

**IN THE HIGH COURT OF THE FEDERAL  
CAPITAL TERRITORY, ABUJA  
HOLDEN AT ABUJA**

**ON TUESDAY, 21<sup>ST</sup>FEBRUARY, 2023**

**BEFORE HON. JUSTICE SYLVANUS C. ORIJ**

**SUIT NO. FCT/HC/CV/3033/2019**

**BETWEEN**

**AYO OMOLEAUPEN ESQ.**  
*[Carrying on Legal Practice under  
the Name and Style Umar & Alofe]*



**CLAIMANT**

**AND**

**TIP TREE INTERTRADE NIGERIA LIMITED --- DEFENDANT**

**JUDGMENT**

The claimant, a legal practitioner, commenced this suit on 25/9/2019 in the undefended list for a liquidated sum of N11,497,258.00. On 13/1/2020, learned counsel for the claimant applied to the Court to transfer the case from the undefended list to the general cause list for trial. The Court granted the application and directed the parties to file their pleadings.

The pleadings in this case are: [i] the claimant's amended statement of claim filed on 21/2/2022; [ii] the defendant's amended statement

of defence filed on 19/4/2022; and [iii] the claimant's amended reply to the amended statement of defence filed on 28/6/2021.

In paragraph 22 of his amended statement of claim, the claimant claims this relief:

An Order of this Honourable Court directing the defendant to pay the claimant the sum of N11,497,258.00 [eleven million, four hundred and ninety-seven thousand, two hundred and fifty-eight Naira] only representing the agreed 5% of the net value [N229,945,700.00] as contained in the Project Execution Agreement between the defendant and one Loamy Green Integrated Services Nigeria Limited drafted for the defendant being payment for the claimant's Legal/Professional[*sic; fee*] for services rendered to the defendant.

In proof of his case, the claimant testified as CW1. He adopted his statement on oath filed on 6/2/2020 and his additional statement on oath filed on 23/11/2020. The claimant tendered Exhibits 1, 2, 3, 4 & 5.

Mr. Jude Otayokha, the project manager of the defendant, testified as DW1. He adopted his statement on oath filed on 19/3/2021.

**Evidence of the Claimant - CW1:**

The evidence of the claimant is that Mr. Oshikoya Lola is a registered shareholder and director of the defendant and conducts all its authorized affairs in Nigeria. Mr. Oshikoya Lola superintended and took managerial decisions for the defendant. Sometime in April 2019, Mr. Lola invited him to their office at No. 6 Konoko Crescent off Adetokunbo Ademola Crescent, Wuse 2, Abuja for a meeting with the view of engaging him to draft a contractual agreement on behalf of the defendant.

The claimant stated that at the meeting, Mr. Lola, on behalf of the defendant, instructed him to prepare a Project Execution Agreement between the defendant and Loamy Green Integrated Services Nigeria Limited. Mr. Oshikoya Lola and one Sylvia [defendant's operations manager] represented to him that they had the requisite authority and powers to represent and bind the defendant in the instruction they were giving him to execute. He relied on this representation and believed that Mr. Oshikoya Lola,

being a director and shareholder of the defendant, was truly acting for the defendant and indeed he was acting for the defendant.

The CW1 further testified that he executed the defendant's instruction to draft the Project Execution Agreement between it and Loamy Green Integrated Services Nigeria Limited for Preliminary Project Execution for the Clean-up and Remediation in Ogoni Land, Rivers State. The defendant's instruction was verbally communicated to him by Mr. Oshikoya Lola in his capacity as the director of the defendant and he [the claimant] accepted the instruction.

The defendant, through Mr. Oshikoya Lola, agreed to pay him [as his professional fees] 5% of the total net value of the contract [which is the sum of N224,945,700] as contained in the Project Execution Agreement. The value of the agreed 5% of N224,945,700 amounts to N11,497,258, which he is entitled to as his professional fees accruing from the draft and preparation of the said Agreement for defendant.

