

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY  
IN THE ABUJA JUDICIAL DIVISION  
HOLDEN AT JABI, ABUJA.**

**BEFORE HIS LORDSHIP: HON. JUSTICE J. ENOBIE OBANOR**

**HIGH COURT NO. 29**

**DATE: 3/07 /2023**

**SUIT NO: FCT/HC/CV/1567/2022**

**BETWEEN:**

**1. MR ALEXANDER SHAIYEN  
2. WHITE HALL MANAGEMENT LTD**

**CLAIMANTS**

**AND**

**1. MR NANKPAH NDEN  
2. LALIR PROPERTIES**

**DEFENDANTS**

**JUDGMENT**

**(DELIVERED BY HON. JUSTICE J. ENOBIE OBANOR)**

By a Writ of Summons filed by the Claimant on the 22<sup>nd</sup> day of September, 2022, the Claimant seeks the following reliefs:

1. A DECLARATION that the Defendants have breached the terms of the agreement between the parties herein.
2. A DECLARATION that the representation of the Defendants to the Claimants deprived the Claimants from depositing the sum of N65,000,000.00 (Sixty-Five Million Naira) in a time deposit account.
3. AN ORDER of this Honourable Court that the Defendants are jointly and severally liable to pay to the Claimants the sum of N15,500,000.00 (Fifteen Million, Five Hundred Thousand Naira).
4. AN ORDER directing the Defendants to pay to the Claimants the sum of (N24,628,500) Twenty-Four Million, Six Hundred and Twenty-Eight Thousand, Five Hundred Naira Only which the Claimants would have realized from the time deposit of the sum of N65,000,000.00(Sixty-Five Million- Naira).
5. AN ORDER of this Honourable Court that the Defendants are jointly and severally liable to pay to the Claimants the sum of N3,000,000.00(Three Million Naira) as cost of litigation

6. AN ORDER of this Honorable Court that the Defendants are jointly and severally liable to pay to the Claimants the N5,000,000.00 (Five Million Naira) being exemplary damages
7. AN ORDER for 10% payment annually on judgment sum from the day of judgment till the final liquidation of the judgment sum.
8. AND FOR SUCH ORDER OR FURTHER ORDERS as this Honorable Court may deem fit to make in the circumstance.

This court upon being satisfied that all the defendants in this suit were duly served commenced hearing on the 20<sup>th</sup> February, 2023. On that day, the 1<sup>st</sup> Claimant Alexander Shaiyen testified as CW1. He adopted his Witness Statement on oath. The Claimants in proof of their case tendered the following documents through CW1:

- a Document evidencing land coordinates.
- b Copy of the agreement between the parties herein.
- c 1<sup>st</sup> Claimant's account statement.
- d Receipt evidencing Solicitor's fee
- e The Claimants' Board Resolution.
- f CBN information on interest rate on deposit.
- g Certificate of verification
- h Board resolution ratifying the investment.

From the Witness Statement on Oath adopted by the Claimant, it deposed as follows:

6. That sometime in January, 2013, the Defendants approached the Claimants with a business proposal for development of mass housing estate in Karsana District, Abuja.
7. That in order to convince the Claimants to invest in the said business proposal the Defendants further revealed me that they have commenced the acquisition of a plot of land measuring approximately 36.9 Hectares and located at plot 37 Karsana District, Abuja.
8. That the 1<sup>st</sup> Defendant took me to the said plot of land at Karsana and showed me the coordinates/particulars of the land and gave the Claimants a copy of the said coordinates. The Defendants is hereby given notice to produce originals of the said coordinates (Copies of the coordinates is hereby pleaded and shall be relied upon at trial).
9. That the Defendants represented to me that they had already invested the sum of N50,000,000.00 (Fifty Million Naira) in the process of acquiring the plot of Land, but however needed another sum of N30,000,000.00 (Thirty million Naira) to complete the payment for the land acquisition

