IN THE HIGH COURT OF FEDERAL CAPITAL TERRITORY
IN THE FEDERAL CAPITAL TERRITORY JUDICIAL DIVISION
HOLDEN AT JABI FCT ABUJA

SUIT NO: CV/108/2018

BEFORE HIS LORDSHIP: HON. JUSTICE BABANGIDA HASSAN

BETWEEN

VALENTINE UGWU _____CLAIMANT

AND

1. WILBEKO GLOBAL RESOURCES LIMITED
2. WILSON IKECHUKWU UNACHUKWU } **__DEFENDANTS**
3. WILSON TECHNOLOGIES MULTIMEDIA CONCEPT LTD.

JUDGMENT

This suit was originally filed under the Undefended List Procedure, however, the court in its considered judgment transferred the matter to the general cause list and ordered the parties to file their respective pleadings.

The claimant filed his statement of claim on the 22nd May, 2019, while the defendants filed their statement of defence, but failed to give evidence.

The statement of claim covers from page 1 to 5 and spanned from paragraphs 1 to 23 and the claimant claims against the defendants jointly and severally as follows:-

a. The sum of ₦3,500,000.00 (Three Million, Five Hundred Thousand Naira only) being the unpaid agreed outstanding out of the ₦7,000,000.00 (Seven Million Naira only) for the legal service rendered to the 1st defendant between the period of April, 2013 to May, 2016 and covered in an agreement between

WILBEKO GLOBAL RESOURCES LTD. and **V. N. Ugwu & Co. and dated 4th of April, 2016.**

b. The sum of ₦3,000,000.00 (Three Million Naira only) for continued legal service rendered to the 1st and 2nd defendants and extended to the 3rd defendant between the period of June, 2016 to May, 2018.
c. Pre-judgment interest at the rate of 10% per annum being the current Central Bank of Nigeria interest rate on the same outstanding of ₦6,500,000.00 (Six Million, Five Hundred Thousand Naira only).
d. Post judgment interest at the rate of ₦10% on the judgment debt until full liquidation.
e. N3,000,000.00 as cost of the action.

It is averred by the claimant that sometime in 2013, the 2nd defendant in his capacity as the Chief Executive Officer (CEO) and Managing Director of the 1st defendant approached the claimant that the company is engaged in the business of Informational Certified Technology (ICT) Software **(WILSON MULTIMEDIA INTERACTIVE DEVICE)** which is manufactured in China by a company named **SOHO INDUSTRY LIMITED**. The 2nd defendant then requested to engage the claimant as the company secretary to be rendering legal services to the 1st defendant for a fee to be agreed upon mutually by the parties which the claimant accepted. The legal services included legal advice, representation at meetings with prospective buyers of **WILSON MULTIMEDIA INTERACTIVE DEVICE**, drafting of several business agreements and Sunday legal services.

The claimant averred that on the 7th of January, 2014, the 1st defendant requested the claimant, as its company secretary, to prepare an agreement to formalise its relationship with the Chinese Electronics Product Manufacturer **(SOHO INDUSTRY LIMITED)** of the **WILSON**

MULTIMEDIA INTERACTIVE DEVICE and to sign the agreement in its capacity also as company secretary and that at all material times, the defendants agreed to pay for the legal services rendered by the claimant.

The claimant averred that the 1st defendant on the 4th April, 2016 passed a resolution appointing the claimant formally as its company secretary for the purposes of rendering legal services and agreed that the claimant will be entitled to the sum of ₦7,000,000.00 (Seven Million Naira only) to cover outstanding legal service rendered from April, 2013 to May, 2016. The 1st defendant entered into an agreement dated 4th April, 2016 where it agreed to pay the claimant the sum of ₦7,000,000.00 (Seven Million Naira only) to cover all outstanding fees on the legal services rendered from April, 2013 to May, 2016, and the claimant continued to render legal services to the 1st defendant even after the period covered by the agreement had lapsed.