On 2/5/2019, he prepared the said Project Execution Agreement in line with the defendant's instructions. It was reviewed by

Oshikoya Lola and certified to have met the defendant's instructions. He was further instructed to deliver the draft agreement through the email which Oshikoya Lola made available to him [i.e. [lolade60@yahoo.com](mailto:lolade60@yahoo.com) and [oshikoya@sipraie.com](mailto:oshikoya@sipraie.com)] and he delivered same to the defendant.

The claimant further stated that since the receipt of the Agreement, defendant kept making promises to pay his professional fees. After a while, the defendant ceased all communications with him and Mr. Oshikoya Lola refused acknowledging his calls and all oral demands to make the said payment failed. He served his Bill of Charges/ Professional Fees on the defendant for the sum of N11,497,258. The defendant refused to respond to the bill sent to it. The defendant has refused to pay his professional fees till date.

In his additional statement on oath filed on 23/11/2020, the claimant stated that the period when he drafted the said Agreement, his office secretary was indisposed for some medical reasons. He then engaged the services of Brightpage Global Synergy Limited, which operates a typing and computer type setting services [i.e. a business centre] to type the draft Agreement for him. The first typing was carried out on 26/4/2019 and he paid them N2,000.

The claimant further stated that after some corrections, the final draft was made on 2/5/2019 and sent to Mr. Oshokoya Lola through the email he provided. He also paid the sum of N1,700 to the typing company and a receipt dated 2/5/2019 was issued him. Mr. Oshokoya Lola made him believe that he was representing the defendant and that the defendant will pay his fees. Oshokoya Lola never disclosed to him that the defendant had any other legal representation or any lawyer on retainer. Mr. Angel Prado is aware of his services as he was in constant review of the draft with Mr. Oshokoya Lola.

The claimant tendered the following documents:

1. The defendant's Form CO7 and attached documents: Exhibit 1.
2. Certificate of Identification signed by the claimant dated 28/6/2021 and the attached documents: Exhibit 2.
3. The claimant's letter addressed to the managing director of the defendant dated 15/7/2019: Exhibit 3.

4. Receipt dated 26/4/2019 for N2,000 and receipt dated 2/5/2019 for N1,700 both issued to the claimant by Brightpage Global Synergy Limited: Exhibits 4 & 5 respectively.

During cross examination of CW1, he stated that the defendant has managing director, directors and project managers. He did not have any document to ascertain that late Mr. Lola superintended and took managerial decisions for the defendant. He did not communicate to the defendant the oral agreement by late Mr. Lola to pay him 5% of the consideration stated in the Project Execution Agreement before he carried out his instruction. He did not request for a letter of instruction from the defendant from late Oshikoya Lola.

As a lawyer, he was/is required by the Rules of Professional Conduct to frank the document by writing his name, signing the document and affixing his NBA seal. The said Contract Agreement was not franked; he stated the reason in his statement on oath.

CW1 was asked the format in which late Mr. Lola gave him the terms of the agreement and the obligations of the parties. In

response, he said: "*Late Oshikoya and Sylvia [a Spanish] and I held a meeting and we agreed on the terms and obligations of the parties to the agreement. He gave me the terms orally.*"

The claimant further stated that after filing this case, counsel for the defendant brought Mr. Lola to the office of his counsel. Late Mr. Lola said he will make available funds to settle the matter; but he [the claimant] did not know where the funds would come from. The amount Mr. Lola offered was too small; so, he rejected the offer.

**Evidence of Mr. Jude Otayokha- DW1**

DW1 stated that Mr. Angel Prado is the managing director of the defendant, which is a foreign company registered in Nigeria, and superintends the defendant's activities in Abuja while management decisions are made by the defendant's board of directors. In March 2019, the defendant entered into a contract with Loamy Green Integrated Services Limited for project execution for the cleaning and remediation in Ogoni Land, Rivers State at the cost of N134,967,420, which sum was to be paid in 3 instalments.

