

IN THE HIGH COURT OF JUSTICE  
EDO STATE OF NIGERIA  
IN THE BENIN JUDICIAL DIVISION  
HOLDEN AT BENIN CITY

BEFORE HIS LORDSHIP HONOURABLE JUSTICE C. O. IDAHOSA ó  
CHIEF JUDGE

ON MONDAY THE 11<sup>TH</sup> DAY OF JULY, 2016

**BETWEEN:** SUIT NO. B/565/2008  
**MOUNT GILEAD HOSPITAL NOGERIA LTD** ... **PLAINTIFF**  
**AND**  
**1. GITTO CONTRUZIONI GENERALI NIGERIA LTD** ... **DEFENDANTS**  
**2. MR. LEONARDO PALETTA**

**J U D G M E N T**

This suit was filed on the 11<sup>th</sup> day of September, 2008 but the writ was issued on the 25<sup>th</sup> day of September, 2008, going by the Registrar's signature. When it became impossible for Claimant to effect service, it dawned on Claimant that the then 1<sup>st</sup> Defendant is now in Abuja, a place outside the jurisdiction of this court. As a result of this realization, a motion on notice for leave to effect service by substituted means to writ, by pasting the court processes on the wall of 1<sup>st</sup>

defendant at Ihovbor Village, Benin City was withdrawn and struck out on 16/3/09.

Learned Counsel then applied vide a motion ex-parte for the following orders.

1. "Leave of this Honourable court to amend the Writ of Summons as well as the Statement of Claim in the manner formulated herein and underlined in red.
2. Leave of this Honourable court to issue and serve the Writ of Summons and other process in this suit outside the jurisdiction of this Honourable court to wit; Federal Capital Territory, Abuja.
3. An order deeming the said amended Writ of Summons as properly issued and filed (if already issued) the appropriate filing fees having been paid.
4. An order deeming the amended Statement of Claim as properly filed, the appropriate filing fees having been paid.
5. Leave of this Honourable Court to serve the 1<sup>st</sup> and 2<sup>nd</sup> Defendant in this suit by substituted means to wit;".

On the 27<sup>th</sup> day of May, 2009, the motion ex-parte was taken and granted consequent upon the order, the amended writ of summons

was issued on the 1<sup>st</sup> day of July, 2009 and it was finally served on the 1<sup>st</sup> Defendant on 15/10/09 in Abuja. See the affidavit of service at page 39 of the case file.

In the said amended writ of summons, Claimant claimed as follows:-

WHEREOF Claimant claims against the Defendant as follows:-

1. "The sum of N2,006,925.00 (two million and six thousand, nine hundred and twenty five Naira) being the outstanding medical bills owed the Claimant by the Defendants.
2. A declaration that the non-payment of the medical Bills arising from medical services of the Claimant amounts to a breach of contract.
3. The sum of N5,000,000.00 (five million Naira) against the Defendant being general damages for breach of contract."

After repeated unsuccessful efforts to enter an appearance, Defendant finally entered an appearance on 14/10/14 when its motion to that effect was granted.

Before I proceed, it is very important for learned Counsel to advise their clients properly. It will be observed that the real claim in this action is actually N2,006,925.00. Claimant also claims N5,000,000.00 as general damages.

Total claims is N7,006,925. This is far less than the threshold of claims that our Magistrates' Court or Area Courts can handle by way of summary trial.

This case has been in court since 2008. I do not think it would have lasted this long in a court of summary trial, where no pleadings are filed. The greater part of the period this case has spent in this court has been on pleadings or amendments, entering of appearance etc, etc. In a court of summary trial, these are not required. I use this opportunity to appeal to members of the Bar, to use the Magistrates' Court and Area Courts for claims below N11,000,000.00, unless of course such claims are outside the jurisdiction of the court.

Some Counsel deliberately inflate the quantum of general damages claimed, in order to make the claims above the jurisdiction of the Magistrates and Area Courts. This does not augur well for the administration of justice as the time spent by the High court on these “little” claims could have been spent on more complex cases many of which are crying for attention. It must be stated that this case is one of such “little” claims. When Defendant failed to appear, the Claimant was allowed to prove its case.

Claimant called one witness, Mrs. Orobosa Idon, a secretary. She adopted her statement on Oath. She then tendered Exhibits A, B, C, D, D1 and D2, E, F, F1, F2, F3, and F4, G, H, J, K and L.

On the day fixed for learned counsel to address the Court, a letter was sent to the court by Defendant’s Counsel. The letter was considered on its merit and I determined that it had no merit and refused the application for an adjournment. Learned counsel for Claimant then proceeded to adopt his written address.

I have read and considered the statement on oath of the claimant's only witness. From her position as secretary of the claimant Hospital, she is in a position to know the facts. She has deposed to in her statement on oath. Although the Defendant filed a statement of defence, and a witness statement on oath, the failure by Defendant to call the said witness to appear in court and adopt his or statement on oath means that no witness testified for the defendant.

A witness statement on oath duly deposed to and filed, is meaningless without the deponent i.e the witness coming to court to adopt it and be subjected to cross examination. Such a situation is tantamount to no evidence being presented by the party calling such a witness. With the failure of Defendant to present evidence to support its Statement of defence, all the facts pleaded therein go to no issue.

See SHELL V. ABEDI 1974 1 SC. 23

OTUKPO V. JOPHN (2000) 8 NWLR (669) 507

N. I. P. C. LTD V. THOMPSON ORG. LTD 1969 1 ALL NLR 138

GEORGE V. UBA LTD 1972 8 – 9 SC 264.

Where the evidence presented by a party is uncontradicted or uncontroverted, the onus of proof is minimal.

LARMIE V. DATA PROCESSING MAINTENANCE AND SERVICES LTD 2006 ALL FWLR (296) 1.

In his address learned Counsel for Claimant referred to OGUNYADE V. OSHUNKEYE 2007 AFWLR (389) at PAGE 1183. In this case the Defendant failed to call any witness to testify in support of its statement of defence. In view of that failure, there is nothing to compare or weigh the Claimant's evidence against. Thus after due consideration, I am satisfied and I find and hold that claimant has prove its claims.

Accordingly judgment is hereby entered in its favour in the following terms:

(a) Defendant shall pay the sum of N2,006,925.00 to the claimant.

(b) It is declared that failure of defendant to pay the bills arising from services rendered by claimant to Defendant is a breach of contract.

(c) Since this is a contract Claimant is not entitled to general damages. Accordingly Claim No. 28.3 is dismissed.

(d) Defendant shall pay costs assessed and fixed at N150,000.00

C. O. IDAHOSA  
CHIEF JUDGE  
11/7/2016

**COUNSLE:**

O. A. OTAMERE ESQ with him

J. O. ASUERIMEN ESQ for Claimant.

A. N. NTUI ESQ., STEPHEN EGBOGBO ESQ. for Kanu Aganbi & Co, and

E. C. UDEMBA ESQ. and

C. I. AFAMEFUNE – AGBAKOR MRS. All for Defendant