10. That the Defendants further demanded the sum of N30,000,000.00(Thirty million Naira) only, from the Claimants as equity contribution in the business.
11. That the agreement between all Parties herein is that on the completion of the project, the profits would be shared on the basis of 60%-40% (Copy of the agreement is hereby pleaded and shall be relied upon at trial).
12. That the Claimants in fulfillment of its contractual obligation to make capital contributions gave to the Defendants, the sum of N29,800,000 (Twenty-Nine Million, Eight Hundred Thousand Naira) on the 23rd day of January, 2013 through my account (Copy of my account statement reflecting the transaction is hereby pleaded and shall be relied upon at trial).
13. That before the said payment of N29,800,000 (Twenty-Nine Million, Eight Hundred Thousand Naira) I had earlier paid to the Defendants the sum of N200,000.00(Two Hundred Thousand Naira).
14. That the total sum paid to the Defendants by the Claimants is in the sum of N30,000,000.00(Thirty million Naira) only.
15. That several months after the Claimants paid the capital contribution, the Defendants have failed to keep faith with their contractual obligations,
16. That consequent on the failure of the Defendants to fulfill their contractual obligations, the Claimants demanded for a refund of the sum of N30,000,000.00(Thirty Million Naira) being the sum the Claimants paid to Defendants
17. The Defendants paid the sum of N14,500,000.00 (Fourteen Million, Five Hundred Thousand Naira) to the Claimant at different times and have failed to refund the outstanding sum of N15,500,000.00 (Fifteen Million, Five Hundred Thousand Naira).
18. That the Claimants had no choice than to resort to litigation to recoup the outstanding
19. That the Claimants expended the sum of N5,000,000.00(Five Million Naira) as Solicitor's professional fee in prosecuting this case (a Copy of the receipt is hereby pleaded and shall be relied upon at trial.)
20. That the continuous delay in refunding the said outstanding sum has deprived the Claimants of substantial profits on returns on investment of the principal sum of N30,000,000.00(Thirty million Naira).
21. That if the Claimants had not invested in the venture put forward by the Defendants, the Claimants would have put the sums in a time

deposit account and would have earned returns on investment/interest on time deposit.

22. That the representation made by the Defendants to invest money deprived the Claimants of the sum the Claimants would have realized from investing the sum stated above in a time deposit account.
23. That the board of directors of the 2nd Claimant reached a resolution to put the sum of Sixty Million Naira (N65,000,000.00) in a time deposit account for a period of some years between 2013-2016(The board resolution is hereby pleaded).
24. That the intention of the board as reflected in the resolution is to fix the money in a deposit account that will yield 12.63% interest yearly.
25. That the prevailing interest yield on time deposit in Nigerian banks is between 6% to 13% (The Claimants pleads the Central Bank on Nigeria's information on interest rate on deposit and Lending in Nigeria as at 31-12-2012). ..
26. That the prevailing interests yield on time deposit in Stanbic IBTC Bank where the Claimants sought to make the time deposit is 12.63% per annum.
27. That as a result of the representations the Defendants made to the Claimants, the Claimants released the sum of N30,000,000.00 (Thirty million Naira)to the Defendants and had to forgo the need to go ahead with the time deposit plan (See the Claimants resolution on same. Resolution ratifying the investment made with the Defendants and putting a hold on the time deposit plans is hereby pleaded)
28. The Claimants would have made N8, 209,500 (Eight Million, Two Hundred and Nine Thousand, Five Hundred Naira) per annum on its Sixty Million Naira (N65, 000,000.00).
29. At the end of 31 day of December 2016 the Claimants would have been entitled to a total sum of (N24,628,500)Twenty Four Million, Six Hundred and Twenty Eight Thousand, Five Hundred Naira Only...

The Claimants Closed their case and it was adjourned to 5<sup>th</sup>April, 2023 for Cross examination. The Defendants were served with hearing notice to enable them cros-examine the Claimant's Witness, CW1 they did not however harness the opportunity.

