IN THE MAGISTRATE'S COURT OF ENUGU STATE OF NIGERIA
IN THE ENUGU NORTH MAGISTERIAL DISTRICT
HOLDEN AT ENUGU

BEFORE HIS WORSHIP K. O EZE, CHIEF MAGISTRATE GD. 2 ON THURSDAY THE 15TH DAY OF AUGUST 2019

SUIT NO MEN/914/2018

IFEANYICHUKWU EJIKE — PLAINTIFFS
EMMANUEL IKEMA F

VS

MARTINS ANTHONY SEGUN — DEFENDANTS
SOLOMON JACOB

JUDGEMENT

By their amended claim dated November 11, 2018 and filed on November 27, 2018 the Plaintiffs are claiming jointly and severally from the defendants as follows:

1. Special damages of N1,165,000.00 (One Million One Hundred and Sixty-five Thousand Naira) only being total sum paid to the defendants by the 2nd plaintiff.
2. Special damages of N1,420,000.00 (One Million Four Hundred and Twenty Thousand Naira) only being total sum paid to the defendants by the 1st plaintiff.
3. Special damages of N960,000.00 (Nine Hundred and Sixty Thousand Naira) only being the expenses for the Lagos trip.
4. General damages of N3,000,000.00 (Three Million Naira) only for breach of agreement.

The defendants were absent and not represented at the plea stage of the proceedings so a plea of not liable was entered in their favour. They were served with the court processes, writ of summons and hearing notice according to the affidavit of service filed in the court file. During the proceedings the plaintiffs called five witnesses. The defendants were not represented by a counsel.

The Plaintiff Counsel called the first witness. He introduced himself as Ejike Ifeanyi Solomon. He is the first plaintiff. He resides at Block 6N Elim Estate, Nike, Enugu. He is a legal practitioner. He knows the defendants in this suit. He met the 2nd defendant on October 26, 2017 and he introduced him to the 1st defendant. The defendants are travel agents doing business in the name and style of Lamty Enterprises. They discussed terms for getting travel documents for him to visit

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Australia for studies. The 2nd defendant told him study visa to Australia would cost him N1,200,000.00. He agreed and was assured by the defendants that the visa would take two months to process. The defendants also agreed to allow him make part payments which he paid into the accounts they provided. He made payments through his Diamond and Union bank accounts online platform and the transactions reflected on his bank statements. Once he completed the payments the defendants claimed they were processing the visa which took so long with so much delays and excuses. In June 2018 the defendants called him to come to Lagos for the visa with his friend who also indicated interest and made payment to the defendants. They both travelled to Lagos together to collect the visas. They were made to wait for two months without collecting any visa. They had to lodge in a hotel and wait for the visas. The witness stated that after much delays, they asked for a refund which lead to another series of delays. Mr Martins Segun the 1st defendant promised to refund the money in full and failed repeatedly. They had to return to Enugu to wait for the refund. He paid a total of N1,420,000.00 and spent N960,000.00 for the three months stay in Lagos waiting for the visas. The witness identified his Union Bank and Diamond bank statements of accounts which were tendered and admitted as exhibits 1 & 2. The witness further stated that he helped the 2nd plaintiff make payments to the defendants. He transferred a total of N1,165,000.00 on behalf of the 2nd plaintiff to the defendants using his online platform through his Diamond bank account. He urged the court to grant the reliefs as per the claim. The witness was not cross examined in court due to the absence of the defendants.

The second plaintiff witness introduced himself as Emmanuel Friday Ikema. He lives at No 1 Graceland, Obiagu, Enugu. He is the second plaintiff in the suit. He is a business man. The witness stated that he knows the parties in the suit. The 1st plaintiff introduced him to the defendants as travel agents who processed visa applications. He indicated interest to travel to Ireland and was charged N1,200,000.00. He paid a total of N1,165,000.00 to the defendants through the account of the 1st plaintiff as well as N300,000.00 from his brothers account. The defendants told them on May 25, 2018 to come to Lagos for the visas and they travelled to Lagos without getting the visas after three months of delays and excuses. They incurred N900,000.00 in living costs while waiting for the visas in Lagos. They tried calling the defendants to refund their money and got no response. The witness urged the court to grant the reliefs as per the claim. The witness was not cross examined in court due to the absence of the defendants.

The third plaintiff witness introduced herself as Okaro Ugochi Stephanie. He is a banker with Access (Diamond) bank plc. She stated in her testimony that she knows the 1st plaintiff in the suit. The bank issued a statement of account to the 1st plaintiff. She executed a certificate to confirm the authenticity of the statement. The witness identified the statement admitted as exhibit 1 which was for period of November 1, 2017 to July 1, 2018. The witness further stated that the statement was prepared in their office with the computer in good condition and used daily in

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regular business of the bank. The content of the statement represents the exact information stored in the data of the bank. The witness was not cross examined by the defendants in court due to their absence.

The fourth plaintiffs witness introduced himself as Ikeme Paul Ikechukwu. He lives at No 1 Graceland Lodge, Obiagu, Enugu. He is a trader. He knows the parties to the suit. He stated in his testimony that when the plaintiffs were making travel arrangements, they needed N300,000.00 which he transferred from his First bank account to the account of the defendants also in First Bank. He was issued with a receipt for the transfer. The witness was not cross examined in court.

