

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: 10TH JULY, 2023

FCT/HC/CV/590/2021

BETWEEN

1. ANSAR CORE CONCEPT SOLID FIELD LIMITED } PLAINTIFFS
2. AHMED SAIDU }

AND

1. KUJE AREA COUNCIL }
2. CHAIRMAN KUJE AREA COUNCIL } DEFENDANTS

JUDGMENT

The Claimants instituted this suit on 25th February vide a writ of summons, seeking the following reliefs:-

1. A DECLARATION that the contract entered into by the 1st Plaintiff and the 1st Defendant has been breached by the Defendants on the 25th day of February, 2019.
2. Specific damage of the sum of N3, 330,000.00 (Three Million Three Hundred and Thirty Thousand Naira).
3. General damages in the sum of N10, 000,000.00(Ten Million Naira) only for the breach of contract.
4. N300, 000.00 (Three Hundred Thousand Naira) only being the cost of maintaining this action.

A summary of the Claimant's case is that the 1st Claimant was engaged by the Claimant as consultants for collecting revenue for the Area Council in respect of borehole drillers and water commercial, and the contract was to be renewed yearly. The first engagement was done with percentage sharing formula wherein the 1st Claimant will remit 70% to the 1st Defendants and keep 30%.

The Claimants averred that the Defendants did not adhere to its terms and conditions of the unsigned agreement drafted in 2014. The claimants further averred that in 2017, 6 lines of operations was handed over to the Defendants to collect revenue in respect of drillers and water vendor which lines are: water tankers, borehole drillers, borehole drillers, borehole commercials, pure water industries, pure water suppliers and truck pushers. Furthermore, in 2019, the claimant's contract was allegedly renewed and the Defendants increased the areas of collection to 10 which included bottle water suppliers, plastic bottled water producers and leather water producers. The amount to be remitted to the Defendants in 2019 was N2, 200,000.00 (Two Million Two Hundred Thousand Naira) only.

As at May 2019, the Claimant claims to have paid into the coffers of the 1st Defendant the sum of N1, 900,000.00 (One Million Nine Hundred Thousand Naira). The Claimants alleged that the

1st Claimant and the 1st Defendant entered into an agreement for the period of 2019 which agreement the Defendants held over and refused to sign same despite the fact that Claimant signed it and handed it over to the Defendants. The Claimants allege that he worked in consonance with the said agreement, but the obligation of the 1st Defendant as contained in the said agreement was not adhered to at all. The 1st Defendant did not allow the officials of the 1st Claimant to enter the secretariat to carry out their prescribed duty. The defendants did not provide any office accommodation, logistic support like vehicles to the 1st Claimant.

The Claimants claim that they rented office space and furnished same for themselves and also spent money on movement of logistics, vehicle, and motorcycle, the total of which amounted to N1, 130,000.00.

It is the contention of the Claimants that the Defendants used hoodlums to deprive the Claimants of collecting the said tax in April 2019, that the activity of the hoodlums has made it impossible for the Plaintiff to completely pay the sum to the Defendants or make any profit at all.

The Defendant in reaction, filed a statement of Defence on 5th October, 2021 and categorically denied renewing the 1st Claimant's engagement for 2015, part of 2016 and 2018. The

Defendants averred that their decision not to renew the said contract was a result of the internal bickering amongst the 1st Claimant, One Mr. Godwin Iornongo Atolough who partnered with the 1st Claimant, and other of their employees, and also due to the unsatisfactory performance of the 1st Claimant arising from its refusal to make full disclosure of monies generated, lack of transparency and sincerity that culminated into non-remittance of some of the revenue. The Defendants also alleged that Plaintiff committed serious breaches to the terms of the 2014 engagement letter.

The Defendants denied the allegation that they refused to sign the said contract, rather they alleged that it is the 1st Claimant who actually refused to and neglected to perfect the contract agreement by signing it. The Defendants contend that there is no contract between Plaintiff and Defendant, as the unsigned agreement cannot pass or qualify for a binding agreement.

The Defendants further maintained that issues bothering on furnishing office space, movement of vehicles, etc., are matters personal to the Claimant and have never been an obligation of the 1st Defendant right from 2014 when the Defendant started engaging the Claimant.

