

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT ABUJA,

BEFORE HIS LORDSHIP: HON. JUSTICE MUHAMMAD S. IDRIS

COURT: 28

DATE:-7<sup>TH</sup> MARCH, 2023

FCT/HC/CV/2283/2021

BETWEEN:

**RICHCONT LIMITED-----**

**CLAIMANT**

**AND**

**ALEX N.N WILLIAMS-----**

**DEFENDANT**

(Trading under the name  
& style of N.N Williams & Co)

### **Judgment**

This suit was commenced by the claimant vide an originating summons filed on 8<sup>th</sup> September,2021 and seeking for the following reliefs:-

- a. A declaration of this Honourable Court that the action of the Defendant in converting the total sum of N107, 200,000 (One Hundred and Seven Million, Two Hundred Thousand Naira) only he was retained to recover on behalf of the claimant and diverting the proceeds to his personal use is unprofessional, unethical and a breach of his professional responsibility to the Claimant.

- b. A Declaration of this Honourable Court that the Claimant is entitled to receive an account of the recovery of the total sum of ₦107, 200,000 (One Hundred and Seven Million, Two Hundred Thousand Naira) only and the amount of the money spent in the performance of the brief he was retained to carry out on behalf of the claimant.
- c. An order of this Honourable Court directing the Defendant to pay to the Claimant the total sum of ₦107, 200,000.00 (One Hundred and Seven Million, Two Hundred Thousand Naira) only he recovered on behalf of the Claimant as part of his brief of the Claimant.
- d. An order of this Honourable Court directing the defendant to pay the sum of ₦20, 000,000.00 (Twenty Million Naira) only as damages suffered by the Defendant resulting from the conversion of ₦107, 200,000 (One Hundred and Seven Million, Two Hundred Thousand Naira) only by the Defendant.
- e. An order of this Honourable Court directing the Defendant to pay the sum of ₦5, 000,000.00 (Five Million Naira) only as exemplary damages.
- f. An order of this Honourable Court directing the Defendant to pay 10% of the judgment debt commencing from the 3<sup>rd</sup> June 2021 until the date the judgment is delivered by this Honourable court.
- g. An Order of this Honourable Court directing the Defendant to pay 10% of the judgment sum from the date judgment is delivered until the judgment sum is liquidated.

The summary of the Claimant's story is that the Defendant, a legal practitioner was engaged by the Claimant on the recommendation of Andi-Kan Resources Limited sometime in 2015, for the purpose of recovering a total debt of ₦107, 200,000.00 from 134 customers of the Claimant who owed the Claimant ₦ 800, 000.00 each. Part of the Defendant's duty was to undertake the procurement of certificates of occupancy for all the 134 customers of the Claimant with the Accelerated Area Councils and Sectional Title Re-issuance Scheme from the amount recovered, and to remit the balance to the Claimant.

The Claimant avers that the Defendant has since December 2016 abandoned performing his brief and has refused rendering account to the Claimant, and in what seems to them, has converted the money paid by the 134 customers to his personal use. The defendant also failed to procure the certificates of occupancy for the Claimant's customers.

In his defense, the Defendant denied being engaged by the Claimant to recover a total debt of ₦107, 200,000.00 from 134 of their customers. The defendant stated that he was engaged by one Andi-Kan Resources Limited to process issuance of certificates of occupancy for the subscribers to the Andi-Kan Beulah Estate situate at Plot 61, Kafe District, Abuja; that they did not inform him that the subscribers owe the Claimant, neither was he instructed to recover any contract obligation of the subscribers to the Claimant.

The Defendant further averred that he commenced the said processes for the few subscribers who paid full

payments till the activities of Accelerated Area Councils and Sectional Title Re-Issuance Scheme (AATRIS) of the FCTA was put to hold to the knowledge of the Claimant. He also stated that more than 90% of the subscribers have not made payments for the processing of the certificate of occupancy, and that his client, Andi-Kan Resources Limited did not instruct him to make any remittance to the Claimant either before or after the conclusion of the processes.

The Defendant however admitted that the Claimant introduced some subscribers to the Defendants, and that some of the subscribers referred by the Claimant made full payments, while others made part payments and that he commenced the process for issuance of C of O to them until the process was stalled due to the putting on hold of the activities of AATRIS.

In summary, the Defendant position is that he did not recover the sum of N107, 200,000.00 on behalf of the claimant as alleged at all, and that he has no contractual obligation to the Claimant as far as Plot 61, Kafe District, Abuja, is concerned.

