

**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: 18<sup>TH</sup> MAY, 2023**

**FCT/HC/ CV/708/2021**

**BETWEEN**

**VLANICOM LIMITED-----**

**CLAIMANT**

**(FORMERLY VLATACOM LIMITED)**

**AND**

- 1. NIGERIA IMMIGRATION SERVICE**
- 2. FEDERAL GOVERNMENT OF NIGERIA**
- 3. HONOURABLE ATTORNEY- GENERAL OF THE  
FEDERATION AND MINISTER OF JUSTICE**



**DEFENDANTS**

**JUDGEMENT**

By an amended writ of summons filed on 21<sup>st</sup> October, 2021, the Claimant instituted this suit against the Defendants, seeking the several reliefs contained in the writ and statement of claim.

A brief gist of the Claimant's case as can be gleaned from its statement of claim is that the Claimant entered into a lease agreement for customized passenger registration system (PARS) with the Nigerian Immigration Service (the 1<sup>st</sup> Defendant) on the 9<sup>th</sup> of February, 2011. The initial lease agreement was to run for two years. At the expiration of the

initial two years, the parties executed an addendum to the original lease agreement dated February 9, 2011 and signed on December 2014. By this addendum, the parties revalidated the lease agreement of February 9, 2011 and further extended the expiry date of same from the 8<sup>th</sup> day of February, 2013 to the 8<sup>th</sup> day of February 2015.

According to the addendum to the lease agreement, the annual lease price per unit of passenger registration software effective from February 9, 2015, was US\$2,300 (Two Thousand Three Hundred US Dollars) only VAT inclusive. The total leasable quantity of the said software was one hundred and sixty (160), and by virtue of the addendum to the lease agreement, the Defendant was supposed to order an additional ninety (90) units to increase the total leasable quantity of the said software to 250 (Two Hundred and Fifty) units.

It is the contention of the Claimant that upon expiration of the lease on 8<sup>th</sup> February 2015, the 1<sup>st</sup> Defendant continued using the said software, and has refused to pay the Claimant for the lease and use of the customized passenger registration system software since the 9<sup>th</sup> of February, 2015.

In response to the claimant's claim, the Defendants in their joint statement of Defence alleged that the due process of law was not followed in the execution of the said agreement between the Claimant and the 1<sup>st</sup> Defendant, and that the purported executed agreement with the claimant was never executed in that the Defendants lacked the statutory powers to award contracts in that magnitude without the approval of the Federal Ministry of

Finance, the Infrastructure Concession Regulatory Commission, the Bureau of Public Procurement and the Federal Executive Council. As such, the Defendants maintained that the project was a proposal which was never approved.

The Defendants further faulted the lease agreement signed on 9<sup>th</sup> February, 2011, stating that it was not properly executed, having not complied with the rules of a valid and enforceable contract execution as it relates to attestation of witness.

The Defendants denied using the software and maintained that the alleged proposed agreement expired since 2015 without any further renewal or extension.

The Claimant opened its case on the 5<sup>th</sup> day of October, 2021 by calling its lone witness, Mr. Edmond Osita Osiegbu, the Managing Director of the Claimant. He testified as the PW1 by adopting his witness statement on oath deposed to on the 9<sup>th</sup> day of March, 2021. The PW1 in the course of the testimony tendered 21 documents in evidence as follows:-

1. Certificate of incorporation- Exh. 1
2. 1<sup>st</sup> Defendant Letter to the Claimant dated 12<sup>th</sup> October, 2010-Exh. 2
3. Lease Agreement dated 9<sup>th</sup> February 2011- Exh. 3
4. Addendum to Lease agreement- Exh. 3
5. System Acceptance Test Procedure dated 7<sup>th</sup> December 2011- Exh. 4
6. PARS hand over signed off dated 28 December 2011- Exh. 5
7. Site Acceptance Test dated 28 December, 2011- Exh. 5

