IN THE HIGH COURT OF JUSTICE

OF EDO STATE OF NIGERIA

IN THE BENIN JUDICIAL DIVISION

HOLDEN AT BENIN CITY

BEFORE HIS LORDSHIP, HON.JUSTICE P.A. AKHIHIERO

ON TUESDAY

THE 25TH DAY OF APRIL, 2023.

BETWEEN: ***SUIT NO. B/732/2021***

1. ***BUA INTERNATONAL LIMITED***
2. ***MR ABDULSAMAD RABIU*** ***----------CLAIMANTS***

AND

1. ***ARTHUR FERDINARD LIMITED***
2. ***MR IDAMA AMURE*** ***----------DEFENDANTS***

JUDGMENT

The Claimant instituted this suit against the Defendant vide a writ of summons filed on the 20th of August, 2021 claiming as follows:

a. ***The sum of ₦1,018,865,968.50 (One Billion Eighteen Million, Eight Hundred & Sixty - Five Thousand, Nine Hundred & Sixty Eight Naira, Fifty Kobo) being special damages in that sometime in August, 2015 the Defendants failed, refused and neglected to complete the pipeline project awarded to them by the Claimants;***

b. ***The sum of ₦ 300,000,000 (Three Hundred Million Naira) being special damages for money paid to the Defendants in respect of the aforesaid contract which contract was abandoned by the defendants;***
c. ***The sum of ₦ 1,000,000,000.00 being general damages in that sometime in August, 2015 the Defendants failed, refused and neglected to complete the pipeline project awarded to them by the Claimants.***

The originating processes in this suit were served on the Defendants by substituted service but they failed to enter any appearance or file any statement of defence. When the suit became ripe for hearing, Hearing Notices were served on them but they also failed to show up in Court to defend the suit.

Consequently, the Claimants were granted leave to lead evidence in proof of their case. At the hearing, the Claimants called two witnesses and tendered some documents.

The Claimant's case as can be gleaned from their evidence is that the Claimants entered into a contract to engage the Defendants to construct a gas transmission pipeline for Bua Gas Development Project at Okpella, Edo State. The contract was reduced into writing and was executed by the parties on the 24/4/2013; a copy of the contract was admitted as Exhibit E at the trial. The said Exhibit E expressly provided for the works involved to be executed within 8 months.

The consideration for the said contract was stated to be $6,200,000 (Six Million, Two Hundred Thousand U.S Dollars.

The Claimants appointed SATCO Consultancy and Energy Services Limited as its Consultant to monitor and report on the Gas Pipeline Construction Project.

After signing the contract, the Defendants mobilized to site and embarked on the pipeline project and at a stage stopped work which necessitated the intervention of the Consultants to the projects who issued a warning to the Defendants on 10th March, 2014 to work within the schedule of the project.

The Consultant further wrote another letter dated 19th March, 2014 to the Defendants to clearly outline the works that were outstanding and behind schedule.

The Defendants allegedly responded by a letter on the 2nd of June 2014 and gave an undertaking to expedite action on the work as soon as they received additional excavators.

In spite of the warnings by the Consultants, the Defendants failed and/or neglected to work within the schedule of work to complete the project.

The Defendants allegedly abandoned the project in August 2015 and the Claimants were constrained to re-award the contract to Job Ruth'Rford Services Limited who eventually completed the project for the sum of ₦ 1,018,865,968.50 (One Billion Eighteen Million, Eight Hundred & Sixty - Five Thousand, Nine Hundred & Sixty Eight Naira, Fifty Kobo).

The Claimants allegedly paid the Defendants a total sum of ₦ 589,032,037.88 (Five Hundred & Eighty-Nine Million, Thirty-Two Thousand, Thirty-Seven Naira, Eighty-Eight Kobo) out of which the Defendants worked for only ₦ 289,032,037.88 leaving the sum of ₦ 300,000,000 (Three Hundred Million Naira) outstanding for work undone.

The Claimants alleged that they paid a cumulative sum of ₦ 1,607,898,006.38 to the two contractors in order to complete the contract.

The Claimants alleged that they suffered untold hardship, financial losses and damage to their goodwill because customers who had deposited huge sum of money with them lost confidence in them and doubted their ability to ever go into production of cement.

As earlier stated, the Defendants failed to turn up to defend this suit, so the Claimants were directed to file their final written address.

In his final written address, the learned counsel for the Claimants, ***Ibrahim Amusat Esq.*** formulated a sole issue for determination as follows:

"Whether the Claimants are entitled to a judgment in this case".

