

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT COURT 20, GUDU-ABUJA
ON WEDNESDAY THE 24TH DAY OF MAY 2023
BEFORE HIS LORDSHIP: HON. JUSTICE MODUPE R. OSHO- ADEBIYI
SUIT NO:CV/1093/2021

BETWEEN:

AYHMKEEM NIGERIA LTD =====CLAIMANT

AND

1. NIGERIAN POSTAL SERVICES (NIPOST)=====DEFENDANTS
2. ATTORNEY-GENERAL OF THE FEDERATION

JUDGMENT

The Claimant by a writ of Summons dated and filed on the 16th day of June 2021, prayed this Court for the following reliefs:

1. Damages to the tune of N9, 751, 728 .00 (Nine Million Seven Hundred and Fifty-One Thousand Seven Hundred and Twenty-Eight Naira) being the value of contract between 1st Defendant and the Claimant for the construction of retaining wall/blockwall fence at the Uli Post Office in Anambra State which said sum the Defendants have so far refused to pay despite several demands by the Claimant.
2. The sum of N6, 046, 071.36 (Six Million, Forty-Six Thousand, Seventy- One Naira and Thirty-Six Kobo) representing 62% increase in the cost of construction materials (inflation) being avoidable cost foisted on the claimant by the 1st Defendant's refusal to defray the project sum of N9,751, 728 .00 as at when due.
3. The sum of N2,925,518.40 (Two Million Nine Hundred and Twenty-Five Thousand Five Hundred and Eighteen Naira forty Kobo) representing 30% of the contract sum of N9,751,728.00 being the contingency fees charged by the legal practitioner foisted on the Claimant by the conduct of the 1st Defendant refusing/failing to pay its debt in issue as at when due.

4. Interest of 15% per annum on the entire judgment sum from the date of judgment sum until final liquidation.

The summary of facts that gave rise to this suit are as follows: The 1st Defendant awarded a contract to the Claimant for the construction of a retaining wall/blockwall fence at the Uli Post office, Anambra State, to the tune of Nine Million Seven Hundred and Fifty One Thousand, Seven Hundred and Twenty Eight Naira (N9, 751, 728). That the Claimant approached suppliers of construction materials and labourers to supply them on credit, making it possible for the Claimant to discharge its own part of the contract and ensure that it was completed within the specified time frame. That on the 12th day of February 2019, a team of inspectors conducted a joint inspection of the completed project and certified it as having been completed up to the desired standard. That the 1st Defendant has failed to pay the Claimant the contract sum despite several demands and entreaties to the 1st Defendant in order to pay the suppliers of the materials used for the job on credit.

That the price of cement has sky-rocketed up to 62% as of 2018 and now sells for N4,200.00 per bag and the refusal of the 1st Defendant to defray the project sum of N9, 751, 728.00 has placed the Claimant in a disadvantaged position and has gravely dented its reputation. That Claimant engaged a legal practitioner who agreed to institute this suit on a contingency fees' basis of 30% of the contract sum of N9, 751, 728.00 and judgment be entered per the claims in the statement of claim.

Upon service of the Writ on the Defendants, the 1st Defendant filed their Statement of Defence and accompanying processes and a summary of their case is that the Claimant failed to accept the award of the contract and neither did Claimant execute a formal agreement before proceeding to commence work at the site. That the Claimant acted mala-fide by not accepting the award of the contract and not executing a formal

agreement and urged the Court to dismiss the Claimant's case and award cost in their favour.

The 2nd Defendant on their part did not file a defence but filed a motion praying the Court to strike out the name of the 2nd Defendant as a party to this suit.

Parties having exchanged pleadings and issues joined, the case proceeded to trial with the claimant opening their case and calling a sole witness who testified as PW1 and adopted his witness statement on oath and tendered the following documents:

1. Award of contract for the construction of retaining wall/ block wall fence at NIPOST addressed to claimant and signed by the secretary/ legal adviser Nipost admitted as Exhibit A.
2. Letter dated 30th of December 2020 addressed to Nipost signed by Claimant as Exhibit B.
3. Protest letter on the refusal of the postmaster general to retire contract sum dated 19th of March 2021 signed by the claimant as Exhibit C.
4. Letter of reminder on the refusal of postmaster general to retire contract sum dated 27th of April 2021 and signed by claimant as Exhibit D
5. Final demand notice for payment of the sum of N9,751,728.00 Naira address to postmaster general dated 1st of June 2021 signed by West Point chambers as Exhibit E.
6. Contingency fee agreement as Exhibit F.
7. Article from vanguard newspapers on "Nipost threatening to reclaim encroached lands" dated 18th October 2020 as Exhibit G.
8. Letter of demand of payment of contract sum addressed to postmaster general dated 24th of June 2021 signed by claimant as Exhibits H.