8. Letter dated 11<sup>th</sup> March, 2019 – Exh. 6
9. Pre-Action notice dated 9<sup>th</sup> day of February, 2021 – Exh. 7
10. Letter dated 2<sup>nd</sup> November 2010 – Exh. 8
11. Letter dated 17<sup>th</sup> February, 2014 – Exh. 9
12. Letter dated 19<sup>th</sup> May 2014 – Exh. 10
13. Letter dated 1<sup>st</sup> July, 2014 – Exh. 11
14. Letter dated 21<sup>st</sup> day of July 2014 – Exh. 12
15. Letter dated 12<sup>th</sup> September 2014 – Exh. 13
16. Letter dated 13<sup>th</sup> October 2014 – Exh. 14
17. Software Usage Agreement dated 16<sup>th</sup> September 2015 – Exh. 15
18. Letter dated 12<sup>th</sup> January 2016 – Exh. 16
19. Letter dated 9<sup>th</sup> day February 2016- Exh. 17
20. Letter dated 24<sup>th</sup> August, 2016 – Exh. 18
21. Letter dated 9<sup>th</sup> January, 2017 – Exh. 19
22. Annual Report of the Nigerian Bureau of Statistics dated 20<sup>th</sup> October, 2021 – Exh. 20

PW1 was cross examined by learned counsel to the Defendant. After affording the Defendants several opportunity to proceed with its defence, to which the Defendant failed, on 29<sup>th</sup> September, 2022, the Claimant applied that the defence of the Defendants be foreclosed and the court granted the application foreclosing the defence of the Defendants.

Parties proceeded to file their respective final written addresses.

Learned counsel to the Claimant in his final written address raised a sole issue of whether the Claimant has discharged

the burden of proof placed on it by law in this suit, and therefore entitled to judgment.

Counsel submitted that the Claimant has discharged the burden of proof placed on it by law in this action. He pointed out that the claimant's claim is declaratory and that in a suit like this, the law is that any claimant who seeks declaratory relief must show that he has an interest or right which forms a foundation for that declaration. Counsel posited that the Claimant and the 1<sup>st</sup> Defendant are bound by Exhibit 3, the addendum to the lease agreement, and that the 1<sup>st</sup> Defendant breached the contract by refusing, failing and neglecting to pay for the usage of the software from 9<sup>th</sup> day of February, 2015 up till this moment and unlawfully and illegally using the already installed 160 units.

Counsel argued that the Claimant has showed by evidence that it has fulfilled its own part of the contract by the deployment and installation of the 160 units of the software which was duly certified to be in good condition by virtue of exhibit 4 and 5, while the 1<sup>st</sup> Defendant have failed to pay for the agreed annual lease per price unit of the 160 units of the software and the refusal to take lease of the minimum leasable quantity as agreed in the contract. Highlighting the essential elements of a contract, counsel urged the court to ensure the enforcement of the contract between the Claimant and the 1<sup>st</sup> Defendant, and to give a restitution order for the economic loss suffered by the Claimant.

Counsel further argued that the Claimant's claim remains unchallenged and uncontradicted, as the Defendants did not at any material time challenged or contradicted the

claim for the Claimant's pleaded and proved special damages. According to counsel, the defendants abandoned their defence having failed to call any witness to testify in their defence. Counsel submitted that the averment of a fact in a pleading that is not supported by evidence is deemed abandoned and must be discountenanced.

On the part of the Defendants, learned state counsel raised two issues to wit:-

- a. Whether the Addendum to the lease agreement dated 11<sup>th</sup> December 2014, is still a subsisting document capable of vesting any legal rights or obligation, same having expired on the 8<sup>th</sup> February, 2015.
- b. If the answer to the above is negative, does the Claimant's case establish a cause of action against the Defendants?

Arguing on issue 1, learned counsel for the defendants stated that article 2 of the Addendum dated 11<sup>th</sup> December 2013 does not contain anything to the effect that the 1<sup>st</sup> Defendant is under a perpetual obligation to continue to lease the claimant's software license after the expiration of the addendum on the 8<sup>th</sup> February, 2015, and as such, the Claimant's reliefs have no leg to stand.

Relying on the decision in *Ezenwa v. Oko* (2008) 3 NWLR (Pt. 1075) 610 at p. 629-630, counsel argued that upon the expiration of the lease agreement between the Claimant and the 1<sup>st</sup> Defendant, clause 2 of the addendum can only be enforceable if the 1<sup>st</sup> Defendant requested for the renewal of the services contained therein. Counsel

submitted that the contract being sought to be enforced in this case is non-existent, the said contract having expired on the 8<sup>th</sup> of February, 2015.

