

**IN THE HIGH COURT OF JUSTICE  
EDO STATE OF NIGERIA  
IN THE BENIN JUDICIAL DIVISION**

**HOLDEN AT BENIN CITY**

**BEFORE HIS LORDSHIP, HON. JUSTICE N.A. IMOUKHUEDE - JUDGE**

**ON TUESDAY THE 22ND DAY OF SEPTEMBER , 2015**

**B E T W E E N:**

**SUIT NO.: B/857/11**

JAY JONES .....

CLAIMANT

**AND**

EHIGIA OKORUWA

ABUMERE BERTHA .....

DEFENDANTS

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

The Claimant in his amended Statement of Claim seeks against the Defendants the following reliefs:

1. N1, 150,000 being 5% of N23,000,000 (Twenty Three Million Naira) value of the property in issue as professional legal fees for drafting the agreement.
2. 10% interest on the sum since 2009.
3. 10% interest on judgment sum from judgment until liquidation.
4. N500,000 (Five Hundred Thousand Naira), the cost of this suit.
5. Any other cost(s) the Court may deem fit to make in the circumstances.

On the 2nd April 2014 the Claimant testified and stated that he was the Defendants' solicitor and he rendered professional services to them in 2009. The Claimant testified that he and the Defendants agreed that 5% of the total value of the transaction will be paid to him as his professional fees. The Claimant testified that he rendered professional services, which included searching for property for the 1st Defendant, to purchase and meeting with several Real Estate agents with regards to the purchase of the property. The Claimant testified that the agents he met included Pastor John Agemonmen and Captain Orabator Solomon (Rtd), who were in the company of the 2nd Defendant. The Claimant further testified that he conducted searches at the Land Registry, Benin City and provided legal counsel to the Defendants. The Claimant testified that the 2nd Defendant took him to

the property at Ugbor Road, GRA, Benin City, where they inspected it and found out that there were tenants on the property.

The Claimant testified that they confronted the agents about the issue of tenants on the property, and it was agreed that a (three) month Notice to Quit be issued to them. The Claimant testified that he also drafted a Deed of Assignment between the 1st Defendant and Engr. Sunday Andrew Idehen, the Vendor. The Claimant testified that the Deed of Assignment he drafted was corrected and vetted by the Vendor's Solicitor and he reproduced final copies on the instruction of the Defendants, Deed of Assignment dated 17th of June 2009, was admitted and marked Exhibit A. The Claimant testified that a bank draft in the sum of N23,000,000 (Twenty Three Million Naira) was drawn in favour of the Vendor, Engr. Sunday Andrew Idehen.

The Claimant testified that that on the date for the execution of the Deed of Assignment, the Defendants refused to execute the agreement on the grounds that they were discouraged by the delay and arrogant disposition of the Vendor, Engr. Sunday Andrew Idehen. The Claimant testified that the failure to execute the Deed of Assignment by both parties was neither his fault, wrongdoing nor any negligence on his part. The Claimant testified that the Defendants however agreed to pay his professional fees despite their failure in executing the agreement, having discharged his duties. The Claimant testified that the agreed fee for his professional legal services rendered to the Defendants was N1, 150,000 (One Million, One Hundred and Fifty Thousand Naira) being the 5% of the N23,000,000 (Twenty Three Million Naira) value of the property as agreed. The Claimant testified that the Defendants have neglected and persistently refused to pay for the professional legal services he rendered to them despite series of demands.

The Claimant testified that Bill of Charges and Final Demand Notice have been served on the Defendants, yet they have refused to pay for services rendered and that the Defendants were served with the Bill of Charges through the Red Star Express Courier Company : Red Star Way Bill was admitted as Exhibits B, and B1 while Claimant's Bill of Charges dated 8th of November` 2011 was admitted as Exhibit C.

The Claimant testified that he has suffered grave hardships since 2009, as a result of the Defendants' refusal to pay for the legal services rendered.

The Claimant was cross examined by Counsel to the Defendants ,Don Ikediashi Esq and he insisted that he prepared Exhibit A on the instructions of the Defendants. Claimant thereafter closed his case.