It is averred by the claimant that at all material time, was required to render various legal services to the 1st and 3rd defendants such as general legal advice, representations at meetings with prospective buyers of Wilson Products, EFCC and Police matters that arose from time to time, drafting of agreements for prospective customers etc, and pursuant to these, the claimant sometime in 2017 was engaged by the 2nd defendant to incorporate the 3rd defendant and further appointed the claimant as its company secretary. That following the extension of the legal services to the 3rd defendant, the claimant rendered legal service, representations at meetings with prospective purchasers of the Wilson Multimedia Interactive Device including Federal Inland Revenue Service (FIRS) on behalf of the 3rd defendant.

The claimant averred that while the defendants have continued to do business with the Federal Inland Revenue Service (FIRS), they have failed, refused and neglected to pay their outstanding indebtedness to him. That the defendants have acted oppressively and unjustly in depriving the claimant of the agreed outstanding for legal services for the period of April, 2013 to May, 2016 and that the defendants have so far only paid ₦3,500,000.00 (Three Million, Five Hundred Thousand Naira only) out of the sum of ₦10,000,000.00 (Ten Million Naira only) leaving an outstanding balance of ₦6,500,000.00 (Six Million, Five Hundred Thousand Naira only) unpaid.

The claimant averred that he prepared a Bill of Charges and sent to the defendants and allowed a period of one month as a condition precedent to taking a legal action, and the defendants through the 2nd defendant, sent a reply dated 4th September, 2018 and admitted to paying ₦3,500,000.00 and refused that there is no any amount outstanding.

Thus, the defence of the 1st and 3rd defendants spanned from paragraphs 1 to 4 (i) – (xx) of the amended statement of defence. The defendants filed along with the statement of defence the re-sworn statement on oath of the witness which they intend to put before the court. The defendants denied the claim of the claimant.

In trying to prove the claim, the claimant put in one witness (PW1) in which he adopted his witness statement on oath. The following documents were tendered by the PW1 and were admitted by the court:

a. Photocopies of the Certified True Copies of Memorandum and Articles of Association of the 1st defendant, marked as EXH. 'A1';

b. Certified True Copy of Form CAC 2, marked as EXH. 'A2';
c. Certified True Copies of Particulars of Directors of the 3rd defendant, marked as EXH. 'A3';
d. An agreement between **SOHO INDUSTRY LIMITED** and the 1st defendant, marked as EXH. 'A4';
e. Special Resolution of the 1st defendant, marked as EXH. 'A5';
f. An agreement between the 1st defendant and the claimant, marked as EXH. 'A6';
g. Letter written by **SOHO INDUSTRY LIMITED** to the 1st defendant dated the 14th February, 2017, marked as EXH. 'A7';
h. Bill of Charges for legal services written by the claimant to the 2nd defendant dated the 30th August, 2018, marked as EXH. 'A8'; and
i. A reply to the Bill of Charges written by the 2nd defendant to the claimant dated the 4th September, 2018, marked as EXH. 'A9'.

The PW1 was cross-examined by the counsel to the defendants, and at the close of the claimant's case, the matter was adjourned for defence. After about three adjournments, the defendants put in one witness who is the DW1.

The DW1 adopted his re-sworn statement on oath and relied on the document "award of contract" which was pleaded in paragraph (5) of the statement of defence, and the date was taken for cross-examination of the DW1 by the counsel to the claimant.

The defendants and the DW1 could not come after about three adjournments, and the counsel to the claimant filed an application before the court for a leave to serve all

court process on the defendants through substituted means, and the application was granted.

On the next return date, the defendants and their counsel were not in court, and the counsel to the claimant applied to the court to foreclose the defendants of their right to defend the action as they have abandoned their right, and the court granted the application.

At the close of the trial, the claimant proffered and adopted his final written address on the 23rd day of February, 2023.