On issue 2, counsel submitted that the claimant's case lacks any foundation, as the lease being sought to be relied on by the Claimant is long expired and by operation, non-existent. Counsel argued that the Claimant has failed to disclose a cause of action against the defendant in this case.

In reaction to the written address of the Defendants, the Claimant filed a Reply on Points of Law.

Having thoroughly analyzed the facts and legal arguments of parties in this case, I feel compelled to adopt a sole issue, which I believe will sufficiently lay to rest the contention of parties in this suit. The important issue for consideration in this case is whether the Claimant has discharged the burden of proof placed on it by law in this suit, and therefore entitled to judgment.

The claimant in a claim for damages for breach of contract has a fundamental duty to establish certain things. Since a breach is an allegation that the other party has acted contrary to the terms of a contract, the claimant must plead and establish by evidence, the existence and subsistence of a valid contract as well as its terms and particularly, the term that has been breached and in what manner it was breached. **See BIKAY ENGINEERING LTD v. GOVERNOR ONDO STATE & ORS (2013) LPELR-20890 (CA); HAIDO v. USMAN (2003) LPELR-5249(CA) and BEST (NIGERIA)**

**LTD v. BLACKWOOD HODGE (NIGERIA) LTD (2011) LPELR-776(SC)**

The major contention in this suit as highlighted by the Defendants in their final written address is not whether there existed a contract between the Claimant and the 1<sup>st</sup> Defendant, but whether the said contract is still subsisting.

I feel that the Claimant has established the existence of a lease agreement between the claimant and the 1<sup>st</sup> defendant, which lease elapsed on 9<sup>th</sup> February, 2015. The claimant has clearly led sufficient evidence to persuade the court that it had a contract with the defendant for the purpose of leasing and installing a software for use by the 1<sup>st</sup> Defendant. Even though the Defendants may attempt to deny the existence of such contract, as they tried to do in their abandoned pleadings, one fact stands out very clear, that between 2011 to February 8, 2015, there existed a valid lease agreement between the Claimant and the 1<sup>st</sup> Defendant.

Now, the most important issue to consider at this point is whether the expiration of the lease agreement automatically removed discharges the 1<sup>st</sup> Defendant from any obligation under the lease agreement.

Well, the Defendants have placed heavy reliance on the case of Ezenwa v. Oko (2008) 3 NWLR (Pt. 1075) 610 at p. 629-630, in arguing that upon the expiration of the lease agreement between the Claimant and the 1<sup>st</sup> Defendant, clause 2 of the addendum can only be enforceable if the 1<sup>st</sup> Defendant requested for the renewal of the services contained therein. In other words, the defendants argument



is that since the lease agreement had elapsed, the Defendant is no longer obliged to keep to the terms of the lease contract, unless it renews same.

There is no dispute that the lease contract had expired, in fact the Claimant is not denying that fact. The Claimant's contention however is that upon expiration of the lease, the 1<sup>st</sup> Defendant failed to comply with the agreed term for further utilization of the E-Passenger Registration software and continued using the software without payment for them.

Apart from tendering exhibit 20 to prove that the 1<sup>st</sup> Defendant was still using the software after the expiration of the lease on 8<sup>th</sup> February, 2015, the Claimant also tendered several letters written to the 1<sup>st</sup> Defendant by the Claimant.

There is nothing before me to show that the 1<sup>st</sup> Defendant ever responded to this letters to repudiate or challenge its contents. It is my humble view that the defendant ought to have reacted one way or the other to the contents of the letters if indeed it had discontinued usage of the Claimant's software. This, in my view, strengthens the case of the Claimant especially as the 1<sup>st</sup> Defendant never led any evidence to show that it had stopped using the Claimant's software after February 8, 2015.

Now, what is the position of the law where a lessee after the expiration of a lease, continues to retain possession of a leased property, as in this case?

Such a lessee can be described as "a tenant in sufferance". A tenant at sufferance is one in which the original grant by

the lessor to the lessee has expired, usually by effluxion of time, but the lessee holds over the leased property. In such a case, the lessee's right to the property to which he had come in upon a lawful title by grant is at an end but, although he has no more title as such, he continues in possession of the property without any further grant or agreement by the lessor on whom the right to the reversion resides.