On the day the matter was adjourned for Cross-examination, the Defendants were not in Court. They were not represented. Upon the Application of the Claimant counsel they were foreclosed and the matter was adjourned to 28<sup>th</sup> of april, 2023 for defences and hearing notice was ordered to be served on the Defendant. However, the Defendants did

not appear in court and was not represented despite the service of the hearing notice on them. Thus the Claimant applied that they should be foreclosed and the Court graciously granted the application upon being satisfied with the certificate of service duly deposited to by the staff of this Court. Subsequently, the matter was adjourned to 7<sup>th</sup> of July, 2023 for adoption of Final Written Address of parties.

On the day the matter came up for adoption of final Written Address, the Claimants adopted its Written Address filed on the 31<sup>st</sup> May, 2023 and distilled a sole issue for determination as follows:

### **Whether the Plaintiff is entitled to the Reliefs sought?**

The Defendants did not file any Written Address and were absent as usual without any reason before the Court. It should be noted that the duty of this Court is to give parties the clear opportunity to present their cases, but where a party refused to explore such opportunity, the Court will definitely not be blamed. In this regard, Per Akinbami JCA in **IKO V. STATE (2014) LPELR-23488(CA)(PP. 104-105 PARAS. F)** succinctly puts the position of the law as follows:

***"The duty of the Court, is to give equal opportunities to all parties before it, to present their cases and where a party by conduct (such as in this case) voluntarily mischievously opts out of a trial he cannot complain of breach of fair hearing, see NDU V. STATE (1990) 7 NWLR (Pt 164) 550."***

In the circumstances, this court will adopt the sole issue formulated by the Claimant's counsel as it is apt in the determination of this suit. Learned counsel for the claimants in his legal argument contended that the Claimant showed all their entitlement to the all the reliefs sought in their Statement of claim and their Witness statement on Oath.

However, the Defendants refused to Cross examine the Claimants Witness despite being served with hearing notices. The defendant even appeared twice and still did not deem it to file their Defence nor Cross examine the witness of the Claimants. Accordingly, Learned Counsel for the Claimant submits that the Defendants' refused to Cross-examine the PW1 despite service of hearing notices on them, amounts to an admission as it was not challenged. Counsel referred the Court to the

case of **EMIRATE AIRLINES V. NGONADI (NO.2) (2004) 9 NWLR (PT. 1413) 543 PARAGRAPH C-D** and further submits that Once evidence presented by a party is admissible, relevant, credible, conclusive and unrefuted by evidence of the other party if any, the Court will accept it as credible evidence. She also referred to the case of **BERGER V. OGUNDEHIN (2014) 2 NWLR (PT. 1391) 414 PARAGRAPH C-E 3.18.**

Counsel further submits that it has been held in plethora of cases that once there is a proof of service of Hearing Notice on a party and such party failed to be in Court, that the trial Court can proceed with the matter. It means that the absence of a party is presumed to be deliberate as such party has neglected and abandoned his Defence to the action. She referred the Court to the case of **AGBABIKA V. FBN PLC (2020) 6 NWLR (PT. 1719) 97 OKON V. ADIGWE (2011) 15 NWLR (PT. 1270) 373 PARAGRAPH A -B 3.10.**

Again, Learned Counsel posits that in every civil case, the standard of proof, (the onus) is on the Plaintiff. Such onus does not shift until he has proved his claim with cogent facts and credible Exhibits on preponderance of the evidence of the Witnesses and on balance of probabilities. She relied on the case of **IMAM V. SHERIFF (2005) 4 NWLR (PT. 914) 180 PARAGRAPH B-3.14** and further argued that in this case, the Plaintiff had fulfilled that onus through the testimony of CW1 and the documents she tendered in form of documentary evidence, all of which were uncontroverted and unchallenged.