9. Letter written by claimants dated 7th of September 2020 addressed to postmaster general as reminder on demand for payment of contract as Exhibit I.

10. Exhibit J NIPOSTPROGRESS/PRACTICAL COMPLETION REPORT 2 pages report on construction of retaining wall/block wall.

Under cross examination, the PW1 stated that they were awarded the contract in 2018 but was given the offer letter one month after. That they submitted their letter of acceptance although the acceptance was not done within two weeks as they were called to report to site in Anambra. That no formal agreement was executed. That the job was done in good faith without assurance of payment or mobilization.

The Claimant closed its case, and the 1st Defendant opened their defense calling two witnesses who testified as DW1 and DW2 who adopted their witness statement on oath and tendered the award of contracts already before the court as Exhibit A. Both witnesses were cross examined and at the close of their case the court ordered parties to file their written addresses.

The defendant failed to file within the required time frame whereupon the claimant filed their written address and raised four issues for determination as follows:

1. Whether the terms of a simple contract require compliance with/observance of any special formality before it can become binding.
2. Whether the instant contract is a simple contract or not.
3. Whether the 1st Defendant can dissociate itself from the act of its servant/ agents mentioned in paragraphs 3, 4, 5, and 6 of the claimant's reply filed on 28th of September 2021 and paragraphs 7 and 8 of the statement of claim.
4. Whether the Claimant successfully established its claim against the defendants particularly the 1st Defendant.

Claimants counsel, G. Mrakpor, Esq., arguing issue one and two submitted that going by the one-year performance period laid down by the statute of limitation, the contract between the parties is a simple contract and once there is an agreement between the parties, strict compliance with formality is not required for such contract to be binding and enforceable. Submitted that defendant's insistence of lack of compliance should be discountenanced and urged the court to resolve issue one and two in favor of the claimant and hold that the contract between parties falls under simple contract and does not need special formality for it to be binding.

Arguing issue 3, counsel to the claimant submitted that acts of the servants of 1st defendant as stated in the statement of claim are deemed to be acts of the 1st defendant and urged the court to hold that 1st defendant cannot dissociate itself from acts of its agents.

Arguing the final issue, counsel submitted that from the totality of the evidence before this court, the claimant has successfully proved its entitlement to the entirety of the reliefs sought and urged the court to hold in favour of the claimant and grant the reliefs sought in the statement of claim. Counsel relied on the following authorities:

1. ASCOT FLOWLINESS LTD v. PROJECTS LTD (2015) LPELR-25680(CA) PP 14
2. UBA PLC V. SIGNER SABITHOS (NIG)LTD (2018) LPELR-51586(CA) PP 22 - 25 PARAS B- A,
3. BELLVIEW AIRLINES LTD V. FADAHUNSI & ORS (2015) LPELR-25915(CA) PP 25- 25 PARAS A- D,
4. ORIEBOSI V. ANDYSAM INVESTMENT CO. LTD (2014) LPELR-23607(CA) PP 24- 24 PARASD-F,
5. ONYEKWELUJE VS. BENUE STATE GOVERNMENT (2005) 8 NWLR (PT. 928) 614 @ 646 - 647 PARAGRAPHS B- B,
6. MACAULAY v. NAL MERCHANT BANK LTD (1990) LPELR-1801(SC) P.23, PARAS.B-F
7. COTIA COMMERCIO v SANUSI BROS. LTD. (2000) 2 SCNQR (Pt 2) P. 1516 RATIO 2
8. AYOKE V. BELLO (1992) 10 NWLR (PT. 218) P. 380 RATIO 2

9. ZENITH BANKPLC v. OMENAKA &ANOR: (2016) LPELR-40327(CA) PP. 31-32, PARAS. C-B
10. DORKUBO &ORS v. UDOH &ANOR (2016) LPELR-41167(CA) PP. 13-14, PARAS. D-C
11. ADIKE V. OBIARERI (2002) 4 NWLR (PT. 758) 537 RATIOS 6&7
12. DIKE &ORS V. ADUBA &ANOR: (2016) LPELR- 41035(CA) PP. 26-27, PARAS. F-D,
13. OKAFOR & ORS V. IBEGBU (2016) LPELR-40117(CA) PP 31 -32 PARAS E- A.