Before the commencement of the contract, Mr. Angel Prado directed late Mr. Oshikoya Lola to meet with Loamy Green Integrated Services



Limited in order to agree on a draft of the contract agreement containing the responsibilities/obligation of parties and submit to him. Late Mr. Oshikoya Lola later submitted the draft of the contract agreement to Mr. Angel Prado who later sent same to the defendant's external solicitors, Adamu Ibrahim & Co., for review.

The defendant was not aware and did not authorize any transaction between late Mr. Oshikoya Lola and the claimant as the defendant does not have any record of such transaction. The defendant then had a retainership agreement with Adamu Ibrahim & Co. wherein both parties agreed that Adamu Ibrahim & Co. shall review a maximum of 12 legal documents annually for a fee of N700,000. Adamu Ibrahim & Co. reviewed the draft of the contract agreement and sent same back to Mr. Prado. Later, the defendant and Loamy Green Integrated Services Limited signed the contract agreement on 3/5/2019. Mr. Lola died on 7/11/2020.

DW1 further stated that the defendant did not at any time agree with the claimant to engage his services for the sum of N11,497,258. Late Mr. Oshokoya Lola did not have the authority of the defendant to engage the services of the claimant and it is not in his schedule of

work as the project manager to engage external solicitor for the defendant. The defendant did not receive any Bill of Charges/Professional Fees from the claimant as the defendant does not have any record of the Bill of Charges.

When DW1 was cross examined, he stated that late Mr. Oshikoya Lola was the project manager of the defendant. At the time Exhibit 1 [i.e. the defendant's Form CO7] was made, Mr. Lola was a member of the board of directors of the defendant. He [DW1] was not in the defendant then. Mr. Lola was a member of the board of directors when the board decided to draft a contract agreement with Loamy Green Integrated Services Limited. He did not know whether Mr. Oshikoya Lola and Adamu Ibrahim & Co. did not draft the contract agreement.

**Issues for Determination:**

Peter Onuh Esq. filed defendant's final written address on 8/2/2022. Darlington C. Owhoji Esq. filed the claimant's final written address on 8/3/2022. On 15/3/2022, Peter Onuh Esq. filed the defendant's reply on points of law. Both learned counsel adopted their respective final written addresses on 5/12/2022.

In the defendant's final written address, Peter Onuh Esq. formulated these two issues for the Court's determination:

1. Whether the claimant has a valid contract of service with the defendant to prepare an agreement for the defendant and receive 5% of the consideration of the agreement as his professional fee.
2. Whether the claimant is entitled to the relief sought or any relief.

In the claimant's final written address, Darlington C. Owhoji Esq. distilled one issue for determination, viz:

Whether the claimant proved his case to be entitled to the relief claimed before this Honourable Court.

From the evidence adduced by the parties, the Court is of the opinion that the Issue formulated by the claimant's counsel - which is similar to Issue 2 formulated by the defendant's counsel - is the Issue for resolution in this case.

**Submissions of Learned Counsel for the Defendant:**

Peter Onuh Esq. referred to sections 131 to 134 of the Evidence Act, 2011 and posited that the claimant has the burden to prove the existence of the contract of service he relied on. He cited **Central Bank of Nigeria v. Aribo [2018] All FWLR [Pt. 925] 93** to support the principle that he who asserts must prove. It was submitted that the claimant did not tender any shred of evidence to prove his assertion that late Mr. Oshikoya Lola and Sylvia [the operations manager] engaged him on behalf of the defendant to prepare an agreement for a fee of 5% of the consideration stated in the agreement.

The defence counsel further argued that assuming claimant proved that late Mr. Lola and Sylvia engaged him, they lack the capacity to engage the claimant on behalf of the defendant. This is because a registered company in Nigerian can only act through its members in general meeting or its board of Directors or through officers and agents appointed by members in a general meeting or the board of directors. He relied on sections 87[1]-[3] and 88[b] of the Companies and Allied Matters Act, 2020; and the case of **Batraco Ltd. v. Spring Bank Ltd. & Anor. [2013] LPELR-20174.**

Peter Onuh Esq. submitted that from the above, the act of late Mr. Lola and Sylvia do not amount to the act of the board of directors or members in general meeting of the defendant. Even if late Mr. Lola was a member of the board of directors of the defendant, he alone cannot act as the board of directors of the defendant.