The counsel to the claimant, in his final written address, formulated two issues for determination, to wit:

1. **Whether on the strength of the pleadings, evidence adduced, the claimant is entitled to the principal relief sought in the statement of claim?**
2. **Whether the claimant is entitled to the ancillary reliefs contained in the statement of claim?**

The learned counsel to the claimant submitted that evaluation of evidence is the primary duty of the trial court, and he cited the case of **Akanbi Agbaje & 2 ors V. Chief Agba Akin Joshua Ajibola & 2 Ors. (2002) 2 NWLR (pt 750) 127 at p. 148, paras. E-G;** and **Mogaji V. Odofin (1978) 4 SC 91, 93 at 95.** He submitted that the claimant only pleaded but proved by evidence the facts averred in the pleading, and he cited the provision of sections 125 and 169 of the Evidence Act, 2011 to the effect that parties are bound by the terms of the agreement they entered, and he cited the cases of **JFS Investments LTD. v. Brawal Line Ltd. & 2 Ors (2010) 18 NWLR (pt 1225) 495 p. 531, para. B; Baba V. Nigerian Civil Aviation Training Centre (1991) 5 NWLR (pt 192) p. 388; Koki V. Magnusson (1999) 8 NWLR (pt 615) p. 492 at 494; Sona Breweries Plc. V. Peters (2005) 1 NWLR (pt 908)**

478; and Owoni Boys Technical Services Ltd V. UBN Ltd. (2003) 15 NWLR (pt. 84) 345.

The counsel also relied on section 145 of the Evidence Act, 2011 to the effect that the court is to regard any fact as proved unless and until it is disproved, whenever it is directed by the Act that the court should presume such fact. The counsel also cited section 134 of the Evidence Act, 2011 in relation to the burden of proof which shall be discharged on the balance of probabilities in civil actions, and submitted further that the defendants failed to prove all allegations contained in the amended statement of defence of the 1st and 3rd defendants, and that the court should not regard the re-sworn witness statement on oath having not given evidence to support the allegations, and which he relied on section 40 of the Evidence Act to the effect that when a fact is especially within the knowledge of any person, the burden of proof is on such person.

On the issue No. 2, learned counsel submitted that it is the principle of law that what is not denied is presumed to have been admitted which in effect means that the defendant admitted al the paragraphs of the statement of claim, and he cited the case of **Attorney General of the Federation and 35 Ors;** and **Iyere V. Bendel Feed & Flour Mill Ltd (1997) 10. NWLR (pt 523) 136,** and submitted further that he has proved his case against the defendants sued jointly and severally with regard to issue No. one, the principal relief and the ancillary reliefs, and urged the court to enter judgment in favour of the claimant.

Now, having summarised the pleadings, evidence led, it is the duty of this court to evaluate the evidence and to ascribe a probative value to the one that is credible. See the case of **Statoil (Nig.) Ltd V. Inducon (Nig.) Ltd. (2021) All FWLR (pt 1109) 239 (SC).**

It is in evidence of the PW1 that the 2nd defendant, in 2013, requested to engage the claimant as the company secretary to be rendering legal services to the 1st defendant for a fee to be agreed upon mutually by the parties, and the claimant accepted on behalf of the 1st defendant and he commenced rendering the legal services, and in 2014 he drafted an agreement to formalise the relationship of the 1st defendant with the Chinese Electronics Product Manufacturer named **SOHO Industry Ltd** and he signed on behalf of the 1st defendant, and the defendants agreed to pay for the legal fees.

In the course of cross – examination, the PW1 was asked whether the decision of the 2nd defendant binds the 1st and 3rd defendants, and the PW1 answered in the affirmative.

The PW1 was further asked whether instruction from client must be in writing, and the PW1 answered that instruction can be in writing or verbal.

He was further asked whether the instruction to be the company secretary of the 1st defendant was in writing or verbal, and the PW1 answered that the instruction was in writing, and that was why he tendered EXH. 'A5'.

The PW1 was asked whether he was appointed as company secretary in 2013, and had registered the appointment with CAC, and the PW1 said that he was not and that he was appointed in 2013, but he commenced legal services to the 1st and 3rd defendants, and in 2016, a formal resolution was perfected, and the agreement was also perfected to cover the legal services from the period of 2013 to 2016.

The PW1 was asked as to what were the legal services rendered, and the PW1 answered that apart from the legal draftings to the 1st and 2nd defendants, he attended

meetings and represented the 1st and 2nd defendants in meeting with their respective buyers of Wilson products. He represented them before the police, EFCC as the defendants had some issues with. He also represented the defendant at F.I.R.S. which culminated in the award of contract for the supply of Wilson Multimedia Device which was awarded to the 3rd defendant.

