

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. AKHIHIRO
ON FRIDAY
THE 13TH DAY OF JANUARY, 2023.

BETWEEN: **SUIT NO. B/831/2021**
MR. EHIAMENTALOR VICTOR BENEDICT.....CLAIMANT
(SUNG BY HER LAWFUL ATTORNEY
MISS DEBORAH ROBINSON)

AND
ROWLAND O. OMO-OGBEBOR.....DEFENDANT

JUDGMENT

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

- 1. A DECLARATION that the Defendant deliberately misrepresented to the Claimant that being a top aide of the Benin Monarch, he was capable of resolving the rift between him and Miss Ekata Rachael by transferring a parcel of land measuring 100ft by 200ft lying and situate at Eyaen Community about 400 meters away from Eyan/Auchi Road, Benin City for exchange of the land developed by the Claimant belonging to Miss Ekata Rachael;***

2. ***A DECLARATION that the Claimant is entitled to be refunded the sum of N3,000,000 (Three million naira) he paid to the Defendant for the purchase and transfer of the parcel of land measuring 100ft by 200ft lying and situate at Eyaen Community to the Claimant's ex-lover Miss Ekata Rachael purporting to exchange for the land developed by the Claimant which belongs to Miss Ekata Rachael;***
3. ***AN ORDER of this Honourable Court directing the Defendant to refund the sum of N3,000,000 (Three million naira) to the Claimant which he paid for the purchase of the said parcel of land in exchange of the land developed by the Claimant which belong to Miss Ekata Rachael;***
4. ***AN ORDER for general damages of the sum of N2,000,000 (Two million naira); and***
5. ***An interest rate of 10 per cent on the judgment sum until same is paid by the Defendant to the Claimant.***

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

Consequently, the Claimant was granted leave to lead evidence in proof of his case. At the hearing, the Lawful Attorney of the Claimant, Miss Deborah Robinson adopted her witness Deposition on Oath and the case was adjournment for cross-examination by the Defendant.

The Claimant's case as can be gleaned from his evidence is that the Claimant was once in love with one Miss. Ekata Rachael who had a parcel of land at Eyaen measuring 100ft by 100ft.

That while they were still in love, the said Miss Ekata Rachael surrendered her parcel of land at Eyaen measuring 100ft by 100ft to the Claimant which he developed by erecting four blocks of three bedroom flat each on the parcel of land.

That the Claimant has spent over N63, 000,000 (Sixty Three Million Naira) to develop the parcel of land into a beautiful edifice.

That when their love turned sour, the said Miss Ekata Rachael demanded for the sum of N20, 000,000 (Twenty million naira) from the Claimant or else forfeit the edifice he had erected on the land. The Claimant made all possible peaceful entreaties

to Miss Ekata Rachael to settle the matter amicably but to no avail as the family of Miss Ekata Rachael insisted on the payment of the money or nothing else.

That it was during this crisis that the Defendant was introduced to the Claimant as a top aide of the Oba of Benin who is in a position to summon the family of Miss Ekata Rachael to settle the rift between Claimant and Miss Ekata Rachael.

That when the Claimant met the Defendant, he allegedly boasted that as a prominent emissary of the revered Benin monarch, he would resolve the problem between the Claimant and Miss Ekata Rachael.

That the Defendant demanded the sum of N3,500,000 (Three million, five hundred thousand naira) only to give another land, measuring 100ft by 200ft to Miss Ekata Rachael, which is just 400 metres from Eyaen-Auchi Road, Benin City.

That the Defendant directed the Claimant to pay the sum of N3,000,000 (Three million naira) into the account of Hardrow Construction Nigeria Ltd with Sterling Bank and this was effected through a First Bank Fund Transfer on 23/12/2019 made under the instruction of the Claimant.

That the Defendant further directed that the sum of N500, 000.00 should be paid into the account of Mr. Otasowie Glory which was also done.

That as a result of these payments made, the Defendant issued the Claimant with an approval of Plot Allotment Paper from the Enogie of Eyaen Village to him the Defendant. That there was also a Deed of Transfer which was allegedly prepared to document the purchase of the land.

The Claimant alleged that soon after the payments were made, the Defendant who had given very solid assurance that he would call the family of Miss Ekata Rachael to hand over the said parcel of land to them became evasive and refused to pick the Claimant's calls.

That the Claimant was disappointed by the attitude of the Defendant who knew that he had few days to stay in the country in December 2019 before returning to his base in Switzerland. That after collecting the money, the Defendant, refused to put Miss Ekata Rachael in possession of the said land and settle the rift between the Claimant and Miss Ekata Rachael as he earlier promised.

That upon discreet checks, the Claimant discovered that the Defendant had swindled him of the sum of N3,500,000 (Three million, five hundred thousand naira)

only while using the Oba of Benin Palace address, P.O. Box 1 in the Plot Allotment paper which the Claimant honestly believed as authentication of the Defendant's Claim and capacity to settle the matter.

