The case came up for hearing on 15/02/21 but the Claimants were not in Court neither were they represented. The case was therefore struck out for lack of diligent prosecution.

The Defendants prays for the following in their Counterclaim:

- (1) An Order of Court against the Defendants to Counterclaim to pay the sum of N60,000,000.00 being 60% of the

interest of the partnership agreement from the 5th of December 2018 to June 2019.

- (2) That the Defendants to Counterclaim be ordered to vacate the entire 2042 square meters occupied by the Defendants to Counterclaim.
- (3) An Order against the Defendants to Counterclaim to pay 60% of the profit of the partnership from the date of the receipt of termination till the date the premises is vacated.
- (4) 10% interest of the judgment sum until it is finally liquidated.

The Counterclaim was set down for hearing on 8/07/21. The Counterclaimants' witness Olayinka Fayomi (Mrs). She stated orally that she is a business-woman. That she deposed to a Witness Statement on Oathon 28/06/19. She adopted same as her oral testimony. She deposes as follows:She is the 1st Counterclaimant and the owner of Plot 2402 Shehu Shagari, Maitama, the premises that the Defendants to Counterclaim are operating a restaurant. The Defendants have refused to operate in accordance with the partnership agreement.

The Counterclaimants are entitled to 60% of profit based on their equity contribution in the business by providing their land with foundation wherein they built their bamboo structure. That Defendants to Counterclaim are entitled to 40% of the entire profit by operating the restaurant with their materials after building the temporary structure. That Defendants to Counterclaim had been using the proceeds of the partnership business to fund building different restaurant in Garki, Abuja.

The Defendants to Counterclaim put 1st Counterclaimant on a platform to monitor sales every day hence knows the sales from December till date to be ₦230 Million. The Defendant to Counterclaim expressed that 50% of the money generated is profit while 50% is for expenses. That she is entitled to ₦69 Million from 5th December 2018 to June 2019, as they have continually made over ₦1.8 Million on daily basis while the Defendants to Counterclaim are entitled to ₦46,400,000 of the 50% profit while the remaining 50% is for expenses and management.

That the land and foundation upon which the Defendants to Counterclaim put the temporal structure is her equity contribution while the temporary structure and running of the business is the 40% contribution of the Defendant in the Counterclaim. The Defendants to Counterclaim have not rendered account to her since they started the business even when she called them to do so. The Defendants to Counterclaim have breached the contract generally and are not willing to fulfil their obligation under the working agreement. That several meetings were held but Defendants to Counterclaim are not willing to pay the Counterclaimant.

That she had served the Defendant to Counterclaim a Notice of Termination of the partnership. That the time given in the said notice has lapsed. The Defendant to Counterclaim have failed to vacate the premises. That as long as the Defendants in the Counterclaim sell on the premises. The Counterclaimant are entitled to 60% profit.

The Counterclaimants' witness tendered the following:

Exhibit: A Copy of a letter on the letter-headed paper of 2nd Counter-claimant dated 8/05/19.

Exhibit B: Record of everyday sales and profit sharing.

Exhibit C: Copy of the letter from 2nd Defendant signed by 1st Defendant/Counter-Claimant.

Under cross examination by Defendants to Counterclaim the witness answers as follows: That the plot of land I use as restaurant belong to her. That she had an agreement with Defendant to Counterclaim to build and operate on a sharing formula. That she gave consent to operate on the premises based on an agreement. That the portion of land upon which the restaurant is built is her equity contribution.

To another question, she answered that there is no agreement that she pays N19 Million out of N44 Million. That she demanded 60% of the profit that is due to her which never came. To another question she said they both kept records. That she was added to the sales platform and that they see what the sales are everyday. That the accounts were managed wholly by the Defendants to Counterclaim.

To a further question she answered that her lawyer wrote requesting for payment. That they have a valuation of the

property. That according to the contract and agreement, it was the operator who built and constructed the restaurant that runs the restaurant. To another question, she said she collected about N1 Million to 2 Million as loan and receivables but cannot remember the exact amount. That it is documents. She does not know why the restaurant was demolished by Development Control. To another question she said she has building approval for the plot. The Defendants to Counterclaim built. That he has his own relationship with Development Control she understood. To a question she answered that the value of the plot of land was not put at ₦10 Million by the valuation report. The above is the case of the Counter-Claimant.

The Defendants to Counterclaim did not file a reply to Statement of Defence and Defence to Counterclaim in accordance with the Rules of Court hence did not enter a defence. Parties were ordered to file Written Addresses.

The Counter-Claimants' Final Written Address which he adopted on 21/09/22 is dated 22/03/22. In the said Final Written Address he raised only one issue for determination which is whether the Counter-Claimant has proved her case to be entitled to Judgment.

Learned Counsel to Counter-Claimant submits that parties are in agreement as to the partnership relationship. That where evidence is not disputed or contradicted by any form of evidence, the Court will rely on such evidence as proved. That the Court should rely on the available evidence in the Counter-claim. That the Counter-Claimant has proven her case on the balance of probability and is entitled to Judgment.

The issue for determination posited by the Counsel to the Counter-Claimant is whether the Counter-Claimant has proved her case to be entitled to Judgment.

The Counter Claim is one way. The Defendants to Counter-Claim failed, refused and or neglected to file a reply to Statement of Defence and Defence to Counter-Claim in accordance with the Rules of Court hence did not give evidence in their defence.

I have summarised the only evidence available. In civil cases such as this, the only way to reach a decision as to which party is entitled to judgment is by determining on which side the weight of

evidence lay and this could be done by putting the evidence called by either side on an imaginary scale and weighting them together to find out to which side the evidence preponderates.

See *ALHAJI MOHAMMED BALOGUN VS. UBA LTD (1992) 6 NWLR (PT. 247) P. 336 at P. 337.*

In the present case, the Defendants failed, refused and or neglected to enter their defence despite Cross-examining the Counter-Claimants' Witness.

Whenever on an issue evidence comes from one side and is unchallenged and uncontradicted, it ought normally to be accepted on the principle that there is nothing to be put on the other side of the balance unless it is of such quality that no reasonable tribunal should have believed it. So when evidence goes on one way, the onus of proof is discharged on the minimal of proof.

See *ABDULLAI BABA VS. NIGERIAN CIVIL AVIATION TRAINING CENTRE, ZARIA (1991) 7 SCNJ Page 1.*

I believe the only evidence of the Counter-Claimants. The Counter-Claimants have proved their case on the preponderance of evidence and balance of probability.

Consequently, judgment is entered in favour of the Counter-Claimants against the Defendants to Counter-Claim as follows:

- (1) The Defendants to Counter-Claim are hereby ordered to pay to the Counter-Claimants the sum of N60 Million being 60% interest/profit of the partnership agreement from 5th December 2018 to June 2019.

- (2) The Defendants to Counter-Claim are hereby ordered to vacate the Counter-Claimant's premises occupied by the restaurant forthwith.

- (3) The Defendant to Counter-Claim shall further pay 60% profit from the date of the termination of the partnership until the Defendant to Counter-Claim vacates the premises.

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HON. JUSTICE U.P. KEKEMEKE
(HON. JUDGE)
13/12/2022

Parties absent.

Dr. Adekunle Oladapo Otitoju with Christiana F. Asoegwu, Esq. for
the Claimants.

Mohammed Lukeman, Esq. for the Defendants

A. A. Orire, Esq. for Interested Party/Applicant.

COURT: Judgment delivered.

(Signed)

HON. JUDGE

13/12/2022