It is also argued by Learned Counsel that where a Claimant had established that Damages suffered which is as a result of action or inaction of the Defendant, such Claimant is entitled to be paid compensation for such damages. Such compensation is to act as deterrence to the Defendant. The quantification of the amount to be paid as compensation is done by the Court after due consideration of the whole circumstance of the case before it. She anchored her submission on the case of **BRITISH AIRWAYS V. ATOYEBI (2014) 13 NWLR (PT. 1424) 286 PARAGRAPH B-C 3.23** and submits that in this case, the Plaintiffs have established and also shown the damages suffered as a result of the acts of the Defendants. According to Counsel they deserved to be compensated for that suffering and she urged the Court to so hold and grant Relief 6.

Now, I have thoroughly reviewed the reliefs of the Claimant, evidence of CW1, the documents tendered in Court and the legal argument of Learned Counsel for the Claimant. I will start by first of all resolving the first relief sought by the Claimant as it is germane before determining other issues. Thus, the first relief is as follows:

**A DECLARATION that the Defendants have breached the terms of the agreement between the parties herein.**

It should be noted that in an action arising out of a breach of contract, plaintiff must plead in his statement of claim the terms of the contract and how the breach occurred. Unless these facts are pleaded therein, the statement of claim will disclose no cause of action for breach of contract. Merely pleading the existence of the contract is not sufficient. The existence of the contract perse is not the cause of action, it is the breach of the term of the contract that constitutes the cause of action. See **AZUBUIKE & ANOR V. GOVERNMENT OF ENUGU STATE & ANOR (2013) LPELR-20381(CA) (PP. 47 PARAS. D)**

I agree with the Claimants' Counsel that the onus of proving the existence of the contract rest on the plaintiff who must show that the contract was breached to his advantage. Where the contract is reduced into writing, the Claimant will succeed by leading his evidence based on the provision of the contract because parties are bound by the terms of their agreement. And the duty of Court is to simply interpret the terms of an agreement entered into by parties and not to created any. See the cases of **ORJI VS ANYASO (2000)2 NWLR (PART 643) PAGE 1; ARFO CONSTRUCTION CO. LTD V. MINISTER OF WORKS & ANOR (2018) LPELR-46711(CA) (PP. 23 PARAS. B); ORJI VS ANYASO (2000)2 NWLR (PART 643) PAGE 1.**

In the instant case, the Claimants in discharging their burden of proof averred at Paragraphs 10-17 that they entered into agreement (which is tendered and marked as Exhibit A) with the Defendants to invest in the purchase of Landed property on a sharing profit formula of 60%-40% basis. The Claimants fulfilled their part of the agreement by contributing the sum of N29,800,000.00 (TwentyNine Million, Eight Hundred Thousand Naira) only on the 23<sup>rd</sup> of January, 2013. The Claimants also exhibited bank statement to support the said claim. They also averred that before making the above payment, they paid the sum of N2000,000.00 to the Defendants making the total sum of money paid to

the Defendants the sum of 30,000,000.00 (Thirty Million Naira) only. When the Defendants could not keep faith their promise, the Defendant demanded for the refund of the money paid to the Defendants who only paid the sum of N14, 500,000.00 (Fourteen Million, Five Hundred Thousand Naira) only remaining the balance of N15,500,000.00.

These averments of the Claimants which were also supported by the evidence of CW1 are cogent. I have also gone through the Agreement entered by parties, Exhibit A, on the 19<sup>th</sup> September, 2013. There is no doubt that parties entered into the said agreement as averred by the Claimants. This burden of proof expected of the Claimants have been discharged. The Defendants who were given all the opportunity to cross examine the Claimants witness and to present their defence refused to do so. Thus, the credible and convincing evidence of the Claimants having not be disputed or challenged by the Defendants amounts to admission. As I have said earlier, it is not the duty of this Court to present the Defendants' case. In the circumstance, I will not hesitate in granting the first relief of the Claimants. Accordingly, relief 1 is hereby granted as prayed. In the same breath, the Defendants are hereby ordered pay to the Claimants the sum of N15,500,000.00 (Fifteen Million, Five Hundred Thousand Naira) jointly and severally been the outstanding balance of the money deposited by the Claimants in the agreement breached by the Defendants. Therefore, relief 3 is granted as prayed.

