

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 WEDNESDAY THE
25TH DAY OF OCTOBER, 2023.

BETWEEN

SUIT NO: B/81^{OS}/2023

A.C. EGBE NIGERIA LIMITED.....CLAIMANT

AND

FIRST CITY MONUMENT BANK.....DEFENDANT

JUDGMENT

The Claimant filed an Originating Summons dated the 28th of March, 2023, filed on the 14th of April, 2023 for the determination of the sole legal question set out in the Claimant's originating summons as follows:

Whether upon the interpretation and construction of the Award letter/agreement with the Federal Ministry of Works, Abuja and the agreement signed with the Defendant Bank upon the grant of APG (Advance Payment Guarantee), pursuant to the execution of Ohordua-Ugbodua-Ugbodu-Onicha-Uku-Isselu-Uku road, did not provide for the Bank to hold back the monies (N6,510,213.90) Six Million, Five Hundred and Ten Thousand, Two Hundred and Thirteen Naira, Ninety Kobo only, belonging to the Claimant in the absence of any specific directive/instrument from the Claimant who is their customer.

In the event that the answer to this question is in the affirmative, the Claimant claims the following reliefs against the Defendant.

- 1. A declaration that the holding back of the N6,510,213.90 without authorization from the Claimant is null and void and is a flagrant violation of Customer/Bank relationship.*
- 2. A declaration that the Defendant has no authority in law and equity to hold back that amount of money for these 12 years as this is against natural justice and good conscience.*
- 3. An order directing the Defendant to pay that sum to the Claimant within 7 days of the order.*
- 4. An order preventing the Defendant from cutting any further corners after the order of this Honourable Court.*

This Originating Summons is supported by a seven (7) paragraph affidavit in which the facts supporting the application are enumerated. Attached to the supporting affidavit are some relevant documents.

In consonance with the rules of this Court, the learned counsel for the Claimant filed a written address which he adopted as his arguments in support of the Originating Summons.

In his written address, the learned counsel for the Claimant, *C.E. Agbowanegbe Esq.* merely identified the sole question to be determined in the suit and the four reliefs which the Claimant is claiming. He did not make any effort whatsoever to articulate any submissions to assist the Court to interpret the contents of the alleged Award Letter/Agreement with the Federal Ministry of Works, Abuja and the agreement signed with the Defendant Bank upon the grant of APG (Advance Payment Guarantee), pursuant to the execution of the contract for the Ohordua-Ugbodua-Ugbodu-Onicha-Uku-Isselu-Uku road.

It has been held by the Supreme Court that addresses are designed to assist the court. See: *Niger Construction Ltd. v. Chief A.O. Okugbeni (1987) 4 N.W.L.R. (Pt.67) 787 S.C.*; and *OGUGU & ORS V. STATE (1990) LPELR-19873(CA) (PP. 17 PARAS. C)*. The importance of addresses from counsel cannot be over-emphasized as "*a good address may provide a Judge a clear mental opinion to perceive either the tenuousness in what had appeared impregnable or to see through the veneer and discover the hard core of a party's case*" - see *Ndu v. The State (1990) 7 NWLR (Pt.164) 550 SC*.

Thus before determining this suit, I am constrained to observe that the learned counsel's written address was so skeletal that it did not perform or serve the purpose which a written address is meant to serve. Submissions contained in a written address are supposed to demonstrate a good understanding of the application of the law to the facts of the case. Arguments should clearly and convincingly be proffered on the known position of the law on the issues submitted to the Court for determination in a manner that would assist the Court to easily decide the crucial issues in the suit. See *UNIPETROL V. EDO STATE BOARD OF INTERNAL REVENUE (2001) 10 NWLR (720) 167*, *UBA V. OGUNSANYA (2003) 8 NWLR (821) 111*, *HAWAD INT'L SCHOOL v. MIMA PROJ. VENTURES (NO. 2) (2005) 1 NWLR (908) 574*.

A written address such as that of the Claimant in this suit, which is in such a skeletal form without the necessary submissions and relevant authorities to ossify and amplify the issues sufficiently, is of little assistance in the determination of the suit. With this terse address, the counsel has simply shifted the entire burden of proving his case to the Court. This is not a commendable approach.