The 1stdefendant on its part, filed their final address out of time along with the motion for extension of time which motion they failed to move.The Court in OFORKIRE & ANOR v. MADUIKE & ORS (2003) LPELR-2269(SC) PerTOBI, J.S.C in (Pp. 17 paras. E) held that a Court process which is not moved in Court is as good as not filed, unless the process is not opposed by the respondent. In that respect, the Court will deem the motion as moved. In this instant case, the 1st Defendant did not move his motion for extension of time and there is no opposition by the Claimant, hence, this Court would deem the motion as moved and proceed to consider the written address filed by the 1st Defendant.

From the address filed, the defendant raised three issues as follows:

1. Whether a mere offer without more can constitute a valid and enforceable contract?
2. On whom lies the burden of proof in a civil case.
3. Whether the claimant has successfully proved its case to be entitled to the reliefs sought in this suit.

Counsel to the 1st defendant E. A. Agbonjafor, Esq., arguing the first issue, submitted that the offer letter by the 1st defendant in Exhibit A ought to be accepted in writing for there to be an agreement, which claimant under cross examination admitted not to have done and urged the court to hold that since there was no acceptance, there is no valid contract to be enforced.

Arguing issue 2, counsel submitted that he who asserts must prove and the claimant failed to prove the fact that the 1st defendant's agent excused the

claimant from executing the agreement in Abuja due to urgency as the agent was not called as a witness to buttress that fact and urged the court to so hold.

Arguing issue 3, counsel contended that the claimant's suit is unmeritorious, and the contract is unenforceable as there is no valid contract to enforce as a result of the unacceptance by the claimants to the offer letter, hence, claimant has failed to prove its case to be entitled to the reliefs sought and urged the court to so hold. Counsel relied on the following cases:

1. NAFF LTD/GTE & ORS v. LLOYD & SOTHEBY LTD & ANOR (2021) LPELR-54741(CA)
2. TSOKWA MOTORS NIGERIA LTD. & ANOR V. UNION BANK OF NIGERIA LTD. (1996) 9 NWLR (PT. 471) 129.
3. OMEGA BANK NIGERIA PIC. V. O.B.C. LTD. (2005) 8 NWLR (Pt. 928) 547.
4. AKPAN v. UBONG (2013) LPELR-20418(CA)
5. OKOYE V. NWANKWO (2014) 15 NWLR (PT. 1429)
6. DUNLOP PNEUMATIC TYRE CO LTD V. SELFRIDGE & CO LTD [1915] UKHL 1(26 APRIL 1915), [1915] AC 847.
7. DHL v. EZE-UZOAMAKA & ANOR (2020) LPELR-50459(CA)
8. MICHAEL V. ACCESS BANK (2017) LPELR (41981) 1 at 48-49 IBE v. BONUM NIGERIALTD (2019) LPELR (46452) 1.
9. GUINNESS NIGERIA PLC v. WOKE (2000) 15 NWLR (pt. 689) 135 at 159
10. NWANJI v. COASTALSERVICESLTD (2004)36 WRN 1at 14-15,
11. IHEKWOABA v. ACB LIMITED (1998)10 NWLR (PT. 571) 590 AT 690-611,
12. MACHINE UMUDGE & ANOR VSBPDC NIG LTD (1975) LPELR- 3375 (SC).

I have examined the totality of the Claimant's case together with the evidence and argument of Claimant's counsel in the written address. I have also examined the case of the 1st Defendant as well as the written address of Counsel to the 1st defendant. This Court has also considered the motion filed by the 2nd defendant and the issues that require resolution are:

1. Whether the name of the second defendant be struck out from this suit.

2. Whether the claimant is entitled to the reliefs are sought in the statement of claim.

With respect to the first issue, which is whether the name of the 2nd defendant be struck out in this suit, the second defendant in their preliminary objection, prayed this court to strike out the name of the 2nd defendant on the ground that no cause of action is disclosed against the 2nd defendant amongst other grounds. The claimant in this suit did not object to this application. The law is trite that in determining whether reasonable cause of action is disclosed, the court will confine itself to the writ of summons and statement of claim. I have examined the entirety of the writ of summons and facts in the statement of claim from the facts stated therein, nowhere is the name of the second defendant mentioned save for when the second defendant is being described. The grouse of the claimant is clearly against the 1st defendant who they allegedly entered into a contract with. I am in total agreement with the Counsel to the 2nd defendant that the 2nd defendant ought not be joined as a party in this suit as clearly, they are not privy to the alleged contract between the 1st defendant and the claimant. Consequently, the name of the 2nd defendant be and is hereby struck out from this suit.