One necessary pre-condition of a tenant at sufferance is that the lessee must have come upon property lawfully. Though he no longer, strictly, has a legal interest in the lease, the law will deem his right to possession to have continued on the same terms and conditions as the original lease till possession has been duly and properly wrested from him by the lessor. See **AFRICAN PETROLEUM LTD. V OWODUNNI (1991) 11 SCNJ 81**

This point was explained by Iguh, JSC in Ogualaji Vs Attorney General, Rivers State (1997) 6 NWLR (PT 508) 209 at pages 233-234 H-F thus: -

*"Secondly, while the appellant under the said State Lands Law was entitled to a further use and possession of the demised property for three months after the expiration of his lease, he remained, at common law, a tenant at sufferance of the property in dispute until he was lawfully ejected or sued for possession by the lessor. This is because, where a tenant, having entered the demised premises lawfully or under a valid tenancy in the first place, holds the same over at the expiration of the lease and remains in possession thereof without*

*the landlord's assent or dissent, he automatically becomes a tenant at sufferance . . . This class of lease or tenancy arises only by operation of law and not by express grant for it assumes an absence of an agreement between the lessor or landlord of the one part, and the lessee or tenant of the other part . . . It is nonetheless well recognized in law as a special class of tenancy or leasehold, enjoying as it were, its attendant rights and privileges and terminable by the lessor or landlord by the ejection of the lessee or tenant by the due process of law. This generally takes the form of a Court action against such lessee or tenant for possession of the demised premises."*

Though the lease agreement in this case is not that of occupation of a physical premises as in the above case, the general principle which governs all manner of leases is still very much relevant and applicable in this case.

Where a lessee holds a lease property over at the expiration of the lease, such lessee is still bound by the terms and conditions of the original lease, and the lessor is entitled to recover mesne profit from the lessee.

Having determined that the continued holding over of the Leased property even after the expiration of the lease, binds the lessee to the terms of the original lease, the vex question for determination at this point is whether the lessee is bound to pay the lessor the sum of 2,300 US Dollars per unit of the software annually as

specified in article 2 of the Addendum to the lease agreement.

It is instructive to note that the said payment of 2,300 US Dollars per unit, was to take effect after the expiration of the addendum to the lease agreement on 8<sup>th</sup> February, 2015.

To my mind, the intention of parties, was very clear and unambiguous in as to the amount to be paid by the 1<sup>st</sup> Defendant for the continued usage of the software after the expiration of the extended tenor of the lease. The Lessee (i.e the 1<sup>st</sup> Defendant) is therefore bound to honor that agreement. If it did not intend to be bound by it upon the expiration of the lease, it should have made that known to the Claimant in clear terms.

Nevertheless, the 1<sup>st</sup> Defendant should not be made to pay for more than the 160 units of software for which it had used. As for as the 1<sup>st</sup> Defendant did not order for an additional 90 units as it was required to do under the addendum to the lease agreement, I think it will be obnoxious to our ideas of justice and fairness to compel the 1<sup>st</sup> Defendant to pay beyond the quantum of what it used.

For the 160 units of the software used between 9<sup>th</sup> February 2015 and 9<sup>th</sup> February 2021, the rent due to the Claimant is 368,000 US Dollars per annum. For the six years which the 1<sup>st</sup> Defendant continued using the 160 units of the software after expiration of the lease, the total rent due to the Claimant is 2,208,000 US Dollars, being the cumulative sum from the 160 Units of

Software. The 1<sup>st</sup> Defendant is hereby ordered to immediately pay to Claimant the sum of 2, 208, 000 US Dollars, being the cumulative outstanding rent for the 160 units of the E-Passenger Registration software used by the 1<sup>st</sup> Defendant for a continuous period of Six (6) years after expiration of the addendum to the original lease agreement.

The 1<sup>st</sup> Defendant is also ordered to pay the sum of N2,000,000.00 To the Claimant as general and exemplary damages for the sufferings inflicted on the Claimant's business as a result of its action in holding unto the Claimant's property and using same without payment for a continuous period of six years after the expiration of the lease. N500,000.00 is awarded as cost of this suit.

10% interest on the entire judgment sum is hereby levied from the date of this judgment until the entire sum and interest is liquidated by the Defendants.

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

Ayo Omoleaupaen:- Appearing with O. Onuigbo and A.A Salami for the  
Claimant

Mallam J.A Adamu:-Appearing with O.A Oluruntogbe for the Defendant.