On the 19<sup>th</sup> day of May, 2022, the Claimant opened its case and called in evidence one Olushola Daniel who testified as PW1, and the following documents were tendered through PW1: -

- a. Six Copies of the Claimant's letters of introduction to their customers dated 18<sup>th</sup> October, 2015
- b. Defendant's letters to the Claimant's customers.
- c. Claimant's letter to the Defendant dated 19<sup>th</sup> May, 2016.

- d. Claimant's letter to the Defendant dated 28<sup>th</sup> February, 2019.
- e. Claimant's counsel letter to the Defendant dated 1<sup>st</sup> April, 2021.
- f. Defendant's letter to the Claimant's counsel dated 14<sup>th</sup> April, 2021.
- g. Claimant's counsel letter to Andi-Kan Resources Limited
- h. Andi-Kan Resources Limited's letter to the Claimant's counsel
- i. Financier development agreement between the Claimant and Andi-Kan Resources Limited
- j. Supplemental financier development agreement between the Claimant and Andi-Kan Resources Limited.

The Defendant on his own part testified and tendered a receipt issued to him by the law firm of Chief Noel Agwuocha Chukwukadibia & Co.

At the close of hearing, the Defendant did not file any written address. The Claimant filed a written address when the period within which the Defendant ought to have filed a written address had lapsed.

The Claimant through his counsel, raised 5 issues for consideration to wit:-

1. Whether or not that the Claimant engaged the services of the Defendant.
2. Whether or not the Claimant is entitled to the rendering of account by the Defendant.
3. Whether or not the Claimant has made out a case deserving of a favorable judgement of this honorable court.

4. Whether or not the Defendant's exhibit D1 is admissible in law.
5. Whether or not the Defendant is entitled to an order for the payment of professional fees incurred in the defense of this matter.

Arguing on issue 1, learned counsel to the Claimant maintained that the feeble defense of the Defendant that his services were retained by one Andi-Kan Resources Limited cannot hold water, as the said Andi-Kan Resources Limited by her letter dated 28 October, 2019 and addressed to the counsel to the Claimant emphatically stated that they had nothing to do with the engagement of the Defendant by the Claimant. Moreso, the Defendant particularly in paragraphs 2, 4, 5, and 7 of his statement of claim, admitted to the averments of the Claimant that the Defendant was retained by Andi-Kan Resources Limited to process issuance of certificates of occupancy for the subscribers to Andi-Kan Beulah Estate situate at Plot 61, Kafe District, Abuja of which the Claimant has some interest.

Counsel, relying on the Supreme Court decision in the case of **ADUSEI V. ADEBAYO (2012) 17 W.R.N. 1 SC at 6**, submitted that the law is trite that facts admitted by an adverse party needs no further proof. See Section 123 of the Evidence Act.

On issue 2, counsel argued that the Claimant is entitled to an account of how much was recovered by the Defendant and how much was expended in the

performance of the professional duties for which his services were engage.

Counsel referred to the deposition of the Defendant in paragraph 5 of his statement of defense, where he stated that some of the subscribers introduced by the Claimant made full payments while others made part-payments and the process commenced. Counsel reasoned that by Order 1 of the Rules of Professional Conduct for Legal Practitioners, a Lawyer shall uphold and observe the rule of law, promote and foster the cause of justice, maintain a high standard of professional conduct, and shall not engage in any conduct which is unbecoming of a legal practitioner. Also Order 23 rules 2 of the Rules of Professional Conduct for Legal Practitioners provides that where a Lawyer collects money for his client, or is in a position to deliver property on behalf of his client, he shall promptly report, and account for it, and shall not mix such money or property with, or use it as his own.

On exhibit D1, learned counsel submitted on behalf of the Claimant, that it is trite law that any document made during the pendency of a matter is inadmissible in law.

Section 83 (3) provides as follows:-

*"Nothing in this section shall render admissible as evidence any statement made by a person interested at a time when the proceedings were pending or anticipated involving a*

*dispute as to any fact which the statement might tend to establish."*

Counsel urged the Court to reject the said exhibit and expunge same from the records of this honorable court as the said exhibit D1 as a document was made during the pendency of this matter.

Furthermore, the Supreme Court in the case of **NWAJI V. COASTAL SERVICES LIMITED (2004) 36 W.R.N. 1 at 14 TO 15** and the case of **GUINNESS NIGERIA PIC V. NWOKE (2000) 15 N.W.L.R (PT 689)135 at 159** held that it is now firmly settled that it is unethical and an affront to public policy for a litigant to pass the burden of cost of action including his solicitor's fee to his opponent.

Counsel maintained that the Claimant has led by uncontroverted evidence that they engaged the Defendant to recover monies from their customers and render other services by applying the monies recovered. It is further their uncontroverted evidence that the Defendant has failed and refused to render account of the monies recovered.