Now to the second issue which is, whether the claimant is entitled to the reliefs as sought in the statement of claim. The claimant in relief one is claiming for the value of the contract sum having completed the contract. To prove this, the claimant's witness gave evidence that they were awarded a contract via letter of award in Exhibit A to construct a block wall fence to the tune of 9,751,728 naira. That the claimant proceeded to site and the job was completed with the claimant given a job completion report by the 1st defendant in Exhibit J, however, after completion of the job and several demand letters written to the 1st defendant, the 1st defendant refused to defray the project sum. The 1st defendant on its part is contending that the offer letter which is Exhibit A was merely an offer which was subject to a

formal written acceptance and subsequent execution of a written agreement and the claimant's admission that neither of the requirements have been done, the court should hold that there was no acceptance and consequently no valid contract to be enforced.

The law is very well settled that to constitute a binding contract between parties, there must be a meeting of the mind and the mutual consent relates to offer and acceptance. An offer is the expression by a party of readiness to contract on terms specified by him (the offeror), which if accepted by the offeree, gives rise to a binding contract. The offer matures to a contract where the offeree signifies the clear and unequivocal intention to accept the offer. See the case of BILANTE INT'L LTD VS. NDIC (2011) LPELR-781(SC) where Per ADEKEYE, J.S.C (Pp. 22-23 paras. F) defined an offer as

"An offer may be defined as a definite indication by one person to another that he is willing to conclude a contract on the terms proposed which when accepted will create a binding legal obligation. Such offer may be verbal, written or even implied from the conduct of the offeror. Majekodunmi v. National Bank of Nigeria (1978) 3 SC 119 at Pg.129., Omega Bank (Nig.) Plc. v. O.B.C. Ltd. (2005) 8 NWLR (Pt.928) Pg.547."

Clearly, there is an offer before this Court in exhibit A. For there to be a consensus, there ought to be an acceptance. An acceptance is the reciprocal act or action of the offeree to an offer in which he indicates his agreement to the terms of the offer as conveyed to him by the overall. This can be demonstrated by the conduct of the parties, by words or by documents. It is the dictum of Achike JCA (as he then was) in Orient Bank (Nig) PLC v. Bilante International Ltd (1997) 8 NWLR (Pt 515) 37 at 77 held thus *"it is true to state that the signification of acceptance may be verbal, inferable from conduct or in writing...."*

In this instant case, it is the evidence of the claimant that they accepted the offer by proceeding to site to commence the construction in order to finish within the stipulated time frame as stated in the offer.

It is thus the law that the offeree's act or conduct must be unequivocal and in accordance with the terms of the offer to constitute an acceptance. Clearly there is acceptance by the claimant to the offer through the conduct of the Claimant by proceeding to execute the task as stated in the award letter. Now, where an offer as in this case is subject to condition, the formation of the contract is postponed until the happening of the event on which the offer is conditioned.

In this instant case, from the content of the offer and exhibit A it stipulates the mode of acceptance which states thus

“You are requested to indicate your acceptance of the offer within two weeks of the receipt of this letter and thereafter liase with the general manager (PW) for further directions.

You are also advised to execute a formal agreement in the office of the secretary/legal adviser to validate the offer.”

The above stated conditions from the evidence before this court were not fulfilled prior to the claimant's acceptance by conduct. This fact was admitted by the PW1 under cross examination. Having stated the stipulated mode of acceptance of the offer in the offer letter, the claimant has a duty to comply with same for the agreement to take effect.

Be that as it may, it is the evidence before this court that the claimant indeed commenced the job without any form of objection from the defendant. There is also undisputed evidence before this court that the claimant indeed completed the contract with officers of the 1st defendant sending a team of inspectors to the site who conducted inspection upon completion of the job by the claimant and a copy of the job completion

report was issued to the claimant by the defendant in Exhibit J. This piece of evidence was neither controverted nor challenged by the defendant. The law is settled that a party who has benefited from a contract cannot evade his obligations under that contract cannot allege same to be null and void. See **ADETUNJI V. AGBOJO (1997) 1 NWLR (Pt. 484) Pg. 705 @ 718**. Also, a party cannot take advantage of an irregularity he acquiesced.

Also, in the case of **ADEDEJI V. NATIONAL BANK OF NIGERIA LTD (1989) 1 NWLR (PT. 96) 212 @ 226** Akpata JCA (as he then was) held as follows: -

“It is morally despicable for a person who has benefitted from an agreement to turn around and say that the agreement is null and void”.