On the 3rd of April 2014, 2nd Defendant testified and stated that she and 1st Defendant are siblings but presently he is not in the country. 2nd Defendant testified that a female cousin of theirs helped them contact the Claimant for him to provide legal services in the purchase of a property. 2nd Defendant testified that it was supposed to be a complete legal service. 2nd Defendant testified that the Claimant claimed that he conducted a search at the Lands Registry but unfortunately there was no written report signed by him or from the Ministry of Lands and Survey sent to them which is the usual practice.

2nd Defendant testified that the Claimant's report was verbal. 2nd Defendant testified that since there was no written report, they never instructed the Claimant to draft the agreement neither were they aware of any vetting of any agreement.

2nd Defendant testified that based on Claimant's verbal report, they went ahead to prepare a bank draft of N23,000,000.00 in favour of the owner of the property, Mr. S.A. Idehen. 2nd Defendant testified that they prepared the said Bank draft for payment on the basis of Claimant's search. 2nd Defendant testified that they found out from their personal investigation and with the help of the Vendor through his lawyer that the property sought to be bought and transferred or assigned to them was encumbered. 2nd Defendant testified that the owner of the property, Mr. S. A. Idehen asked them to go back with their N23, 000,000.00 bank draft.

2nd Defendant testified that if they were not diligent, lucky and extra careful they would have parted way with the colossal sum of N23,000,000.00 and had they we relied on the verbal opinion of the Claimant alone, who told them to go ahead and pay, retrieving their money would have been a herculean task.

2<sup>nd</sup> Defendant testified that if the property were not encumbered, the Claimant would have been paid.

2nd Defendant testified that had the Defendants not been diligent they we would not have found out that the property is encumbered.

2nd Defendant testified that when they asked the Vendor why he refused to take so much money he said that his tenants had just paid him a year's rent, so he is not selling and more so his property was not for sale.

2nd Defendant testified that parties could have executed the deed prepared by the Claimant and he ought to have known why but he never cared. 2nd Defendant testified that the Claimant totally failed in the discharge of his responsibility and that he was only interested in his fees, once he saw them with a cheque of N23 million naira.

Finally 2nd Defendant testified that they are not liable to the sum claimed and the Claimant is not entitled to be paid for an uncompleted job. Under cross examination, 2nd Defendant stated that she and 1st Defendant contracted the Claimant to conduct legal services but that she did not contract the Claimant to draft agreement. 2nd Defendant stated that the Claimant told her that he conducted a search and that there was no problem with the property. 2nd Defendant stated that the Claimant told them to go ahead and make the bank draft and went with the Claimant to the Vendor's office.

The 2nd Defendant stated that the Vendor then told them that he can only do things with his legal adviser. The 2nd Defendant stated that the owner refused to accept the cheque, that he was no longer selling. The 2nd Defendant stated that the Vendor's legal adviser told them that a tenant just paid the owner one year's rent and the owner was not selling anymore. Under cross examination 2nd Defendant further denied that she did not contract the Claimant to draft an agreement, that what they instructed the Claimant to do was to make a photocopy of the bank draft and the Vendor

will sign as evidence. 2nd Defendant stated that there was no agreement signed and they did not pay for the land. The 2nd Defendant admitted that the Claimant rendered some services to them and that she did not pay him cash but that she fueled his car. The 2nd Defendant stated that the claimant prepared a deed on his own and fixed the amount on his own. The 2nd Defendant further stated under cross examination that they went to the Vendor's office with the bank draft and photocopy of the title deeds. The 2nd Defendant stated that the Vendor gave them the name to be put on the draft.

That was the Defendants' case.

Counsel to the Defendant in his written address formulated the following issues for determination:

1. Whether an incomplete legal service of transfer of property is actionable where the service was frustrated?

2. Is there need for the counsel to prepare a deed of transfer for the parties to compulsorily sign in view of the evidence before the court that the deal completely failed because of the element of frustration which he was very much aware of?

3. Whether there was there any agreement ab initio ?

(a) If the deed succeeds how much will be paid to the claimant.

(b) If the deed fails (which was not contemplated) how much will be paid to the claimant? The answers are in the negative.

4. Should a solicitor be paid for doing a shoddy search job and giving a false verbal report? The answer is no. Even in the face of the fact that he claimed he visited the property?

5. Should a frustrated contract for no fault of the Defendants be paid for? The answer is no. Counsel to the Defendant submitted that from the evidence adduced the Defendants are not liable at all.