There is no evidence that the board of directors or members in general meeting of the defendant authorized late Mr. Lola and Sylvia to act on their behalf. Therefore, there is no valid contract of service between the claimant and the defendant to prepare any agreement and to receive 5% of the sum stated in the agreement as his fee.

Mr. Peter Onuh reasoned that at best, the claimant assisted his friend, late Mr. Oshikoya Lola, who he claimed instructed him to draft the agreement. During cross examination, claimant admitted that he did not communicate his instruction from late Mr. Lola to the defendant before preparing the agreement. Counsel stressed that apart from his testimony, the claimant did not prove that late Mr. Lola agreed to pay him 5% of the consideration in the agreement or any amount.

Finally, the defence counsel submitted that there is no evidence on the face of the agreement [forming part of Exhibit 2] that the claimant prepared the agreement as a lawyer in line with the provisions of the Rules of Professional Conduct. The claimant did not write his name and did not sign or fix his stamp and seal on the agreement.

**Submissions of Learned Counsel for the Claimant:**

Darlington C. Owhoji Esq. posited that the basic issue for the Court to unravel is whether from the totality of facts before it, there was a legal services contract between the claimant and defendant. He referred to section 90[1][a] of the Companies and Allied Matters Act, 2020, which provides that the acts of officers or agents of a company shall not be deemed to be the acts of the company unless the company acting through its members in general meeting, board of directors or managing director shall have expressly or impliedly authorised such officer or agent to so act.

Learned counsel for the claimant cited the cases of **Delta Steel [Nig.] Ltd. v. American Comtech Inc. [1999] 4 NWLR [Pt. 597] 53** and **GTB Plc. v. Noble [2019] 14 NWLR [Pt. 1693] 389** to support

the view that the acts of directors and managers of a company are binding on the company. Thus, where the directors enter into a contract in the name and benefit of the company, the company [as the principal] will be liable. A contract made by an agent acting within the scope of his authority for his disclosed principal is in law the contract of the principal. He cited the case of **Uwah v. Akpabio [2014] 7 NWLR [Pt. 1407] 472** in support.

Mr. Darlington C. Owhoji argued that the evidence before the Court is that late Oshikoya Lola was not only a director of the defendant but its agent and he acted based on the instruction of Angel Prado [the managing director] to liaise with Loamy Green Integrated Services Nigeria Limited for a draft contract agreement. That instruction produced the Agreement [Exhibit 2], the subject matter of this suit.

The Court was urged on behalf of the claimant to find as a fact that the defendant entered into a valid contract with the claimant through its director [late Oshikoya Lola]. The agreement was consummated by the defendant as admitted by DW1 during cross examination. It was submitted that the admitted fact by DW1 is an admission against the interest of the defendant. Mr. Owhoji stated that a valid and legally binding agreement may be written or parole;

and cited Fawehinmi v. G.M.H. [Nig.] Ltd. [2018] 12 NWLR [Pt. 1633] 197.

The claimant's counsel further argued that by section 24 of the Legal Practitioners Act, 2004, Adamu Ibrahim & Co. is not a legal practitioner and cannot practice as a solicitor or barrister. The case of Alikor v. Ogwo [2019] 15 NWLR [Pt. 1695] 331 was cited to support the view that a law firm is not a legal practitioner recognised under the law. Therefore, Adamu Ibrahim & Co. could not have drafted or reviewed the said Project Execution Agreement.

Finally, learned counsel for the claimant submitted that the claimant's letter [Exhibit 3] requesting for his professional fees is a business letter. The defendant's failure to respond to Exhibit 3 amounted to an admission of its contents. He relied on Tilley Gyade & Co. [Nig.] Ltd. v. Access Bank Plc. [2019] 6 NWLR [Pt. 1669] 399 to support the principle that where a party fails to respond to a business letter which by the nature of its contents requires a response, the party will be deemed to have admitted the contents of the letter. He concluded that the claimant has proved his case and is entitled to his claim.