Counsel further argued that Section 134 of the Evidence Act provides that the burden of proof shall be discharged on the balance of probability in all civil proceedings, and that the burden of proof in this case tilts in favour of the Claimant.

In determining this suit, I will extract two relevant issues out of all the issues raised by the Claimant. I believe that these issues will sufficiently address the contention of parties:-



1. Whether or not the Claimant has made out a case deserving of a favorable judgment by this honorable Court.
2. Whether or not the Defendant is entitled to an order for the payment of professional fees incurred in the defense of this matter.

The law is clear, particularly as stipulated under sections 13 (1), 132, 133(1) and 136 (1) of the Evidence Act, 2011, that the burden of establishing a case generally lies on the claimant who asserts the existence of certain facts. He must discharge the burden by adducing cogent and credible evidence to prove same. See **J. IGWE V. ACS LTD (1999) 6NWLR (PT. 605) 1.**

The focal point in this case is the claimant's assertion that he engaged the services of the Defendant to recover the sum of N107, 200,000 from 134 of their customers, and to process the issuance of a certificate of occupancy for the said customer, but the Defendant failed and has refused to render account of the amount received from the customers, and has also failed to carry out the job of processing the issuance of certificates of occupancy to the Claimant's estate subscriber's.

The first task here is to determine whether or not the Claimant ever engaged the Defendant to recover the sum of N107, 200,000 from 134 subscribers, and if indeed the Defendant did recover the said sum.

As evidence of their engagement of the Defendant, the Claimant tendered six copies of letters of introduction of the Defendant to their customers dated 8<sup>th</sup> October, 2015. I

have taken the pains to read the said letters tendered by the Claimant, with the aim of finding out the contractual relationship between the Claimant and the Defendant.

I found paragraph 2 of the said letter quite helpful in determining the existence or not of a contractual relationship between the Claimant and the Defendant. The paragraph read thus:

**“Andikan Resources Limited** *in consultation* with RichCont Limited **has appointed Alex N.N. Williams & Co** to coordinate processing of C of O for individual subscribers”

Now, the natural question here is, was the Defendant (Alex N.N. Williams & Co.) appointed by the Claimant? The answer which is as clear as a white linen, is NO! The letter of the Claimant is an admission of the fact that they had no contractual relationship with the Defendant, at least not for recovering the sum of ₦ 107, 200,000.00 as alleged by the Claimant. The Defendant was appointed by Andi-Kan Resources Limited. Andi-Kan Resources Ltd, from the wordings of the letter merely consulted Richcont Limited on the appointment of the Defendant. This does not in any way raise a presumption of contractual relationship between the Claimant (RichCont Limited) and the Defendant.

During cross examination, PW1 was asked the following questions, and the answers given, did not prove the claims of the Claimant:-

**“ C.J.Okereke:** *The Claimant engaged the Defendant pursuant to the contract between the claimant and 134 customers.*

**PW1:** Yes

**C.J Okereke:** Any document in court in proof of this assertion?

**Pw1:** Yes. I did not come with it.

**C. J. Okereke:** In paragraph 10 of your statement on oath, you stated that the Claimant instructed the Defendant to remit the balance after processing the Certificate of Occupancy for the alleged 134 customers of the Claimant.

**PW1:** Yes

**C.J.Okereke:** Any document to support the above assertion?

**PW1:** Yes. I did not come with any document.

**C. J. Okereke:** What was the amount to be remitted by the Defendant to the Claimant?

**PW1:** I cannot ascertain how much was collected by the Defendant."

From the testimony of PW1, and the totality of the Claimant's case, I must state that the claimant has failed to furnish the court with relevant evidence to prove the allegation that he contracted the Defendant to recover the sum of N107, 200,000.00 from 134 subscribers. I so hold!

The right person to sue the Defendant for a breach of contract (if any), is Andi-Kan Resources Ltd.

Now, assuming but not conceding that the Claimant actually engaged the Defendant to recover the said sum of N107, 200,000 from the Defendant, the Claimant ought to have established by credible evidence that the Defendant indeed collected the said sum, but refused to do the job for

which he was contracted. The amount sought by the Claimant is a liquidated money demand, which ought to be specifically proven by the Claimant.

What is liquidated money demand? No doubt, the term or phrase "debt or liquidated money demand" has been severally and variously defined. Generally, the term, means an ascertained or specific amount which requires nothing more to be done to determine the quantum or extent of the Defendant's liability. It is an amount of money that could be ascertained by calculation or fixed by any scale or other positive data or Mathematics.

It is an amount that must be already ascertained or capable of being easily ascertainable as a mere matter of Arithmetical calculation without any further inquiry or investigation. It is a debt or other specific sum of money usually due and payable and which amount must already have been ascertained.