Arguing the sole issue for determination, the learned counsel posited that the Claimants witnesses gave copious evidence in support of the Claimants claim against the Defendants and their evidence was not challenged or contradicted in any form whatsoever. That it is trite law that unchallenged evidence is deemed admitted and will entitle the Claimants to judgment and he relied on the decision of the Supreme Court in the case of ***NWABUOKU V OTTIH (1961) ALL NLR 507***, where the Court held as follows:

"Where a Plaintiff adduces oral evidence which establishes his claim against the Defendant in the terms of the writ and that evidence is not rebutted by the defence; the Plaintiff is entitled to judgment".

He also relied on the decision of the Supreme Court in the case of ***MUSA V. YERIMA (1997) 53 LRCN 2549 AT 2568P*** where they re-stated the position.

Learned counsel posited that in the instant case, the Claimants are entitled to judgment having proved their claim against the Defendants and without any contradiction whatsoever.

Furthermore, he posited that the Claimants are entitled to damages for the Defendants' breach of Exhibit E, the contract entered into by the parties. He said that the Claimants have shown that the Defendants abandoned the contract and failed to execute the project within the scheduled time. That the delay caused the Claimants to engage the services of another contractor, Ruth' Rford Services Ltd to complete the project with an additional cost of N1,018,865,968.50 (One Billion, Eighteen Million, Eight Hundred & Sixty- Five Thousand, Nine Hundred and Sixty-Eight, Fifty Kobo).

Counsel submitted that the principle guiding contract was clearly stated in the case of ***AFOLABI V GOVERNOR OF OYO STATE & ORS (2016) LPELR – 41945 (CA)*** as follows:

"The principle guiding contract was clearly propounded in the case of OBAJIMI V ADEDIJI (2008) 3 NWLR pp. 16-17 para NB. A breach of contract is committed when a party to the contract without lawful excuse fails, neglects or refuses to perform an obligation he undertook in the contract or either performs the obligation defectively or incapacitates himself from performing the contract."

He also relied on the decision of the apex Court in the case of ***AHMED V CBN (2013) 2 NWLR (PT 1339) 524 AT 544***.

Counsel referred to the case of ***ARFO CONSTRUCTION CO. LTD V. MINISTER OF WORKS (2018) LPELR – 46711 (CA)*** where the Court held that once a breach of contract is established, damages follow. He said that the Claimants have shown clearly that the failure of the Defendants to complete the contract compelled them to enter into another contract with Ruth' Rford Services Ltd. with an additional cost of ₦1,018,865,968.50 (One Billion, Eighteen Million, Eight Hundred & Sixty- Eight Naira, fifty kobo.

He said that the Claimants have also proved that the Defendants were paid the total sum of ₦ 589,032,037.88 (Five Hundred and Eighty-Nine Million, Thirty-Two Thousand, Thirty-Seven Naira and Eighty-Eight Kobo) out of which the Defendants worked for only ₦ 289,032,037.88 (Two Hundred and Eighty-Nine Million, Thirty-Two Thousand, Thirty-Seven Naira and Eighty-Eight Kobo) leaving the sum of N300,000,000.00 (Three Hundred Million Naira) outstanding for work undone.

He maintained that the Claimants are entitled to the damages as claimed in their statement of claim. That he who suffers a wrong is entitled to a remedy and he cited the maxim *Ubi jus, ibi remedium*.

In conclusion, he urged the Court to enter judgment for the Claimants.

I have carefully considered all the processes filed in this suit, together with the evidence led in the course of the hearing and the address of the learned Counsel for the Claimants.

As I have already observed, the Defendants did not put up any defence to this suit. Thus, the evidence of the Claimants against them remains unchallenged.

The position of the law is that evidence that is neither challenged nor debunked remains good and credible evidence which should be relied upon by the trial court, which has a duty to ascribe probative value to it. See the following decisions on the point: ***Monkom vs. Odili (2010) 2 NWLR (Pt.1179) 419 at 442; and Kopek Construction Ltd. vs. Ekisola (2010) 3 NWLR (Pt.1182) 618 at 663.***

Furthermore, where the Claimants have adduced admissible evidence which is satisfactory in the context of the case, and none is available from the Defendants, the burden on the Claimants is lighter as the case will be decided upon a minimum of proof. See*: **Adeleke vs. Iyanda (2001) 13 NWLR (Pt.729) 1at 23-24.***

However, notwithstanding the fact that the suit is undefended, the Court would only be bound by unchallenged and uncontroverted evidence of the Claimants if it is cogent and credible. See***: Arewa Textiles Plc. vs. Finetex Ltd. (2003) 7 NWLR (Pt.819) 322 at 341***.