**Reply on Points of Law by Learned Counsel for the Defendant:**

In the reply on points of law, Peter Onuh Esq. posited that an agent is bound to work in line with the instruction of his principal and where the agent carries out his work outside the instruction of his principal or scope of work, the principal is not bound by such act of the agent. He referred to **Acmel Nig. Ltd. & Anor. v. First Bank of Nig. Plc. & Anor. [2014] 6 NWLR [Pt. 1402] 158.** He argued that the defendant's managing director did not instruct late Mr. Oshikoya Lola to engage the claimant to prepare an agreement.

With respect to the claimant's letter, Exhibit 3, the defence counsel argued that it is in evidence that the defendant did not receive Exhibit 3. Even if the defendant received Exhibit 3, where there is evidence contradicting the claimant's claim or there is no credible evidence to prove the content of Exhibit 3, the said content is a mere assertion. He relied on the case of **Thompeotan & Sons Nig. Ltd. v. Jos South Local Government Council [2021] 4 NWLR [Pt. 1766] 277** to support the submission that each case must be settled upon its own peculiar facts.

**Decision of the Court:**

In paragraphs 5 & 6 of his statement on oath, the evidence of the claimant is that in April 2019, Mr. Oshikoya Lola invited him to their office for a meeting. At the meeting, Mr. Lola, *“a Director of the Defendant on behalf of the Defendant and acting in that capacity instructed me to prepare a Project Execution Agreement between the Defendant and Loamy Green Integrated Services Nigeria Limited.”*

In paragraphs 7 & 8 thereof, the claimant stated that Mr. Oshikoya Lola and Sylvia [the defendant’s operations manager] *“represented to me that they had the requisite authority and powers to represent, deal and bind the Defendant in the instruction they are giving me to execute.”* He relied on the representation and believed that Mr. Oshikoya Lola, being a director and shareholder of the defendant, *“was truly acting for the defendant and indeed he was acting for the defendant.”*

The claimant’s evidence in paragraph 10 of his statement on oath is that the defendant through Mr. Oshikoya Lola *“agreed to pay me as my Professional fees the value representing 5% of the total net value of the Contract Agreement”* which is N224,945,700.

By section 131 of the Evidence Act, 2011, whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist. Thus, the claimant has the burden to prove his case. It is trite law that he who asserts must adduce evidence to prove his assertion. See the case of Okonkwo v. Okolo [2016] LPELR-4093 [CA].

In order to succeed in his claim, the claimant must prove that: [i] late Mr. Oshikoya Lola instructed him to prepare the Project Execution Agreement between the defendant and Loamy Green Integrated Services Nigeria Limited; [ii] Mr. Oshikoya Lola agreed to pay him 5% of N224,945,700 being the net value of the Contract Agreement; [iii] Mr. Lola had the defendant's authority to instruct him to prepare the said Agreement; and [iv] he prepared the said Agreement.

Apart from the *ipsi dixit* of the claimant, there is nothing to prove that Mr. Oshikoya Lola instructed him to prepare the said Agreement and agreed to pay him 5% of N224,945,700 [the net value of the Contract Agreement], which is N11,497,258. Unfortunately, Mr. Lola is late and cannot confirm his discussion

with the claimant. The claimant stated that Mr. Lola and one Sylvia [the operations manager of the defendant] represented to him that they had the authority to bind the defendant in the instruction they gave him to execute. Sylvia did not testify to confirm the claimant's evidence.

Learned counsel for the claimant is correct that a valid and legally enforceable contract or agreement may be in writing or may be made orally. See the case of Metibaiye v. Naralli Int'l Ltd. [2009] 16 NWLR [Pt. 1167] 349. However, the existence of the oral agreement must be satisfactorily proved for it to be enforceable. In Odutola v. Papersack [Nig.] Ltd. [2006] 18 NWLR [Pt. 1012] 470, the Supreme Court held that a party alleging the existence of an oral agreement is duty bound to prove such an agreement to the hilt by credible evidence.