Defendant by Exhibit J which is unchallenged has stated that Plaintiff indeed executed his side of the contract to the satisfaction of the defendant. It is now too late in the day for the defendants to challenge the mode of acceptance bearing in mind that defendant benefitted from the contract. The defendant clearly failed to challenge the mode and procedure at the commencement of the job or upon being aware that the claimant had proceeded to site prior to the written acceptance and execution of a contract and as such, the failure of the claimant to accept the offer in the mode prescribed by the defendant has not in any way jeopardized the Defendants.

It is even more despicable on the part of the defendants to bring up the issue of acceptance after defendant had gone to the site of the finished job, inspected same, satisfied with quality of contract executed by the Claimant and proceeded to issue the Claimant with a completion report duly signed by 5 members of an inspection team made up of employees of the Defendants who confirmed via the report that the contract was 100% completed by the Claimant and contract was satisfactorily executed. The said report is marked as Exhibit J and is unchallenged and uncontroverted

by the Defendants. It is the duty of the Court in the principle of equity and fairness to do substantial justice.

In this instant case, the Defendant having issued the job completion certificate upon being satisfied about the quantity and perfection of the job, cannot resile from the contract on the ground of irregularity. The claimant is in my view entitled to the sum claimed and the argument of the defence on the total sum to be paid raised in their amendment cannot be sustained as what was stated in the offer is the sum claimed by the claimant. The Claimant's relief 1 hereby succeeds.

The Claimant's relief 2 for the sum of N6, 046, 071.36 (Six Million, Forty-Six Thousand, Seventy- One Naira and Thirty-Six Kobo (sic) representing 62% increase in the cost of construction materials (inflation) being avoidable cost foisted on the claimant by the 1st Defendant's refusal to defray the project sum of N9,751, 728 .00 as and when due, fails in its entirety as the the Claimant failed to prove his entitlement to this relief. There is nothing before this Court to show that indeed the Claimant got the supplies used for the job on credit. The Claimant from the evidence before this Court executed the job using the bill of quantity exhibited before this Court and in the absence of any other evidence to show that the materials used for the job was gotten on credit, this relief fails.

The Claimant in relief 3 is seeking for the sum of N2,925,518.40 (Two Million Nine Hundred and Twenty-Five Thousand Five Hundred and Eighteen Naira forty Kobos) representing 30% of the contract sum of N9,751,728.00 being the contingency fees charged by the legal practitioner foisted on the Claimant by the conduct of the 1st Defendant refusing/failing to pay its debt in issue as at when due.

Per AGUBE, J.C.A in KEYSTONE BANK LTD v. ABDULGAFARU YUSUF & CO. LTD (2021) LPELR-55646(CA) (Pp. 68 paras. A) held thus

"The recovery of legal fees by client does not form part of our legal jurisprudence be that as it may, it seems that a claim

for Solicitors fees does not form part of the cause of action is not one that can be granted. A relief which a claimant in an action is entitled to, if established by the evidence, are those reliefs which form part of the claimant's cause of action. See the cases of Guinness Nigeria Plc vs. Nwoke (2000) 15 NWLR (Pt.689) 135 at 159; Nwanji vs Coastal Services Ltd. (2004) 36 WRN 1 at 14-15 and Prince Ugoh Michael vs. Access Bank of Nigeria Plc (2017) LPELR-41981 (CA) per Ogakwu, JCA at pages 48-49, para. E."

Consequent of the above, this relief also fails as from the totality of the facts and evidence before this Court, the solicitors fee does not form part of the cause of action in this instant suit.

On the final relief for interest of 15% on the judgment sum, by Order 39 Rule 4 of the FCT Civil Procedure Rules 2018, this Court is empowered to grant post judgment interest and as such, this Court hereby grant 15% interest on the judgment sum until final liquidation.

Consequently, it is hereby ordered as follows:

1. The sum of N9, 751, 728 .00 (Nine Million Seven Hundred and Fifty-One Thousand Seven Hundred and Twenty-Eight Naira) is hereby awarded to the Claimant being the value of contract between 1st Defendant and the Claimant for the construction of retaining wall/blockwall fence at the Uli Post Office in Anambra State.
2. Interest of 15% per annum on the entire judgment from the date of judgment sum until final liquidation.

Parties: Claimant is present represented by OnyinyeOguamah. Defendants are absent.

Appearances: Emmanuel A. Agbonjator appearing for the 1st Defendant. Claimant is not represented.

HON. JUSTICE MODUPE R. OSHO-ADEBIYI
JUDGE
24/5/2023