During the hearing of this suit, the Claimants through their sole witness (PW1), Ahmed Saidu (the 2nd Claimant herein) adopted

his witness statement on oath and tendered ten exhibits namely: The Certificate of incorporation of the 1st Claimant-Exh.1; Letter of Appointment of the 2nd Claimant as Sarki Ruwa-Exh. 2; the 1stDefendant letter inviting the claimants for a meeting dated 15/03/2012-Exh.3; The 1st Claimant's letter to the 2nd Defendant dated 27th June, 2013 –Exh. 4; the 1st Defendant's letters of engagement issued to the 1st Claimant for 2014, 2016, 2017, 2018 & 2019 – Ex. 5; the Claimant's report to the Defendants for 2014, 2016, 2017 & 2018 – Exh. 6; the receipt of payment made by the Claimants into the 1st Defendant's account - Exh.7; Claimants' letter of Complaint to the Divisional Police Officer Kubwa Police Division about hoodlums – Exh. 8; receipts printed by hoodlums-Exh.9; Claimants letter of breach of contract to the Defendants – Exh. 10.

The Defendants on their part in opening their defence, called one Baba AdugaMukailu, an account officer in the Finance and Accounts Department of the 1st Defendant, who adopted his statement on oath and tendered no exhibit.

By order of court vide a subpoena duces tecum and ad testificandum, one Godwin I.Atolough, who claims to be the General Manager of the 1st Claimant was subpoenaed at the instance of the defendants to give evidence and through him, the

originating process of this suit initially filed at the Federal High Court was tendered and marked as Exhibit DW1.

In their final written address filed on 9th February, 2023, the Defendants' counsel raised three issues for the court's determination:-

- i. Whether there is a valid and enforceable contract agreement between the Claimants and the Defendants in this suit.
- ii. Whether on the Strength of the Pleadings and the Evidences before this Honourable Court, the Claimants are entitled to the reliefs claimed in this suit?
- iii. Whether the Claimants have disclosed any reasonable cause of action against the Defendants.

On issue 1, Counsel vehemently argued that the purported unsigned agreement prepared by the Claimant in respect of the letter of engagement of the year 2019, cannot pass or qualify as a valid contract agreement between the parties. Counsel maintained that the fifth paragraph of the said letter of engagement (exhibit 5) specifically stated that the Claimants were in addition to submitting a formal letter of acceptance within one week from the date on the said exhibit 5, were also required to enter into a formal agreement with the legal unit of the 1st Defendant on terms and conditions of the engagement, which the Claimant failed to do.

On issue 2, counsel argued on behalf of the Defendants that having not fulfilled the conditions stipulated in exhibit 5, and having failed to discharge the burden of proof vested on them, the Claimants are not entitled to reliefs sought by them.

On issue 3, counsel maintained that the Claimants have not disclosed any reasonable cause of action against the Defendant, as there existed no contractual relation between the parties ab initio.

The Claimants counsel in his final written address raised four issues for determination:-

- i. Whether the transaction(s) undertaken by the parties in this suit is not binding and enforceable and/or whether the defendant's unilateral appointment of some other persons to perform a parallel function (already agreed with the Claimant's) does not amount to a breach of contract.
- ii. Whether the Claimant did not substantially perform the contract they entered with the Defendant and/or whether the defendant having taken benefit of the said contract by receiving payments from the Claimant can renege, withdraw or even deny the existence of the said contract.
- iii. Whether the evidence led by the Claimant in prove of their case was ever controverted by the defendant at any material point of the proceedings in this suit.

- iv. Whether the Claimants are not entitled to the reliefs claimed in the circumstances of this case.

Arguing on these issues, counsel maintained that the Defendants cannot turn around with a claim of non-existence of a contract with the Claimant especially where the glaring conduct of the parties towards each other in the transaction that greeted the filing of this suit shows that there was a contract. Relying extensively on the case of *Alhaji A. Adebayo v. Benue State University* (2021), counsel submitted that a contract between parties may be expressed by words or in writing and/or implied conduct.

Counsel also argued that the acceptance of the letter of engagement of 25th February 2019 by the Claimant, amounted to a binding and enforceable contract having been received by the Defendant on which premise the Claimant went on with their obligation as agreed with the defendants.

On issue 2, counsel argued on behalf of the Claimants, that not only did the Claimants perform their bid as agreed with the defendants, the defendant had equally taken benefit of the transaction entered for all intent and purposes. Counsel reasoned that a party who has benefited from a contract cannot renege on same in order to ignore his obligation under the said contract.