The PW1 later told the court that he was not in the know of to who the F.I.R.S. awarded the contract, but he knew about the transaction.

The PW1 was asked whether he was paid N100,000.00 for the incorporation of the 3rd defendant, and he answered in the affirmative. In all these questions during cross-examination, the PW1 was not challenged by the counsel to the defendants. No any request for the court to compare the signatures between the special resolutions and the agreement EXH. 'A5' and 'A6' to ascertain whether they are the same or that there is a difference as no allegation of forgery was made by the defendants, and no any document was produced by the defendants to compare the signatures contained in the exhibits and that other document, therefore, the evidence of the PW1 was not controverted by any evidence. See the case of **Transocean S.S. (Nig.) Ltd V. Omeline (2018) All FWLR (pt 927) p. 95 at 111, paras. C-D** where the Court of Appeal, Port Harcourt Division held that evidence that is neither controverted nor successfully debunked remains credible and good evidence, which a trial court ought to rely upon and accept as such. In the instant case, the questions to whether the agreement entered between the claimant and the defendant EXH. 'A6' and the resolution EXH. 'A5' contained the signatures of the 2nd defendant or that of another person does not matter, hence it was not pleaded

that those signatures alleged to have been made by the 2nd defendant were not his, and no any contrary signature contained in any document was produced to compare the signatures in order to prove that the signatures in EXH. 'A5' and 'A6' were no that of the 2nd defendant, and therefore the court has no option than to accept the content of such documents.

Thus, it was in evidence that there was a resolution passed by the 1st defendant and the claimant that the 1st defendant shall pay to the claimant the legal services rendered from 2013 to 2016 in the sum of ₦7,000,000.00 (Seven Million Naira only).

The clause in the agreement reads:

IT IS HEREBY AGREED AS FOLLOWS:

i. That the company upon execution, delivery and receipt of payment on its Purchase Order (P.O.) shall pay the legal consultant a lump sum of ₦7,000,000.00 (Seven Million Naira) only to cover all outstanding on the legal services rendered from 2013 – 2016.
ii. That the legal consultant shall be retained as company secretary to the company.
iii. That Financial Consultants have been detailed to recommend appropriate remuneration for company secretary.
iv. That steps shall be taken by the company to properly register with the Corporate Affairs Commission the appointment of the company secretary in (ii) above.

Thus, the registration of appointment of the company secretary will be registered with the Corporate Affairs Commission, and therefore the registration of the appointment of the claimant as company secretary will be

done after the services were rendered by the claimant to the defendants from 2013 – 2016. The PW1 was not successfully challenged on the registration of the appointment of the claimant, and that will not debar the court from accepting the content of the agreement.

The PW1 contradicted himself when he said he represented the defendants at F.I.R.S. in the meetings and later said he was not in the know as to who the contract was awarded by the F.I.R.S., but still maintain that he represented the defendants in meetings with F.I.R.S., and this contradiction is not all that material to disprove that there was an agreement between the claimant and the defendants EXH. 'A6'. See the case of **Moh'd V. State (2018) All FWLR (pt 936) p. 1432 at 1448, paras. G-H,** where the Supreme Court held that, contradictions of minor details which do not affect the substance of the issue to be decided are irrelevant. In the instant case, the minor contradiction in the evidence of the PW1 will not affect the substance of the matter, which is that whether there is an agreement for the payment of legal services rendered by the claimant to the defendants from 2013 – 2016, and moreso, it is evident that the claimant had attended various meeting with F.I.R.S. on behalf of the defendants.