Even where the evidence is unchallenged, the trial court still has a duty to evaluate it and be satisfied that it is credible and sufficient to sustain the claim. See: ***Gonzee (Nig.) Ltd. vs. Nigerian Educational Research and Development Council (2005) 13 NWLR (Pt.943) 634 at 650***.

Applying the foregoing principles, I will evaluate the evidence adduced by the Claimants to ascertain whether they are credible and sufficient to sustain their Claims.

I am of the view that the sole Issue for Determination in this suit is: ***whether the Claimants are entitled to the reliefs claimed in this suit.***

In a case of a breach of contract such as in the instant suit, it is settled law that the burden is on the Claimants to prove that there was a contract between them and the Defendants and that the contract was breached to their disadvantage. See: ***Orji Vs Anyaso (2000)2 NWLR (part 643) page 1; and RFO CONSTRUCTION CO. LTD V. MINISTER OF WORKS & ANOR (2018) LPELR-46711(CA) (PP. 23 PARAS. B).***

Essentially, the Claimants' case is that sometime in August, 2015 the Defendants failed, refused and neglected to complete the execution of a contract for the construction of a gas transmission pipeline awarded to them by the Claimants;

At the trial, the Claimants led unchallenged evidence of how they paid the Defendants a total sum of N 589,032,037.88 (Five Hundred & Eighty-Nine Million, Thirty-Two Thousand, Thirty-Seven Naira, Eighty-Eight Kobo) out of which the Defendants executed a part of the project which was valued at the sum of N 289,032,037.88 leaving the sum of N 300,000,000 (Three Hundred Million Naira) outstanding for work undone.

The Claimants led evidence of how the Defendants abandoned the project in August 2015 and they were constrained to re-award the contract to Job Ruth'Rford Services Limited who eventually completed the project for the sum of N 1,018,865,968.50 (One Billion Eighteen Million, Eight Hundred & Sixty - Five Thousand, Nine Hundred & Sixty Eight Naira, Fifty Kobo).

The evidence of the Claimants remains unchallenged and un-contradicted. On the basis of the authorities earlier cited in this judgment, I accept the evidence of the Claimants in this regard.

The issue to be resolved at this stage is whether there was any contract between the Claimants and the Defendants which was allegedly breached by the latter.

The principle guiding contract was clearly propounded in the case of ***Obajimi v. Adediji (2008) 3 NWLR pp 16-17 para N B***. It is settled law that a breach of

contract is committed when a party to the contract without lawful excuse fails, neglects or refuses to perform an obligation he undertook in the contract or either performs the obligation defectively or incapacitates himself from performing the contract. See also: ***AFOLABI V. GOV OF OYO STATE & ORS (2016) LPELR-41945(CA) (PP. 16-17 PARAS. E).***

Again in the case of ***UKPONGSON NIGERIA COMPANY LIMITED & ANOR v. BANK OF INDUSTRY LIMITED (2022) LPELR-57927(CA)***, the Court of Appeal exposited thus:

"Breach of contract is no more than a failure, without legal excuse, to perform any promise which forms an integral part of a contract. It is also connotes unequivocal and absolute refusal to perform an agreement. In ARE V OWOEYE (2014) LPELR - 41096 (CA), it was held that breach of fundamental terms occurs in a contract when a party fails to carry out the contract in its essential terms such a breach goes to the root of the contract."

In the instant case, the unchallenged evidence before the Court is that the Defendants entered into a written contract with the Claimants to construct a gas transmission pipeline for the Claimants at Okpella, Edo State. A copy of the contract was admitted as Exhibit E at the trial. The said Exhibit E expressly provided for the works involved to be executed within 8 months.

The Defendants collected a total sum of N 589,032,037.88 (Five Hundred & Eighty-Nine Million, Thirty-Two Thousand, Thirty-Seven Naira, Eighty-Eight Kobo) from the Claimants to execute the contract but only executed a part of the project which was valued at the sum of N 289,032,037.88 leaving the sum of N 300,000,000 (Three Hundred Million Naira) outstanding for work undone. The Defendants did not give any explanation whatsoever for their failure to complete the project.

I am of the view that on the authorities already cited in this judgment, the Defendants are clearly in breach of their contract with the Claimants.

In this suit the Claimants are claiming the sum of N1, 018,865,968.50 (One Billion Eighteen Million, Eight Hundred & Sixty - Five Thousand, Nine Hundred & Sixty Eight Naira, Fifty Kobo) as special damages in for the Defendants failure to complete the contract; the sum of N 300,000,000 (Three Hundred Million Naira) special damages for money paid to the Defendants in respect of the work not done; and the sum of N 1,000,000,000.00 as general damages for the breach of contract.