The fifth plaintiff witness introduced himself as Jude Offor. He is a banker with Union bank Garden Avenue branch. He is the head of sales and services. He stated in his testimony that he knows the 1st plaintiff in the suit. The bank issued a statement of account to the 1st plaintiff. The witness identified the statement admitted as exhibit 2 which was for period of November 1, 2017 to July 31, 2018. The witness further stated that the statement was prepared and produced by a computer in their office and the computer in good condition through the period and used daily in regular business of the bank. The content of the statement represents the exact information stored in the data of the bank. The witness was not cross examined by the defendants in court due to their absence.

The Plaintiff Counsel closed his case and applied to foreclose the defendants from cross examining the plaintiff witness or opening their defence due to their continued absence which application the court granted. The Plaintiff Counsel filed his written address dated July 11, 2016 on the same date and was also adopted by the Court on the same date. The Plaintiff Counsel concluded by urging the Court to grant their prayers as per the amended claim. Upon adoption of the written address by the Plaintiff's Counsel, the suit was adjourned for judgment.

As stated above, the Plaintiff evidence is the only evidence before this Court. The Plaintiff case is unchallenged and uncontradicted. It is the law that an averment of a fact in pleadings is no evidence and can never be so construed. Facts averred have to be proved by evidence except expressly admitted by the adverse party. See the cases of: N.A.S. LTD V. UBA PLC [2005] ALL FWLR [PT.284] 275. BUHARI V. OBASANJO [2005] 2 NWLR [PT.910] 241. OLORUNFEMI V. ASHO [2000] 1SC.15.

In the light of the foregoing therefore, the Court is left with no other option than to hold that the evidence adduced by the Plaintiff has not been controverted nor challenged and as such ought to be relied upon as the truth of the facts in issue. See the cases of: ATTORNEY GENERAL OF LAGOS STATE V. PURIFICATION TECH NIG LTD [2003] 16 NWLR [PT.845] 1 AT 18; ADELAKUN V. ORUKU [2007] 17 WRN 89 AT 95.

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On the first to third arms of the claim the plaintiff is claiming the sums of N1,165,000.00; N1,420,000.00 and N960,000.00 as special damages. The plaintiffs tendered exhibits 1 & 2 which are the bank statements from Diamond Bank and Union Bank for the account of the 1st plaintiff and tendered by the 1ST plaintiff. The court is minded to accept the statement as an accurate reflection of the transactions therein and shall accord a high probative value to the exhibits in the absence of contradictory evidence.

Exhibits 1 and 2 before the court shows proof that the said sum was transferred from the account of the 1st plaintiff to the first and second defendants and its alias as reflected as follows:

S/O	BANK	TRANSACTION DATE	AMOUNT (N)	PAYER	BENEFICIARY
1	DIAMOND BANK	08 NOV 2017	200,000.00	2ND PLAINTIFF	2ND DEFENDANT
2	DIAMOND BANK	17 NOV 2017	200,000.00	2ND PLAINTIFF	2ND DEFENDANT
3	DIAMOND BANK	20 NOV 2017	220,000.00	2ND PLAINTIFF	2ND DEFENDANT
4	DIAMOND BANK	22 NOV 2017	230,000.00	2ND PLAINTIFF	2ND DEFENDANT
5	DIAMOND BANK	25 NOV 2017	15,000.00	2ND PLAINTIFF	2ND DEFENDANT
6	DIAMOND BANK	20 DEC 2017	300,000.00	1ST PLAINTIFF	2ND DEFENDANT
7	DIAMOND BANK	15 MAR 2018	270,000.00	1ST PLAINTIFF	LAMTI ENTERPRISES
8	DIAMOND BANK	03 APR 2018	100,000.00	1ST PLAINTIFF	LAMTI ENTERPRISES
9	DIAMOND BANK	03 APR 2018	100,000.00	1ST PLAINTIFF	LAMTI ENTERPRISES
10	DIAMOND BANK	12 APR 2018	50,000.00	1ST PLAINTIFF	LAMTI ENTERPRISES
11	DIAMOND BANK	11 JUN 2018	110,000.00	1ST PLAINTIFF	LAMTI ENTERPRISES
12	DIAMOND BANK	26 JUL 2018	100,000.00	1ST PLAINTIFF	1ST DEFENDANT
13	UNION BANK	11 JUN 2018	50,000.00	1ST PLAINTIFF	LAMTI ENTERPRISES
14	UNION BANK	11 JUN 2018	150,000.00	1ST PLAINTIFF	LAMTI ENTERPRISES
15	UNION BANK	11 JUN 2018	190,000.00	1ST PLAINTIFF	LAMTI ENTERPRISES

It is trite law that special damages must be strictly proved. AGUNWA V ONUKWE (1962) 1 ALL N.L.R 537. There is a strict proof of special damages where there is a production of receipt as evidence of payment without oral evidence of the maker ELUWEWE V. ELDER DEMPSTER AGENCIES LTD (1976) 6 UILR PT 11 225. U.T.B. v. Ozoemena (2007) ALL FWLR (Pt. 358) 1014 at 1049. Special damages are those that arose after and as a result of the cause of action and not before it. U.B.N. Plc v. Chimaeze (2007) ALL FWLR (Pt. 364) 303 at 318 (CA).