Let me adopt the issue No. I formulated by the counsel to the claimant as I found it suitable, that is to say:

> **Whether on the strength of the pleadings, evidence adduced, the claimant is entitled to the reliefs sought?**

It is the law that a client solicitor relationship comes into existence where a legal practitioner acts for a person in a professional capacity. See the case of **F.B.N. Plc V. Ndoma Egba (2006) All FWLR (pt 307) p. 1015 at 1033, para. F.**

It is also the law that a legal practitioner has a right to be remunerated for his services. He can either be paid in advance upon named fees or rely on the terms of any agreement reached for his fees. See the same case of **F.B.N. Plc V. Ndoma-Egba (supra).** In the instant case, the agreement reached between the claimant and the 1st defendant for the payment to the claimant of the legal fees for the services rendered from 2013 – 2016, is binding on the defendants. See section 169 of the Evidence Act, 2011 which provides:

> **"When one person has either by virtue of any existing court judgment, deed or agreement, or by his declaration, act or omission intentionally caused or permitted another person to believe a thing to be true or to act upon such belief, neither he nor his representatives in interest shall be allowed in any proceedings between himself and such person or such person's representatives in interest, to deny the truth of that thing."**

In also the case of **Bulet Int'l (Nig.) Ltd. V. Olaniyi (2018) All FWLR (pt 943) p. 507 at 531, paras. G-H** to the effect that it would be very dangerous to allow a man over the age of infancy to escape from the legal effects of a document he has, after reading it, signed in the absence of any express misrepresentation by the other party of that legal effect. In essence, parties are bound by the agreement they entered.

In the circumstances of this case, I have come to the conclusion that the claimant has established by evidence that there was no agreement between him and the defendants for the payment of legal services, the claimant rendered, from 2013 – 2016, and whatever services rendered by the claimant within that period is covered by the agreement.

I also hold that no evidence exist showing that there was any agreement between the claimant and the defendants that services have been rendered or that it would be rendered from the period of June, 2016 to May, 2018.

The defendants' witness, having adopted his witness statement on oath but refused to appear before the court for cross-examination by the counsel to the claimant, there is no way the court will test the authenticity of the witness statement on oath. See the case of **N.I.T.E.L. V. Okeke (2017) All FWLR (pt. 899) p. 2220, paras. C-E per Akaahs JSC.** In the instant case, the defendants' witness, having not presented himself for cross-examination, the witness statement on oath has no probative value and it is hereby discountenanced. See the case of **State V. Ibrahim (2019) All FWLR (pt. 1007) p. 713 at 737, paras. G – H** where the Supreme Court held that the evidence of a witness who was not presented for cross-examination or whose evidence was untested under cross-examination by the failure to put him for cross-examination, after his evidence-in-chief, has no probative value.

It is evident that the defendants have paid the sum of ₦ 3,500,000.00 (Three Million, Five Hundred Thousand Naira), and this was acknowledged by the claimant, what is remaining unpaid is the sum of ₦3,500,000.00 (Three Million, Five Hundred Thousand Naira).

The defendants are hereby jointly and severally found liable to the claim of ₦3,500,000.00 (Three Million, Five Hundred Thousand Naira) being the outstanding balance of the agreed sum of ₦7,000,000.00 (Seven Million Naira) payable to the claimant as legal fees for the services rendered from 2013 to 2016.

The defendants are hereby ordered jointly and severally to pay the sum of ₦3,500,000.00 (Three Million, Five Hundred Thousand Naira) within the period of two weeks from the date of this judgment.

In pursuance of Order 39 Rule 4 of the Rules of this court, the defendants are hereby ordered to pay to the claimant a post judgment interest of 10% per annum.

No evidence was led as to the existence of any agreement on interest for the outstanding sum of ₦6,500,000.00, and the cost of action, and therefore these claims are hereby dismissed accordingly.

Hon. Judge
Signed
25/10/2023

Appearances:

The claimant is in court.

Nwosu Augustine Esq appeared for the claimant.

CC-CT: It appears that the defendants are not in court, and they are not represented. The matter was adjourned to today for judgment. Hearing notices were served, and we are ready for the judgment.

CT-CC: This judgment supposed to have been delivered on the 8th day of May, 2023, but it was not, due to the absence of the Judge for National Assignment, have you suffered any miscarriage as a result of that?

CC-CT: We have not suffered any miscarriage of justice at all.

CT: Judgment is delivered.

Hon. Judge
Signed
25/10/2023