That the Claimant further discovered that the said parcel of land measuring 100ft by 200ft is far located in the interior of Eyaen Village contrary to the promise that the said land was just 400 metres from the Benin/Auchi Road in Benin City.

That the said parcel of land was discovered to be far less in value than the N3, 500,000 (Three million, five hundred thousand naira) which the Claimant paid for the purchase of the said land. That the Claimant has discovered that the Defendant falsely represented that he was capable of settling the rift between him and Miss Ekata Rachael by defrauding him of the sum which he paid to him to effect the settlement.

That the Claimant through his solicitors, Samuel Abasilim & Co. had to petition the office of AIG, Zone 5, Benin City wherein the Defendant under Police bond promised in June, 2020 to refund the N3,000,000 (Three million naira) only but thereafter reneged.

That one Mr. Otasowie Glory who was paid the sum of N500, 000.00 (Five hundred thousand naira) as directed by the Defendant, thereafter refunded the said sum to the Claimant but the Defendant has refused to make any refunds hence the institution of this suit against him.

The Defendant was served with hearing notice to enable him to appear and cross-examine the witness but he failed to show up so he was foreclosed from cross examination.

Thereafter, the Claimant closed his case and the matter was adjourned for the Defendant to open his defence. Again, hearing notice was issued and served on the Defendant but he did not turn up to defend the suit, so Claimant was directed to file his final written address.

In his final written address, the learned counsel for the Claimant, *S. Abasilim Esq.* formulated a sole issue for determination as follows:

“Whether or not the Claimant is entitled to the reliefs sought in view of the unchallenged evidence of the Claimant by the Defendant.”

Arguing the sole issue for determination, learned counsel submitted that from the disposition of the Defendant to this suit, and the arising claims against him, despite

the service of the processes on him, it is evident that the Defendant has conceded the entire Claim and reliefs of the Claimant. He relied on the case of *Alhaji Tijani Dagazau and anor. vs Bokir Int Company Ltd and anor (2011) 14 NWLR (PT 1267) 261 at page 290*: where the Court of Appeal, Kaduna Division in ratio 62 defined “concede” or concession thus: *“The meaning of the words “Concede” or “Concession” includes yield to a claim or demand.”*

He further posited that the Defendant by his action clearly abandoned the defence of the Claim made against him by the Claimant. He submitted that **“Abandon” means: to desert, surrender, forsake or cede. To relinquish or give up with intent of never again resuming one’s right or interest. To give up absolutely, to forsake entirely.** On this point, he relied on the case of *Ladunni v Wema Bank Ltd (2011) 4NWLR (PT 1236) 44 at page 64 paras A-B.*

He therefore urged the Court to enter judgment for the Claimant in terms of the reliefs and declaratory orders sought.

He submitted that this is also in line with the extant Rules of this Honourable Court in **Order 20, Rule 1 and Order 9, Rule 1.** He said that the Claimant went further to adduce evidence by adopting her witness Deposition on Oath on March 21, 2022 in line with **Order 20 Rule 9(2)** of the Edo State High Court (civil procedure) Rules; 2018 and tendered exhibits A, B1, C and D. He also relied on **Order 30 Rule 3 of the Rules of this Honourable Court.**

Counsel submitted that failure of the Defendant to enter appearance in an action before a Court of competent jurisdiction results in judgment being entered against the Defendant and he urged the Court to so hold and enter judgment against the Defendant.

He further submitted that in both **common sense and law**, facts not disputed are taken as admitted and therefore established. That by the conduct of the Defendant **in not appearing and filing a defence**, it amounts to **admission of facts as presented by the Claimant.** He urged this Honourable Court to hold that an admission is the best proof of the fact admitted. That facts admitted need no further proof and he cited the cases of *Zaccala v Edosa (2018) All FWLR (PT 926) 1 SC*; *Oluyede v Access Bank Plc (2015) 17 NWLR (PT 1489) 596 at 598 ratio 1*; and *CBN V Okojie (2015) 14 NWLR (Pt 1479) 231 at 258 para F-G.*

Again, learned counsel submitted that evidence which is neither challenged nor debunked remains good, credible evidence and should be relied upon by a trial judge, who would in turn ascribe probative value thereon and he cited the case of *Ehimen*

Esene V State (2017) LP ELR – 41912 (Sc) per Ogunbiyi JSC page 23-24 paras F – A.

Furthermore, he submitted that parties are bound by the agreement they willingly entered into. That the only function of the Court is to interpret the agreement in the enforcement of the terms without more and he relied on the case of ***Artra Industries Ltd V Nigerian Bank for Commerce and Industries (1997) 1 NWLR (Pt 483) 574 ratio 10 at page 593 paras F – G.***

In conclusion, he urged the Court to enter judgment for the Claimant as per the reliefs and damages claimed.

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 Claimant.

As I have already observed, the Defendant did not put up any defence to this suit. Thus, the evidence of the Claimant against him 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 Defendants, 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.***

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 Claimant to ascertain whether they are credible and sufficient to sustain the Claim.