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Counsel further argued under issue 3, that the evidence led by the Claimants in proof of their case was not controverted by the Defendants. Relying on the decision of the court in *PRINCE HEZ OKONKWO V. PDP & ORS (2013) LPELR- 22150(CA)*, counsel submitted that where no evidence is led to discredit or controvert that which is placed before the court, the evidence remains valid and can be relied upon by the court.

Counsel also remarked that the Claimant having signed their own part of the agreement and having handed it to the legal department of the 1st Defendant, which was duly acknowledged by one Mr. Joseph Peter (staff of the 1st Defendant's legal department), the court can presume the existence of a valid contract, as it is trite law that where a document creating an obligation is in the hands of the obligor, the obligation is deemed discharged. Section 167 (e) of the Evidence Act 2011.

On issue 4, counsel maintained that the claimantshave proved their case and the defendant having failed to discredit what was placed before the court by the Claimant, judgment should be given in favour of the Claimant.

The Defendants filed a reply on points of law to the Claimant's final written address, which I have equally considered.

In addressing the contention of parties in this suit, I have set out to resolve a twin issue of whether there is a valid and binding contract between the 1st Claimant and the 1st Defendant, and if the answer is yes, whether there is a breach of same, thereby entitling the Claimants to the reliefs sought.

To arrive at a just decision, I have read the whole of exhibit 5, particularly the letter of engagement dated 25th February, 2019, with the intention of not just identifying at what point the contract between the parties commenced, but to also understand the spirit and intention of the parties to the contract agreement.

It is not the function of the court to make contracts between the parties. The court's duty is to construe the surrounding circumstances including written or oral statements so as to attest the intention of the parties. *NWAOLISAH v. NWABUFOH (2011) LPELR-2115(SC)*

Exhibit 5 is quite revealing as regards the intention of the 1st Defendant, on when a binding contract shall commence between the parties. Paragraph 5 of the said exhibit , reads:

“You are required to submit a formal letter of acceptance within one week from the date of this letter and also enter into a formal agreement with the legal unit of the council on the terms and conditions of your engagement. However, should you fail to do any of the acts mentioned in this

paragraph, this engagement shall automatically become terminated”

From the offer letter, it is clear that the 1st Defendant intended to be bound by the contractual terms upon execution of the contract agreement by the parties.

Once there is a condition that needs to be satisfied before an agreement will come into force, the general position of the law is that such a condition becomes condition precedent. The non-existence of the condition will be an obstacle to the enforcement of the agreement and will prevent anyone from getting any benefit from the agreement. Condition precedent has been defined as one which delays the vesting of a right until the happening of an event. See *NIGERCARE DEVELOPMENT CO., LTD VS ADAMAWA STATE WATER BOARD & ORS (2008) 2-3 S.C (PT. II) 202.*

The implication of a condition precedent is that none of the parties can benefit from the agreement or claim any right therein without the fulfillment of the condition precedent. In this regard, the Supreme Court case of *TSOKWA OIL MARKETING CO (NIG.) LTD VS BANK OF THE NORTH LTD (2002) 11 NWLR LTD (PT. 777) 163* is instructive. The apex Court held thus: "*It is trite law that once a condition precedent is incorporated into an agreement, that condition precedent must be fulfilled before the effect can flow.*"

The question that begs for an answer at this stage is: Have the Claimants sufficiently proved that they fulfilled the conditions stipulated in paragraph 5 of the engagement letter?

Well, the Claimants from the evidence proffered, made an attempt to accept the said letter of engagement, but the second limb of the condition precedent, which was the execution of a formal agreement seems not to have been perfected by the parties.

A calm look at the purported agreement between the parties revealed the following. (1) It is not dated. (2) It is not signed.

Counsel to the Claimants has made heavyweather on the said unsigned agreement.

The general position of the law is that an unsigned document is a worthless piece of paper and does not create any enforceable relationship between the parties to the intended contract or relationship which the unsigned agreement is intended to create. Therefore an unsigned or irregularly signed document is worthless and attracts no probative value nor ascription of any weight in Law. The effect is that such a document binds neither of the parties, agents, nor privies. See *KWARA INVESTMENT Co. LTD V. GARUBA (2000) 10 NWLR (PT. 764) 25-39 para. G, A.G. KWARA STATE V ALAO (2000) 9 NWLR. (PT. 671) 84., OMEGA BANK V.O.B.C LTD (2005) 15 CNJ. 150*. It is trite that parties will only be bound by the content of any written agreement duly executed by them. See the case of *AKUNWATA JOE*

OGUEJIOFOR ANYAEGBUNAM V. PASTOR OKWUDILI OSAKA & ORS. (2000) 5 NWLR (PT. 657) 386, OKONKWO V CCB (NIG) PLC. (2003) 8 NWLR (PT. 822.) page 382.