The Blacks Law Dictionary defines liquidated money as a demand the amount of which has been ascertained by agreement or otherwise. See **MAJA V SAMOURIS (2002) FWLR (PT.98) 818 SC.**

In an elaborate definition by the Supreme Court, in the case **I AKPAN V AKWA IBOM PROPERTY & INVESTMENT CO. LTD. (2013) LPELR - 20758 (SC)** Galadima JSC who delivered the lead Judgment had this to say on the definition of liquidated money demand or liquidated sum:-

"The term "liquidated money demand or liquidated sum" has attracted many judicial definitions. In some cases, it is held to be a sum of money previously agreed upon by the parties to a contract, if the action is based on a breach of

contract. See **JOHNNY v. EDOJA (2007) ALL FWLR (Pt. 365) 527, and NORTEX NIG. LTD V. FRANC TOOLS CO. LTD (1997) (pt. 501) 603, 609**. It has been defined as "a definite settled sum which the Defendant cannot deny. See **YA'U V CITY SECURITY LTD (2003) FWLR (pt.501) 603, 609**. However, the phrase "liquidated money demand" was interpreted by the Supreme Court in MAJA V SAMOURIS (Supra) as an ascertained claim or specific amount, which means there is nothing to be further done to determine the question of extent of the Defendant's liability.....But that when the amount to be recovered is fixed by opinion or estimate it is said not to be liquidated..... All said and done, the bottom line is that the amount claimed must be ascertainable, and if based on a contract. It must be agreed upon by the parties thereto...." [Underlining mine for emphasis].

In the instant case, the sum of ₦107, 200,000.00 is undoubtedly a liquidated demand, and strict proof in this sense means the evidence adduced must be credible. The Claimant is therefore expected to discharge the onus of proof in this regard, whether or not the Defendant has joined issues with him on same.

There is no evidence presented before this court, to show that the Claimant had any agreement with the Defendant or that the Defendant collected the sum of ₦107, 200, 000 from 134 subscribers on behalf of the Claimant. This claim by the Claimant is at best, a mere speculation, and a Court of law is not allowed to act on mere instinct or speculation but only on the evidence before it. See **SEISMOGRAPH SERVICES NIG. LTD. V. OGBEN (1979) 4 SC 101**.

Speculation never forms the basis for a decision of a Court of law. Rather it is evidence which must form the basis. Courts of Law are Courts of facts and Law. They decide issues on facts established before them and on laws. No doubt, the Defendant admitted that the Claimant introduced some subscribers to him, and that some of the subscribers referred by the Claimant made full payments, while others made part payments and that he commenced the process for issuance of C of O to them until the process was stalled due to the putting on hold of the activities of AATRIS.

For the subscribers referred by the Claimant to the Defendant, an order of court is hereby made, ordering the Defendant to immediately perform his obligation under the contract he had with such subscribers, by processing the issuance of the Certificates of Occupancy to them. If he can no longer perform that assignment, he should refund to the subscribers, all the monies paid to him by the subscribers.

On the whole, I find that the Claimant has failed to prove that it contracted the Defendant to recover the sum of ₦107, 200,000 from 134 customers on its behalf. I so hold!

On issue 2, it is instructive to note that there are two elements in litigation expenses, the fees a party pays to his legal practitioner for professional services, and the other sums of money spent by him in the course and for the purposes of the litigation. Costs awarded to cover the first element are known as solicitor's and own client costs, while those awarded in compensation of the second are called party and party costs or costs as between parties.

For solicitors and own client costs, a client is liable to pay. Such costs are rarely, if at all, included in the costs which the Court orders a party to pay. They are expected to be borne by the solicitor's own client. Party to party costs, as defined above, are what the Court considers in making its award and thus the basis of costs ordered against a party.

In **GUINNESS NIGERIA PLC vs. NWOKE (PT 689) 135 at 159**, the Court held that a claim for Solicitors fees is outlandish and should not be allowed as it did not arise as a result of damage suffered in the course of any transaction between the parties. Similarly, in **NWANJI vs. COASTAL SERVICES LTD (2004) 36 WRN 1at 14-15**, it was held that it was improper, unethical and an affront to public policy, to have a litigant pass the burden of costs of an action including his Solicitors fees to his opponent in the suit.

Therefore, I think that on the current state of the law, a claim for Solicitors fees, which does not form part of the claimant's cause of action is not one that can be granted.

This remains the legal position as I know it. The claim for the fees paid to the Defendant's solicitor is not part of the said cause of action. Therefore, it cannot be granted.

-----HON.  
JUSTICE M.S IDRIS  
(Presiding Judge)

Appearance

A.A Ejumejowo:- For the Claimant