The Originating Summons and the accompanying processes were served on the Defendant in this suit but they failed to appear before this Court neither did they file any process to defend the suit. Thus, the evidence of the Claimant against the Defendant 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 Claimant has adduced admissible evidence which is satisfactory in the context of the case, and none is available from the Defendant, the burden on the Claimant 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 Claimant if it is cogent and credible. See: *Arewa Textiles Plc. vs. Finetex Ltd. (2003) 7 NWLR (Pt.819) 322 at 341*.

Thus, 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*.

Incidentally, this suit was initiated by an Originating Summons where there should be no contest on the facts. In the case of *FAMFA OIL LTD VS. A.G FEDERATION (2003) 18 NWLR (PT 852) 454; (2003) 9-10 SC 31*, the Supreme Court reiterated the nature of Originating Summons proceedings when they expounded thus:

"The very nature of an originating summons is to make things simpler for hearing. It is available to any person claiming interest under a deed, Will or other written instrument whereby he will apply by originating summons for the determination of any question of construction arising under the instrument for declaration of his interest. (Order 38 Rule 1 and Order 44 Rule 1L). It is a procedure where the evidence in the main trial is by way of documents and there is no serious dispute as to their existence in the dealings of the parties to the suit. In such a situation, there is no serious dispute as to facts but what the plaintiff is claiming is the declaration of his rights. If there are serious dispute as to facts then a normal writ must be taken out and not Originating Summons - DOHERTY VS. DOHERTY (1968) NMLR 241." See also the case of *KWAKPOVWE & ORS V. NATIONAL ASSOCIATION OF DELTA STATE STUDENTS & ORS (2017) LPELR-45659(CA)(PP. 15-16 PARAS. E)*.

Furthermore, in the case of *Dapianlong v. Dariye (2007) 8 MJSC 140, (2007) 4 S.C. (PT.III) 18*, the apex Court expounded thus:

"The originating summons procedure is a means of commencement of action adopted in cases where the facts are not in dispute or there is no likelihood, of their being in dispute and when the sole or principal question in issue is or is likely to be one directed at the construction of a written law, Constitution or any instrument or of any deed, will, contract or other document or other question of law or in a circumstance where there is not likely to be any dispute as to the facts. In general terms, it is used for non-contentious actions or matters i.e. those actions where facts are not likely to be in dispute."

See also, the following decisions on the point: *Oba Osunbade v Oba Oyewunmi 30 NSCQR 434 at 449; Inakoju v Adeleke (2007) 2 MJSC 1; Peters-Pam v. Muhammed (2008) 9 MJSC 117; FGN v Zebra Energy (Nig.) Limited (2003) 1 MJSC 3; and Executive Governor, Nasarawa State & Anor V. Ukpo (2017) LPELR-42445(CA) (Pp. 19-22 paras. D)*.

In this suit, as already observed, the Defendant did not file any counter-affidavit to dispute the facts as stated by the Claimant. Moreover, the suit is one in which the facts are not in dispute and the sole question in issue is one directed at the construction of the Award Letter/Agreement with the Federal Ministry of

Works, Abuja and the agreement signed with the Defendant Bank upon the grant of an Advance Payment Guarantee (APG), pursuant to the execution of the aforesaid contract. Thus, this is an appropriate situation where the matter can be instituted by Originating Summons.

In this suit, the Claimant is invoking the jurisdiction and powers of this Court to interpret whether the Award Letter/Agreement with the Federal Ministry of Works, Abuja and the agreement signed with the Defendant Bank upon the grant of an Advance Payment Guarantee (APG), pursuant to the execution of the contract for the construction of the Ohordua-Ugbodua-Ugbodu-Onicha-Uku-Isselu-Uku road, did not provide for the Bank to hold back the said sum of (N6,510,213.90) Six Million, Five Hundred and Ten Thousand, Two Hundred and Thirteen Naira, Ninety Kobo only, belonging to the Claimant in the absence of any specific directive/instrument from the Claimant who is their customer.

Simply put, in this suit the Claimant is requesting the Court to declare whether upon the construction of the Award letter/agreement with the Federal Ministry of Works, Abuja and the agreement signed with the Defendant Bank upon the grant of an Advance Payment Guarantee (APG), the Defendant can suo motu withhold the sum of (N6,510,213.90) Six Million, Five Hundred and Ten Thousand, Two Hundred and Thirteen Naira, Ninety Kobo only, belonging to the Claimant (who is their customer) in the absence of any specific directive from the Claimant to that effect.

