IN THE HIGH COURT OF JUSTICE
OF EDO STATE OF NIGERIA
IN THE AGENEBODE JUDICIAL DIVISION
HOLDEN AT UROMI
BEFORE HIS LORDSHIP, HON.JUSTICE P.A.AKHIHIERO,
JUDGE, ON WEDNESDAY THE
31ST DAY OF JANUARY, 2018.

BETWEEN: SUIT NO.: HAG/16 /2016

1. SCEKAFF AND COMPANY LIMITED
2. EZERHUME JAMES BLESSING
3. EZERHUME DEBORAH VIVAN
(trading under the name and style
of INJC VENTURES) ……. CLAIMANTS

AND

ARTHUR FERDINAND LIMTED ……..……..….. DEFENDANT

JUDGMENT

The Claimants instituted this suit *vide* a Writ of Summons and Statement of Claim dated and filed on the 17th of October, 2016.

The Claimants claims against the Defendant, as contained in their Statement of Claim are as follows:

(a) the sum of ₦6, 857,466:00 (six million, eight hundred and fifty seven thousand four hundred and sixty six naira) being the unpaid money for the hiring of Toyota Hiace Bus with registration number LND315XF for one year inclusive of the unpaid money for the materials supplied by the 2nd and 3rd Claimants to the Defendant, which the Defendant by her Solicitor's letter dated 27th March, 2015, agreed that the Defendant is owning the Claimants; and

(b) The sum of ₦500, 000:00(five hundred thousand naira) from the Defendant as general damages for breach of contract.

The writ of summons, statement of claim, witnesses statement on oath and other documents were served by the Bailiff of this Court on the Defendant by pasting them on the

wall/door of the office of the Defendant, which is at Zekhem Construction Nigeria Limited premises Obayantor, old Benin Road, Km 24 Benin--Sapele Express Road, Benin City, in compliance with the ex-parte order granted on the 22nd November, 2016.

On 3rd April 2017, the Defendant entered appearance with a Conditional Memorandum of Appearance filed by one O. Ohwonohwo Esq., for Don. O Egho & Co who is the Defendant's Counsel.

The Defendant was later granted leave to file their statement of defence out of time on the 3rd of April, 2016 together with the deposition of one witness and the case was adjourned for hearing.

On 12th June, 2017, the Claimants opened their case. The 2nd Claimant testified, adopted his statement on oath and tendered exhibits "A" and "B". Thereafter, the case was adjourned to give the defendant the opportunity to cross examine the 2nd Claimant. The Court ordered that hearing notice should be served on the Defendant to enable them appear in Court. The Hearing Notice was served on the Defendant as directed by the Court.

On 9th October, 2017, Claimants continued his evidence and tendered exhibits "C", "D", "E", "F" and "G". Claimants concluded his evidence and closed his case. The case was adjourned to 13th November, 2017 for cross examination by the Defendant or address by the Claimants. The Court again ordered that hearing notice should be served on the Defendant to enable them appear in Court on 13th November, 2017.The Hearing notice was served on the Defendant as directed by the Court.

On the 13th of November, 2017, the Defendant failed to appear in Court to cross examine the Claimants. Again, the Court ordered that the Claimants' Final Written Address be served along with Hearing Notice on the Defendant and the matter was adjourned to the 11th of December, 2017 for final address. The Hearing notice and the Written Address were served on the Defendant as directed by the Court.

On the 11th of December, 2017, the Defendant was again absent and the Claimants' counsel adopted his written address and the matter was adjourned for judgment.