The Court is of the considered view that the least the claimant would have done was to get a written instruction from Mr. Oshikoya Lola specifying the terms of his engagement and his fee especially as he said he was instructed by Mr. Oshikoya Lola to act for the defendant [a company]. The Court holds that the claimant

failed to prove his assertion that late Mr. Oshikoya Lola [and one Sylvia] instructed him to prepare the said Project Execution Agreement and agreed to pay him 5% of the net value of the Contract Agreement amounting to N11,497,258.

Now, assuming the claimant proved that late Mr. Lola instructed him to prepare the said Project Execution Agreement and agreed to pay him 5% of the net value of the Contract Agreement, has the claimant proved that Mr. Lola had the defendant's authority to do so? In this regard, the provisions of sections 87[1], 88[a] & [b] and 90[1][a] of the Companies and Allied Matters Act, 2020 are relevant.

They read:

Section 87[1]:

*A company shall act through its members in general meeting or its board of directors or through officers or agents appointed by, or under authority derived from, the members in general meeting or the board of directors.*

Section 88:

*Unless otherwise provided in this Act or in the articles, the board of directors may -*

- [a] exercise its powers through committees consisting of such members of their body as they think fit; or*
- [b] from time to time, appoint one or more of its members to the office of managing director and may delegate all or any of its powers to such managing director.*

Section 90[1]:

*Except as provided in section 89 of this Act, the acts of any officer or agent of a company shall not be deemed to be acts of the company, unless -*

- [a] the company, acting through its members in general meeting, board of directors, or managing director, shall have expressly or impliedly authorised such officer or agent to act in the matter.*

The unchallenged evidence of DW1 is that the managing director of the defendant at all times material to this suit was Mr. Angel Prado. The claimant did not adduce any evidence to prove that the members of the defendant in general meeting or its board of directors or its managing director expressly or impliedly authorized late Oshikoya Lola to engage or instruct him to draft or prepare the said Project Execution Agreement.

In paragraphs 3 & 4 of his statement on oath, the claimant stated that Mr. Oshikoya Lola was a registered shareholder and director of the defendant and conducted all its authorized affairs in Nigeria; and that he took managerial decisions for the defendant. However, he stated during cross examination that he had no evidence to support this assertion.

As rightly submitted by learned counsel for the defendant, the fact that Mr. Oshikoya Lola was a shareholder and/or a director of the defendant did not mean - and cannot imply - that he was expressly or impliedly authorized by the members of the defendant in general meeting or its board of directors or its managing director to engage the claimant to draft the said Project Execution Agreement.

In paragraph 8 of his additional statement on oath, claimant stated that: *“Mr. Angel Prado is aware of my services as he was in constant review of the draft with Mr. Oshikoya Lola.”* In my view, the claimant did not adduce any credible evidence to prove this assertion. There is no evidence that the claimant ever met with Mr. Angel Prado and there is nothing to show when and how Mr. Angel Prado reviewed the draft of the agreement with late Mr. Oshikoya Lola.

The evidence of DW1 - which in my opinion is unchallenged - is that Mr. Angel Prado [the managing director of the defendant] directed late Mr. Oshikoya Lola to meet with Loamy Green Integrated Services Limited *“in order to agree on a draft of the contract agreement containing the responsibilities/obligation of parties and submit to him.”*

In paragraph 3[iv] of the claimant’s final address, Darlington C. Owhoji Esq. relied on the above evidence and submitted that late Mr. Oshikoya Lola *“acted based on the instructions of one Mr. Angel Prado [the Managing Director] directing him to liaise with Loamy Green Integrated Services Nigeria Limited for a draft contract agreement. That instruction given by Mr. Prado produced exhibit 2 the subject matter of this suit. Also, as a director of defendant, late Mr. Oshikoya Lola doubled as an agent of the defendant.”*

The Court agrees with the view of Peter Onuh Esq. that the fact that Mr. Angel Prado instructed Mr. Oshikoya Lola to liaise with Loamy Green Integrated Services Limited *“in order to agree on a draft of the contract agreement ...”* cannot mean that late Mr. Lola was instructed



or authorized to engage the claimant to prepare the Project Execution Agreement and for a fee of N11,497,258.