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In Alhaji Otaru & Sons Ltd. v. Idiris & Anor (1999) 6 NWLR (Pt. 606) P. 330 the Supreme Court held that special damages must be proved strictly and that a trial court cannot make its individual assessment but must act strictly on the evidence before it which it accepts as establishing the amount to be awarded. See also LCC v. Unachukwu (1978) 3 SC 199, Akintunde v. Ojeikere (1971) 1 NMLR 91, Dumez (Nig.) Ltd. v. Ogboli (1972) 1 All NLR (Pt.1) P. 41, WAEC v. Koroye (1977) 2 SC 45 and Oshinjinrin v. Elias (1970) 1 All NLR 153. In the instant case, there is evidence before the court to show that the sum of N1,420,000.00 was transferred to the defendants by the 1st plaintiff through his Diamond bank and Union bank accounts while the sum of N865,000.00 was transferred by the 1st plaintiff on behalf of the 2nd plaintiff in favour of the defendants. The third plaintiff witness also stated in his testimony that he transferred the sum of N300,000.00 to the defendants on behalf of the 2nd plaintiff without tendering the receipt of payment or any evidence in proof of the said transaction. In the case of Garba v. Kur (supra) at page 295, the Supreme Court set out the guiding principle governing award of special damages in the following words: "An award of special damages, unlike an award of general damages, is not based on the discretion of the trial court, but on credible evidence adduced before the trial court which strictly proves the plaintiff's entitlement to the award". The plaintiffs have clearly failed o adduce credible and cogent evidence in proof of the payment of N300,000.00 as well as for special damages in the sum of N960,000.00 as claimed in paragraph 3 of the amended claim.

On the fourth arm of the claim, the plaintiff is claiming the sum of N3,000,000.00 being damages for the breach of agreement of the parties by the defendants. The Court of Appeal held in Gurara Sec. & Fin. Ltd. v. T.I.C Ltd. (1999) 2 NWLR (Pt.589) pg.29 held as follows "As the issue before the court was for damages for breach of contract the principle to guide such award is well settled in the celebrated case of Hadley v. Baxendale 1854 9 Exch. 341 adopted in universal Vulcanizing Nig. Ltd v. IUTTC (1992) 9 NWLR (pt.266) 388 at 412 SC, Ijebu Ode Local Government v. Adedeji Balogun & Co. Ltd (1991) 1 NWLR (pt.166) 136 at 158 SC: "The object of award of damages for breach of contract is to put the injured party so far as money can do it in the same position as if the contract had been performed than the loss which he had suffered".

Proof of general damages does not require the strictness in proof of special damages. The only requirement in the award of general damages is that such award shall not be manifestly too high, or manifestly too little, or erroneously assessed. See Imana v. Robinson (1979) 3 - 4SC 1; Agbaje v. James (1967) NMLR 49; S.P.D.C. (Nig.) Ltd. v. Tiebo (2005) 9 NWLR (Pt. 931) 439. Based on the judicial precedents cited above, I hold that the defendants are entitled to damages which are reasonable outcome of the breech by the defendants. The court has already awarded special damages to the plaintiffs. I shall therefore award general damages to cover the time, cost and interest of the funds held by the defendants as well as opportunity cost of the funds. I therefore access the damages in the sum of N800,000.00 (Eight Hundred Thousand Naira) only.

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On that note, I hold that the plaintiffs have established their case against the defendants by way of credible, unchallenged and uncontroverted evidence. They have therefore discharged the evidential burden placed on them by virtue of Sections 132, 133 and 134 of the Evidence Act, 2011. Flowing from above, I hereby make the following orders jointly and severally against the defendants:

1. The defendants are hereby ordered to pay special damages in the sum of N1,420,000.00 (One Million Four Hundred and Twenty Thousand Naira) only being the funds paid to the defendants by the 1st plaintiff on or before August 20, 2019.

2. The defendants are hereby ordered to pay special damages in the sum of N865,000.00 (Eight Hundred and Sixty-Five Thousand Naira) only being the funds paid to the defendants by the 2nd plaintiff on or before August 20, 2019.

3. General damages in the sum of N800,000.00 (Eight Hundred Thousand Naira) only being damages for breach of agreement on or before August 20, 2019.

Parties: The 1st Plaintiff is present. The defendants are absent.

Appearances: Ifeanyichukwu Ejike appeared in person as the 1st plaintiff. The defendants are not represented.

This is the judgement of the Court.

J.O UGWU
ASSISTANT CHIEF REGISTRAR

15/08/2019

SGD
K.O EZE
CHIEF MAG 2
ENUGU NORTH

checked and found correct by me

Certification ₦300

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Pd on CR No. 0617293
CHIEF MAGISTRATE'S COURT
ENUGU
DATE 02/12/2019