In his Written Address, the learned counsel for the Claimants, F.A.Okanigbuan Esq. submitted that evidence not challenged by the opposite party is deemed to have been admitted by the Defendant. He relied on the case of: ***HILARY FARMS LTD & 2 OTHER VS M/V "MAHTRA (SISTER VESSEL TO M/V "KADRINA") & 2 OTHER (2007) VOL.153 LRCN PAGE 34 RATIO 5 AT PAGE 37 PARTICULARLY AT PAGES 57JJ & 58A***, where the Supreme Court held as follows*:*

> ***"Unchallenged or uncontroverted fact or facts need no further proof, more so, if the said fact or facts pleaded are given in evidence".***

Learned counsel also relied on the case of: ***PADA CHABASAYA VS JOE ANWASI (2010) Vol. 184 LRCN PAGE 1 RATIO 1 AT PAGE 5 PARTICULARLY AT PAGE 17 AP*** where the Supreme Court held as follows:

> ***"The law is trite that evidence that is relevant to the issue in controversy,***

and that is not successfully challenged, contradicted, and discredited is good and reliable evidence to which probative value ought to be ascribed and which ought to influence the judge in the determination of the case before it… A Plaintiff who adduces such reliable and credible evidence is bound to succeed in his case, as civil cases are decided on preponderance of evidence and balance of probability, as he who asserts must prove".

Furthermore, counsel submitted that the deposition of witnesses in written statement on oath filed before the Court must be adopted before the Court can take cognizance of them for any reliance. He maintained that in the present case, the Defendant's witness statement on oath was never adopted because the witness did not appear in Court throughout the trial of this case.

He therefore urged the Court to discountenance the Defendant's statement on oath filed along with their statement of defence. For this, he relied on the case of: ***IBRAHIM & 67 OTHER VS OKUTEPA (2015) ALL FWLR PART 785 PAGE 331 RATIO 4 AT PAGE 336*** where the court held as follow:

"The front loaded deposition must be adopted by the witness".

Learned counsel referred to letter No. KOLPS/ADM/1512/2014 dated 15th December, 2014 (Exhibit C), written to the Defendant by Claimant's Counsel, Kadiri & Omoloja, where they stated the indebtedness of the Defendant to the Claimants.

He also referred to Exhibit "D", where the Defendant admitted owning the Claimants the sum of ₦6, 857,466:00 (six million eight hundred and fifty seven thousand four hundred and sixty six naira).

He said that the Claimants accepted this amount in exhibit "E" and requested that the money should be paid and in Exhibit "F", the Defendant's Counsel wrote to the Claimant's Counsel expressing appreciation for accepting the ₦6, 857,466:00 (six million eight hundred and fifty seven thousand four hundred and sixty six naira).

He referred the Court to Exhibit "G" where the Claimant's Counsel wrote to the Defendant's Counsel to ascertain the mode of payment of the agreed sum.

He concluded that the Defendant has failed to pay the ₦6, 857,466:00 (six million eight hundred and fifty seven thousand four hundred and sixty six naira) hence the present action.

He urged the Court to give judgment on the reliefs in the writ of summons and the statement of claim.

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

As I have already observed, the Defendant entered appearance in this suit, filed a Statement of Defence and frontloaded the statement of one witness. Thereafter, the Defendant abandoned the trial and never showed up in Court to give evidence. The lone witness did not appear in Court to adopt his statement on oath.

Learned counsel has urged the Court to discountenance the deposition of the witness on the ground that the statement must be adopted before the Court can rely on it. It is settled law that a witness whose statement has been frontloaded must physically attend the Court

and enter the witness box to adopt his statement before the Court can act on it. The effect of the failure to adopt it is that the written deposition is deemed abandoned.

In the case of: ***Jones Fisheries Ltd. vs. M & M Enterprises Nigeria Ltd. (2008) BLR (Pt.1) 248, Okunnu, J***. of the Lagos High Court held that the written deposition: "***only come to be effective and relevant to the court after the person who made them has entered the box and confirmed them positively to be his evidence-in-chief in the matter at hand".***
The above position was adopted by the Court of Appeal in the case of: ***Idris vs. ANPP (2008) 8 NWLR (Pt.1088) 153*** where they stated that: ***"…evidence must be adduced in proof of a witness statement on oath otherwise, it is useless."*** See also the case of: ***IBRAHIM & 67 OTHER VS OKUTEPA (2015) ALL FWLR PART 785 PAGE 331 RATIO 4 AT PAGE 336*** which was relied upon by the learned counsel for the Claimants.