I am of the view that the sole Issue for Determination in this suit is: ***whether the Claimant is 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 Claimant to prove that there was a contract between him and the Defendant and that the contract was breached to his 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 Claimant's case is that the Defendant breached the contract which he purportedly entered with him to use his alleged position as a top aide of the Benin Monarch to resolve the rift between the Claimant and Miss Ekata Rachael by transferring a parcel of land measuring 100ft by 200ft lying and situate at Eyaen Community in exchange of the land developed by the Claimant belonging to Miss Ekata Rachael.

The Claimant led unchallenged evidence of how the Defendant made him to part with the sum of N3,000,000 (Three million naira) which he paid for the purchase of the parcel of land in exchange of the land developed by the Claimant which belong to Miss Ekata Rachael.

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

The issue to be resolved at this stage is whether there was any contract between the Claimant and the Defendant 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.*** 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 expounded 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 Defendant made a promise to use his position as a prominent palace functionary to settle the rift between the Claimant and the said Miss Ekata Rachael relating to her alleged parcel of land. The Defendant allegedly collected the sum of three million naira from the Claimant and failed to fulfil his promise without any explanation whatsoever.

I am of the view that on the authorities already cited in this judgment, the Defendant is in breach of his contract with the Claimant.

In this suit the Claimant is claiming the refund of the sum of N3, 000,000.00 (Three Million Naira) for the sum which he paid to the Defendant. He is also claiming the sum of N2, 000,000.00 as general damages.

The transaction in this case is on all fours with an action for money had and received. The Claimant paid the sum of N3, 000,000.00 (Three Million Naira) to the Defendant for a consideration that has failed. This principle was resonated by the Court of Appeal in the case *Sheshe vs. Ibrahim (2013) LPELR - 22604 CA* where they held thus: ***"The law is that where a party pays money to another under an ineffective contract, the party who pays is entitled to recover in quasi contract as money had and received for a consideration that has failed and the objective is to eliminate the concept of unjust enrichment - Ukota Vs. Alliance International (Nig.) Ltd. 1992 8 NWLR (Pt. 259) 374. I do not see the rationale for the withholding of the money by the Appellant to the detriment of the Respondent."*** See also the cases of *OKPOGA MICROFINANCE BANK LIMITED v. PRINCE JERRY OBEYA (2022) LPELR-57109(CA)*; and *GRANT PROPERTIES LTD & ANOR V. OSASANYA & ANOR (2019) LPELR-49526(CA) (PP. 18-20 PARAS. A-A)*.

On the claim for the sum of N2, 000,000.00 (Two Million Naira) as 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. From the evidence adduced by the Claimant, I observed that he did not elaborate on the extent of losses or harm which he suffered as a result of the Defendant's breach of the contract.

In cases of breach of contract the aggrieved party is only 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 is 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 entire gamut of the Claimant's evidence, there is no evidence of the quantum of damages suffered from the action of the Defendant. However, the Claimant led evidence that he was perplexed and devastated at the turn of events, following the unconscionable attitude of the Defendant who knew that he had few days to stay in the country in December 2019 before returning to Switzerland. From the available evidence, I think the Claimant is entitled to some reasonable compensation for the perplexity and devastation which he suffered as a result of the Defendant's conduct.

Finally on the award of an interest rate of 10 per cent on judgment sum till same is fully liquidated, ***Order 34 Rule 4*** of our rules clearly stipulates that the Court may order interest "***at a rate not more than 20% per annum to be paid upon any judgment.***" In view of the obvious economic down turn, I will impose the rate of 5% per annum.

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

- 1. A DECLARATION that the Defendant deliberately misrepresented to the Claimant that being a top aide of the Benin Monarch, he was capable of resolving the rift between him and Miss Ekata Rachael by transferring a parcel of land measuring 100ft by 200ft lying and situate at Eyaen Community about 400 meters away from Eyan/Auchi Road, Benin City for exchange of the land developed by the Claimant belonging to Miss Ekata Rachael;***
- 2. A DECLARATION that the Claimant is entitled to be refunded the sum of N3,000,000 (Three million naira) he paid to the Defendant for the purchase and transfer of the parcel of land measuring 100ft by 200ft lying and situate at Eyaen Community to the Claimant's ex-lover Miss Ekata Rachael purporting to exchange for the land developed by the Claimant which belongs to Miss Ekata Rachael;***
- 3. AN ORDER of this Honourable Court directing the Defendant to refund the sum of N3,000,000 (Three million naira) to the Claimant which he paid for the purchase of the said parcel of land in exchange of the land developed by the Claimant which belong to Miss Ekata Rachael;***
- 4. AN ORDER for general damages of the sum of N1,000,000 (One million naira); and***

5. *An interest rate of 5 per cent on the judgment sum until same is paid by the Defendant to the Claimant.*

P.A.AKHIHIERO JUDGE

13 /01/2023

COUNSEL:

Samuel Abasilim Esq. -----Claimant.

Unrepresented-----Defendant.