The Claimants also prayed this Honourable Court in their reliefs 2 and 4 a DECLARATION that the representation of the Defendants to the Claimants deprived the Claimants from depositing the sum of N65,000,000.00 (Sixty-Five Million Naira) in a time deposit account and an Order directing the Defendants to pay to the Claimants the sum of (N24,628,500) Twenty-Four Million, Six Hundred and Twenty-Eight Thousand, Five Hundred Naira Only which the Claimants would have realized from the time deposit of the sum of N65,000,000.00 (Sixty-Five Million- Naira).

The Claimants in support of the said reliefs 2 and 4 averred at paragraphs 20 - 29 of the Statement of Claim and paragraphs 21-32 of their Witness Statement on Oath duly adopted by the CW1. Thus, the Claimants only Witness CW1 deposed as follows:



20. That the continuous delay in refunding the said outstanding sum has deprived the Claimants of substantial profits on returns on investment of the principal sum of N30,000,000.00(Thirty million Naira).
21. That if the Claimants had not invested in the venture put forward by the Defendants, the Claimants would have put the sums in a time deposit account and would have earned returns on investment/interest on time deposit.
22. That the representation made by the Defendants to invest money deprived the Claimants of the sum the Claimants would have realized from investing the sum stated above in a time deposit account.
23. That the board of directors of the 2nd Claimant reached a resolution to put the sum of Sixty Million Naira (N65,000,000.00) in a time deposit account for a period of some years between 2013-2016(The board resolution is hereby pleaded).
24. That the intention of the board as reflected in the resolution is to fix the money in a deposit account that will yield 12.63% interest yearly.

The Claimant further pleaded the Certificate of verification on obtaining Rate information from the CBN which interest rate was between 6% to 13% as 31/12/2012 then.

I am convince with the deposition of the Claimant and the exhibit annexed that the Claimant would have made some interest in if it had deposited the said money in and interest yielding acoount. In the circimstances, relief 2 and 4 of the Claimants are hereby granted as prayed. Accordingly, the Defendant is hereby ordered to pay to the Claimants the sum of N24,628,500 (Twenty-Four Million, Six Hundred and Twenty-Eight Thousand, Five Hundred Naira) Only which the Claimants would have realized from the time deposit of the sum of N65,000,000.00(Sixty-Five Million- Naira).

The Claimants in reliefs 5 and 6 prayed this Court for the following reliefs:

***5. AN ORDER of this Honourable Court that the Defendants are jointly and severally liable to pay to the Claimants the sum of N3,000,000.00(Three Million Naira) as cost of litigation.***

**6. AN ORDER of this Honorable Court that the Defendants are jointly and severally liable to pay to the Claimants the N5,000,000.00 (Five Million Naira) being exemplary damages.**

The Claimants at paragraph 19 deposed specifically "**that the Claimants expended the sum of N5,000,000.00(Five Million Naira) as Solicitor's professional fee in prosecuting this case (a Copy of the receipt is hereby pleaded and shall be relied upon at trial.)**"

This piece of evidence was not contradicted. Therefore, the Claimants having sufficiently proved that they spent the sum of 5 million which is supported by a receipt of payment before this Court, this Court will not deny the Claimant this entitlement. Accordingly, the Claimants are hereby awarded the sum of 5 million being cost of litigation. Reliefs 5 is therefore granted as prayed.

As per relief 6 as reproduced above, the Claimants are hereby awarded the sum of 1000,000. 00 (One Million Naira) only as general damages.

Post Judgment interest of 10% is hereby awarded till liquidation of the Judgment sum.

That is the Judgment of this Court.



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**HON. JUSTICE J. ENOBIE OBANOR  
(PRESIDING JUDGE)**

**Legal Representation**

Hannah Dimgba Esq, for the Claimant  
Defendant not represented.