Applying the foregoing principles to the instant case, I agree entirely with the learned counsel for the Claimants that the deposition of the defence witness is deemed abandoned and this Court cannot rely on it. Thus, the evidence of the Claimants 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: ***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***.Even where the evidence is unchallenged, the trial court 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 the Claim.

The sole Issue for Determination in this suit is: ***whether the Claimants are entitled to the reliefs claimed in their Statement of Claim in this action.***

For the avoidance of doubt the Claimants' claims are as follows:

a) ***the sum of ₦6, 857,466:00 (six million, eight hundred and fifty seven thousand four hundred and sixty six naira) being the unpaid money for the hiring of Toyota Hiace Bus with registration number LND315XF for one year inclusive of the unpaid money for the materials supplied by the 2nd and 3rd Claimants to the Defendant, which the Defendant by her Solicitor's letter dated 27th March, 2015, agreed that the Defendant is owning the Claimants; and***

b) The sum of ₦500, 000:00 (five hundred thousand naira) from the Defendant as general damages for breach of contract.

Starting with the claim for the sum of ***₦6, 857,466:00 (six million, eight hundred and fifty seven thousand four hundred and sixty six naira)***, the Claimants led uncontroverted evidence *vide* Exhibit C, a letter No. KOLPS/ADM/1512/2014 dated 15th December, 2014 written to the Defendant by the Claimant's Counsel, where they stated the indebtedness of the Defendant to the Claimants. Furthermore in Exhibit "D", the Defendant admitted owing the Claimants the said sum. An admission is a statement oral or written made by a party or his agent which is adverse to his case. See: ***section 123 of the Evidence Act, 2011 and the case of: Cappa D' Alberto Ltd vs. Akintilo (2003) NWLR (Pt.824) 49 at 69***. This is sufficient proof of the claim.

On the claim for the ***sum of ₦500, 000:00(Five Hundred Thousand Naira) from the Defendant as general damages for breach of contract***, it is settled law that General Damages are presumed by law as the direct natural consequences of the acts complained of by the Claimant against the Defendant. The assessment of general damages is not predicated on any established legal principle. Thus, it usually depends on the peculiar circumstances of the case. See: ***Ukachukwu vs. Uzodinma (2007) 9 NWLR (Pt.1038) 167; and Inland Bank (Nig.) Plc vs. F & S Co. Ltd. (2010) 15 NWLR (Pt.1216) 395.***

The fundamental objective for the award of general damages is to compensate the Claimant for the harm and injury caused by the Defendant. See: ***Chevron (Nig.) Ltd. vs. Omoregha (2015) 16 NWLR (Pt.1485) 336 at 340.***

Thus, it is the duty of the Court to assess General 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 Claimants have suffered from the acts of the Defendant. Going through the entire gamut of the Claimants' evidence, there is no evidence of anything they suffered from the action of the Defendant.

It is usual in cases such as this, where the Claimant has not shown that any particular loss was suffered for the Court to award nominal damages. See: ***Artra Industries (Nig.) Ltd. vs. N.B.C.I (1998) 4 NWLR (Pt.546) 357; Ogbechie vs. Onochie (1988) 4 NWLR (Pt.70) 370***. In the event, I think the Claimants are only entitled to nominal damages.

On the whole, the sole issue for determination is resolved in favour of the Claimants. The claims succeed and judgment is entered in favour of the Claimant as follows:

a) the sum of ₦6, 857,466:00 (six million, eight hundred and fifty seven thousand four hundred and sixty six naira) being the unpaid money for the hiring of Toyota Hiace Bus with registration number LND315XF for one year inclusive of the unpaid money for the materials supplied by the 2nd and 3rd Claimants to the

Defendant, which the Defendant by her Solicitor's letter dated 27th March, 2015, agreed that the Defendant is owning the Claimants; and

b) The sum of ₦200, 000:00(two hundred thousand naira) from the Defendant as general damages for breach of contract.

Costs is assessed at N20, 000.00 (twenty thousand naira) in favour of the Claimants.

P.A.AKHIHIERO
JUDGE
31/01/18

COUNSEL:
F.A.Okanigbuan Esq.…….Claimants.

Unrepresented...…….Defendant.