It is trite that an agent is bound to work in line with the instruction of his principal and an agent who has exceeded the limits of his authority will be personally liable. See the cases of Cotecna Int'l Ltd. v. Church Gate Nig. Ltd. & Anor. [2010] LPELR-897 [SC] and Ubong v. Udo [2022] LPELR-56544 [CA].

The decision of the Court is that assuming the claimant proved that late Oshikoya Lola instructed him to prepare the Project Execution Agreement and agreed to pay him 5% of the net value of the Contract Agreement, he did not adduce any evidence to prove that Mr. Lola had the defendant's authority to do so. Therefore, by virtue of section 90[1] of the Companies and Allied Matters Act, 2020, the act of Mr. Oshikoya Lola "*shall not be deemed to be*" the act of the defendant.

It remains to determine whether the claimant proved that he drafted or prepared the Project Execution Agreement, which forms part of Exhibit 2. The Court agrees with the defence counsel that there is no evidence on the face of the said document that the

claimant prepared it. The claimant's name and signature are not on the said document and his stamp and seal are not thereon. In other words, the claimant did not frank the said Project Execution Agreement.

When the claimant was confronted with this reality during cross examination, he admitted that the document *"was not franked by me. I stated the reason in my statement on oath."* I have read the claimant's statement on oath and his additional statement on oath; I have not found the reason why he did not at least write his name on the said document or sign it or affix his seal or stamp on it to show that he prepared it. Rule 10[1] of the Rules of Professional Conduct for Legal Practitioners 2007 requires a legal practitioner to affix on any document a seal and stamp approved by the Nigerian Bar Association.

The Court holds that the claimant failed to prove that he prepared the said Project Execution Agreement. If the claimant prepared the agreement, he would have, in the ordinary course of events, written his name and address on the Project Execution Agreement or signed same to show that he prepared it.

Finally, in his effort to persuade the Court to hold that the claimant is entitled to the sum claimed, Darlington C. Owhoji Esq. submitted that the defendant's failure to respond to claimant's Bill of Charges/Professional Fee [Exhibit 3], which is a business letter, amounted to an admission of its contents.

In paragraph 17 of the statement on oath of DW1, which is in line with paragraph 7[k] of the amended statement of defence, he stated that the defendant did not receive any Bill of Charges/Professional Fees from the claimant. By the defendant's averment, it joined issues with the claimant on the service of Exhibit 3.

Exhibit 3 shows that it was received by Ejuh Ernest on 17/7/2019. It seems to me that the claimant has the evidential burden to prove that the defendant received Exhibit 3 by establishing a nexus between Ejuh Ernest and the defendant. There is no proof that the defendant received the letter or that Ejuh Ernest received the letter on its behalf.

However, assuming there is proof that the defendant received the letter, Exhibit 3, it is not automatic that the defendant is liable merely because it did not respond to Exhibit 3, which is a business

letter. The Court must be guided by the facts of each case in deciding the effect of failure to respond to a business letter. In Thompecotan& Sons Nig. Ltd. v. Jos South Local Government Council [supra], it was held that it is not enough for the appellant to rely on the failure of the respondent to reply the business letter when the appellant has failed to lead credible evidence to prove its case.

From the evaluation of the facts of the instant case, the Court had found that the claimant failed to adduce credible evidence to prove his claim. Therefore, in the circumstances of this case, assuming the defendant received the letter, Exhibit 3, its failure to respond to it will not amount to admission of the claimant's claim.

**Conclusion:**

All said and in conclusion, the claimant's suit lacks merit and it is dismissed. I award cost of N100,000 to the defendant payable by the claimant.

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HON. JUSTICE S. C. ORIJI  
[JUDGE]

*Appearance of Learned Counsel:*

Peter Onuh Esq. for the defendant; with Martin Ekpah Esq.