On the two separate claims for special damages, it is settled law that special damages must be proved strictly.

In the case of ***ONYIORAH V. ONYIORAH & ANOR (2019) LPELR-49096(SC) (PP. 6 PARAS. E),*** the Court of Appeal exposited as follows:

"Special damages must be specially pleaded and strictly proved by the claimant. To succeed in a claim for special damages the claimant must plead the special damages and give necessary particulars and adduce credible evidence in support. The claimant must satisfy the Court as to how the sum claimed as special damages was quantified."

In the case of ***Udeagha vs Nwogwugwu (2013) LPELR - 21819 (CA)*** the Court of Appeal held thus:

"***The determination of what constitutes special damages is therefore not a matter of conjecture, assessment or estimation by the Court and can therefore not be considered in the context of nominal award..."***

In the same case, the Court stated inter-alia as follows:

"... to be able to win the discretion of the Court in his favour. He should produce the receipts or documents, showing when and where he bought those items, their costs... That, I believe, would have presented some basis for evaluating the claims of the Respondent under the special damage and how to arrive at the amount awarded."

The law is well settled that special damages must be specifically pleaded and strictly proved by the claimant. What this means, is that the facts which will prove special damages, must first be clearly particularized in the averments of the claimant's statement of claim. Thereafter at the trial of the action, evidence must be led at the instance of the claimant, demonstrating how the losses which the claimant alleges that he suffered were incurred. Therefore, a special damage is not to be at large. It is quantifiable and measurable.

The apex Court in the case of ***Adim V. Nigerian Bottling Co Ltd & Anor (2010) 4 SCNJ 222 at 235*** restated the principle with respect to special damages, inter alia:

"The particularity of the pleading and the evidence must be such that the losses are exactly known and accurately measured. It must be measurable and

quantifiable. The nature of pleading and the evidence must establish the entitlement to such damages which will immediately lead to the measurement and quantification of the losses. See Dumez V. Ogboli (1972) 3 SC 196. But where there has been a proper and adequate pleadings, the unchallenged evidence, without more can constitute sufficient proof of special damages. See Adel Boshali V. Allied Commercial Exporters Ltd (1961) AII NLR 917, Odulaja V. Haddad (supra) 1973) 11 SC 351; N. M. S. L.Afolabi (1978) 2 SC 79." Per Musdapher, JSC (as he then was).

Upon a careful examination of the quality of the Claimants' averments with respect to the claims for special damages, I find them bereft of any measurement and quantification of the losses allegedly suffered by the Claimants. The Claimants simply pleaded some lump sums allegedly expended in the execution of the contract without particularizing the alleged expenses.

In the case of ***ODULATE V. FIRST BANK (2019) LPELR-47353(CA) (PP. 15 PARAS. D),*** the Court emphasized the position thus:

"***Damages are not awarded as a matter of course, especially as it pertains to special damages. The party seeking such after establishing the breach, must show how the breach caused injury that is requiring damages. For special damages, the party must itemise every particular expense that requires damages."***

A specific and adequate pleading of special damages precedes the strict proof of the same by the Claimants. Therefore, where the proper foundation was not laid by an adequate pleading of the losses incurred by the Claimants with respect to the alleged losses, the proof of the same would have nothing to stand upon.

From the foregoing it is apparent that the pleadings of the Claimants and the evidence adduced at the trial falls far short of the standard of proof of special damages. It is only where there has been a proper and adequate pleadings that the unchallenged evidence, without more can constitute sufficient proof of special damages. See ***Adel Boshali V. Allied Commercial Exporters Ltd (supra); and Odulaja V. Haddad (supra).*** Thus, in the absence of adequate pleadings, the claims for special damages are bound to fail.

However failure to establish special damages (which must be proved strictly), does not mark an end to a Suit, which has been established, otherwise. A claim is established, once the Court finds merit in the case, even when the special damages claimed cannot be established. In that circumstance, the Court can award general

damages, while refusing the special damages. This is because, while special damages must be proved strictly to succeed, general damages is always due, once the Defendants are found liable to a claim as it flows from the wrong done by the Defendants. See the Cases of ***Okechukwu Vs UBA Plc & Anor (2017) LPELR - 43100 CA; Iyere Vs Bendel Feed & Flour Mill Ltd (2008) LPELR - 1578 (SC); Odulaja Vs Haddad (1973) LPELR 2240 (SC); Onyiorah Vs Onyiorah & Anor (2019) LPELR - 49096 (SC); Agu Vs General Oil Ltd (2015) LPELR - 24613 SC.***

In this case, since I have made a finding that the Defendants are in breach of the contract general damages will naturally follow.