Incidentally, the Federal Ministry of Works who awarded the contract is not a party to this suit. Perhaps the Claimant did not join them because he does not seem to have any dispute with them. As a matter of fact, in this suit he is not seeking any relief against the Federal Ministry of Works so I am of the view that they are not necessary parties to this suit.

In this suit the Claimant frontloaded some of the relevant documents to enable the Court to comprehend the entire transaction between the Claimant, the Defendant and the Federal Ministry of Works who awarded the contract to the Claimant. The relevant documents frontloaded by the Claimant are as follows:

- a. Award letter/conditions;*
- b. Agreement with the Federal Ministry of works, Abuja;*
- c. Agreement between AC Egbe Nig. Ltd. and FCMB PLC. (not given to the Claimant in spite of several demands even when this case was contemplated);and*

d. Demand and reply letters

Upon a careful examination of the above frontloaded documents, the following facts are not in dispute:

- i. The Federal Ministry of Works, Abuja awarded the Claimant a contract for the construction of the Ohordua-Ugbodua-Ugbodu-Onicha-Uku-Isselu-Uku road;***
- ii. Pursuant to the aforesaid contract, the Claimant was requested to present an Advance Payment Guarantee (APG) to the Federal Ministry of Works;***
- iii. Sequel to the foregoing, the Claimant approached the Defendant and obtained an Advance Payment Guarantee bond from them which he presented to the Federal Ministry of Works in order to secure the contract;***
- iv. The Claimant has allegedly discharged its assignment in respect of the amount which was guaranteed by the Advance Payment Guarantee;***
- v. However, the Defendant is still withholding the sum of (N6,510,213.90) Six Million, Five Hundred and Ten Thousand, Two Hundred and Thirteen Naira, Ninety Kobo only, belonging to the Claimant (who is their customer) in the absence of any specific directive from the Claimant to that effect; and***
- vi. The Claimant's counsel has since written to the Defendant to demand the refund of the aforesaid sum which is being withheld by them but the Defendant has failed/neglected to accede to their demand.***

I have carefully examined all the relevant documents frontloaded by the Claimant in this suit to enable the Court to determine the suit. From the contents of the documents submitted for my interpretation, I cannot see any provision authorizing the Defendant to continue to withhold the aforesaid sum after the Claimant has allegedly discharged its assignment in respect of the amount which was guaranteed by the Advance Payment Guarantee.

Thus it is evident that it is quite unlawful for the Defendant to continue to withhold the aforesaid sum of (N6, 510,213.90) Six Million, Five Hundred and Ten Thousand, Two Hundred and Thirteen Naira, Ninety Kobo only, belonging to the Claimant in the absence of any specific directive from the Claimant to that effect.

Sequel to the foregoing, I am of the view that ***upon the interpretation and the construction of the Award Letter/Agreement with the Federal Ministry of Works, Abuja and the agreement signed with the Defendant Bank upon the grant of the APG (Advance Payment Guarantee), pursuant to the execution of the Ohordua-Ugbodua-Ugbodu-Onicha-Uku-Isselu-Uku road, there is no***

provision whatsoever for the Defendant Bank to hold back the said sum of (N6,510,213.90) Six Million, Five Hundred and Ten Thousand, Two Hundred and Thirteen Naira, Ninety Kobo only, belonging to the Claimant in the absence of any specific directive/instrument from the Claimant who is their customer.

Since the answer to the question raised in this Originating Summons is in the affirmative, the Claimant is granted the following reliefs against the Defendant:

- 1. A declaration that the holding back of the sum of N6,510,213.90 without authorization from the Claimant is null and void and is a flagrant violation of the Customer/Bank relationship;*
- 2. A declaration that the Defendant has no authority in law and equity to hold back that amount of money for these 12 years as this is against natural justice and good conscience;*
- 3. An order directing the Defendant to pay the said sum to the Claimant within 7 days of this order; and*
- 4. An order preventing the Defendant from cutting any further corners after the order of this Honourable Court.*

The sum of N200, 000.00 (Two Hundred Thousand Naira) is awarded to the Claimant as costs for this action.

*Hon. Justice P.A. Akhiero
Judge
25/10/23*

COUNSEL:

**C.E. AGBOWANEGBE ESQ.-----CLAIMANT
UNREPRESENTED-----DEFENDANT**