However, the point has to be made that the requirement of signature is made by the law to determine its origin and authenticity with regard to its maker and so where certain situations exist an unsigned document could be admissible where oral evidence clarifying the document and its authorship is given thereby rendering such an unsigned document admissible. This unusual but allowable exception to the general rule was well explained in this Court in the case of *Awolaja & Ors v Seatrade G.B.V. (2002) LPELR - 651* per Ayoola. JSC as follows:-

"A signed document though valuable as putting it beyond peradventure what terms the parties have agreed to is not essential to the existence of a contract of affreightment. Where the immediate parties to the agreement do not deny their agreement or the existence of the contract of affreightment and there is no doubt about their intention that they should be bound, barring statutory provision to the contrary, (and none has been cited by the defendants) the existence of the contract cannot be impugned on the ground that the document embodying the terms they have

agreed to be unsigned, unless the parties have made such a condition of their being bound".

In my humble view, the above exception to the requirement of signature cannot avail the Claimants in the instant case, as the intention of the parties was clearly expressed in the letter of engagement to the effect that the 1st Claimant should enter into a formal agreement with the legal unit of the council. Such an unexecuted agreement ought not to be given any consideration. It should be regarded as Dead on arrival otherwise known as "DOA." Without joining counsel to the Claimants in pursuing the shadow in the circumstance of the fact of this case regarding the unsigned agreement, I rather nip it in the bud by not allowing the spaceship conveying the unsigned purported agreement to land on the planet of this case.

Even if the court were to presume the existence of a properly executed contract, the case of the Claimants will still fail on the grounds that the purported transaction between the parties is an illegal transaction.

Taxes/Levies are serious issues in any part of the world. The government created them, and their prices/amounts are certain and predictable. In Nigeria, all taxes/levies must be created by law and be assessed and collected by either Federal, State, or Local Governments.

For the purpose of clarity as to who has the power to collect taxes/levies in Nigeria, let me reproduce the provision of section 2 (1) of the Taxes and Levies (Approved List for Collection) Act CAP T2, LFN, 2004:-

“(1) Notwithstanding anything contained in the Constitution of the Federal Republic of Nigeria 1979, as amended, or in any other enactment or law, no person, other than the appropriate tax authority, shall assess or collect, on behalf of the Government, any tax or levy listed in the Schedule to this Decree and members of the Nigeria Police Force shall only be used in accordance with the provisions of the tax laws”

The above provision is as clear as a white linen and needs no elaborate and strenuous interpretation.

None of the governments can engage, authorize, delegate, use, or appoint any person, firm, or group to assess or collect taxes/levies on its behalf. The only appropriate tax authorities empowered and allowed to assess and collect taxes/levies in Nigeria are the Federal Inland Revenue Services(FIRS), the State Board of Internal Revenue, and the Local Government Revenue Committee, by whatever name they call themselves in the respective states and local governments across Nigeria. As well as a Ministry, Government department, or any other

Government body charged with responsibility for assessing or collecting a particular tax.

NOTE, that no State Government (including its House of Assembly) or Local Government has powers to make any law or Bye-Law that will allow the appointment and engagement of any person/firm in the assessment or collection of any tax/levy in any part of Nigeria.

I have seen several persons and firms parading letters of engagement from some tax/levy agencies of government, such persons should be properly guided.

It is also a criminal offense for unauthorized persons to collect tax/levies. In fact, section 3 of the Taxes and Levies (Approved List for Collection) Act CAP T2, LFN, 2004 provides as follows:-

“A person who

(a) collects or levies any tax or levy...is guilty of an offense and liable on conviction to a fine of N50,000 or imprisonment for 3 years or to both such fine and imprisonment.”

The 1st Defendant in the first place, had no power to delegate the responsibility of collecting taxes or levies to the 1st Claimant because the 1st Claimant is not one of the authorities considered to collect taxes or levies on behalf of the Federal Capital Territory or any of its Local Government Councils.

From the totality of the foregoing analysis, I find the purported transaction between the 1st Claimant and the 1st Defendant illegal and unenforceable, and incapable of enforcement by this Honourable Court.

Accordingly, the Claimant's suit is hereby dismissed.

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

Appearance

I.W Zom:- For the Plaintiff

A.J Gata:- For the Defendant