In this suit, the Claimants are claiming the sum of N 1,000,000,000.00 (One Billion Naira) as general damages for the breach of contract.

On the claim for general damages, it is settled law that the fundamental objective for the award of damages is to compensate the Claimant for the harm and injury caused by the Defendant. See the cases of ***G. Chitex Industries Ltd. v. Oceanic Bank International (Nig) Ltd (2005) LPELR-1293(SC);*** and ***Omonuwa v. Wahabi (1976) 4 SC 37 at 41.***

Thus, it is the duty of the Court to assess the Damages; taking into consideration the surrounding circumstances and the conduct of the parties. See: ***Olatunde Laja vs. Alhaji Isiba & Anor. (1979) 7 CA.***

The quantum of damages will depend on the evidence of what the Claimant has suffered from the acts of the Defendant. In cases of breach of contract the aggrieved party is entitled to recover such part of the loss which was reasonably foreseeable as liable to result from the breach. Thus a Claimant is only entitled to damages naturally flowing or resulting from the breach. See ***Swiss Nigerian Wood Industries Ltd. v. Bogo (1971) 1 UILR 337; Agbaje v. National Motors (1971) 1 UILR 119***. The measure of damages, in such cases of breach of contract, is in the terms of the loss which is reasonably within the contemplation of the parties at the time of contract. See ***Jammal Engineering v. Wrought Iron (1970) NCLR 295; Alraine v. Eshiett (1977) 1 SC 89***.

General damages are defined as the kind of damages which the law presume to flow from the wrong complained of by the victim. It covers all losses which are not capable of exact quantification, including non-financial losses. The manner in which general damages is quantified by the Courts is by relying on the opinion and

judgment of a reasonable person in the circumstance of the case. ***See Badmus & Anor v. Abegunde (1999) LPELR-705 (SC); Akinterinwa vs. Oladunjoye (2000) LPELR-358 (SC).***

Items of general damages, unlike special damages, need not be specifically pleaded and proved. The measure or quantum of general damages is a matter that is at the discretion of a Judge taking into account the type of wrong committed or injury suffered. ***In ELF Petroleum vs. Umah & Ors (2018) LPELR-43000 (SC) Ogunbiyi JSC*** restated the law as follows:

"It is pertinent to re-iterate herein that in the award of general damages a wide spread power is given to the Court comparable to the exercise of discretion of the Court. It is enormous and therefore far-reaching and contrary to the contention held by the Appellant herein. The measure of general damages is awarded to assuage such a loss, which flows naturally from the Defendant's act. It needs not be specifically pleaded. It suffices if it is generally averred... Unlike special damages, it is generally incapable of exact calculation."

Going through the Claimants' evidence, I observed that they led uncontroverted evidence of how the failure of the Defendants to complete the contract compelled them to enter into another contract with Ruth' Rford Services Ltd. with an additional cost of N1,018,865,968.50 (One Billion, Eighteen Million, Eight Hundred & Sixty- Eight Naira, fifty kobo.

The Claimants also led uncontroverted evidence to prove that the Defendants were paid the total sum of N 589,032,037.88 (Five Hundred and Eighty-Nine Million, Thirty-Two Thousand, Thirty-Seven Naira and Eighty-Eight Kobo) out of which the Defendants worked for only N 289,032,037.88 (Two Hundred and Eighty-Nine Million, Thirty-Two Thousand, Thirty-Seven Naira and Eighty-Eight Kobo) leaving the sum of N300, 000,000.00 (Three Hundred Million Naira) outstanding for work undone.

From the available evidence, I think the Claimant is entitled to some reasonable compensation for all the financial losses incurred as a result of the Defendants' breach of contract. Clearly they are entitled to the sum of N1, 000,000.00 (One Billion Naira) as general damages.

On the whole, I hold that the sole issue for determination is resolved in favour of the Claimants and judgment is entered in favour of the Claimants as follows:

The sum of ₦ 1,000,000,000.00 (One Billion Naira) being general damages in that sometime in August, 2015 the Defendants failed, refused and neglected to complete the pipeline project awarded to them by the Claimants.

The Defendants shall pay the sum of N100, 000.00 (One Hundred Thousand Naira) as costs to the Claimants.

P.A.AKHIHIERO JUDGE

25 /04/2023

<u>COUNSEL:</u>

Ibrahim Amusat Esq. ----------Claimants.

Unrepresented----------Defendants.