Counsel to the Defendant submits that that the transaction they entered into was frustrated and that the frustration was not caused by the Defendants, but by the Vendor who refused to sell his property.

Counsel to the Defendant submits that the Defendants should therefore not be held liable for any legal fees. Counsel to the Defendant further submits that there was no agreement ab initio.

Counsel to the Defendant refers Court to the case of MAZIN ENGINEERING LTD V. TOWER ALUMINIUM (NIG) LTD (1993 13 LRCN at page 926 Ratio 3, 4, and 6.

Counsel to the Defendant submits that the Claimant has no Locus Standi, that there was no agreement between the Claimant and Defendant to prepare a deed of Conveyance and therefore no terms of the agreement was breached as the Claimant was never instructed to prepare a deed of conveyance. Counsel to the Defendant submits that the Claimant's entire claim fails.

The Claimant, Jay Jones Esq who represented himself submitted that as a legal practitioner he rendered some professional legal services to the Defendants to wit: Search for good property to purchase, meet with estate agents on behalf of the Defendants, conduct searches at the land Registry, Benin City and drafting of a Deed of Assignment between the 1st Defendant and one Engr. Sunday Andrew Idehen. (the Vendor) and other ancillary legal services incidental to the services provided. That upon rendering these services, the Defendants willfully refused, neglected and failed to pay for the services rendered by the Claimant but instead claimed that the Claimant was fraudulent in the search by not notifying them that there were tenants on the property, in the cause of the search conducted by the claimant.

The Claimant therefore formulated the following issues for determination:

1. Whether the non execution of a Deed of Conveyance affect payment of legal fees by the Defendants contracted by the Plaintiff to carry out investigation of title, search and to draft a Deed of Conveyance.
2. Whether occupation by tenants on a property affects the title of the owner so as to prevent him from passing good titles to a third party for value.
3. Whether the Claimant is entitled to his claims.

The Claimant submits that payment of a lawyer's professional legal fees is not dependent on the successful execution of the deed of conveyance by the parties.

The Claimant submits that the lawyer does not have the power to lure or compel either of the parties to execute the agreement reached by them.

The Claimant submits that once the lawyer is contracted to draft an agreement or render any professional legal services, he is entitled to be remunerated for his services and relies on the case of GTB PLC Vs. Anyanwu (2011) 46 WRN 159 @ page 164.

The Claimant submits that he was the Claimant contracted to render some form of legal services, which he carried out diligently. The Claimant submits that the Defendants admitted to have contracted him to carry out search, investigation of title and several other services like arrangement for meetings between the parties (the purchaser and the vendor) and other ancillary matters, as well as drafting of an agreement. The Claimant submits that the Defendants admitted in paragraphs 1, 3 and 12 of their Amended Statement on Oath as well as in paragraphs 2, 6, 9 and 16 of the Amended Statement of Defence, that indeed they contracted him to render some form of legal services. The Claimant submits that it is trite that where such evidence is uncontroverted, unchallenged or contradicted by the party against whom it is made, such facts are deemed to have been admitted and relies on the case of Ogbiri Vs. N.A.O.C. Ltd (2010) 14 NWLR (PT. 12130208 @214 and Kaydee Ventures Ltd Vs. Minister Federal Capital Territory (2010) 41, 2 NSCQR 914 per L.T. Mohammed JSC.

The Claimant submits that he was contracted to render some professional legal services, which he performed he is entitled to be paid for those services provided.

The Claimant further submits that the occupation of a property by lawful tenants does not constitute an encumbrance to the title of vendor, so as to render such title as defective. The Claimant in his address defined the following terms using The Black's Law Dictionary Ninth Edition as reference: Who is a tenant? What is a title search and what is an encumbrance?

The Claimant further submits that the presence of tenants on a property does not affect the title of the owner of the property.

The Claimant submits that he is entitled to his claim, having rendered some professional legal services to the Defendants. The Claimant submits that he is entitled to the 5% of the total value of the property the Defendants sought to purchase, being in accordance with the general acceptable standard legal fees obtainable for such services rendered.

The Claimant submits that he carried out the services as he was contracted to do and did same diligently and that he is entitled to his professional legal fees.

The Claimant submits that the service he rendered was not an incomplete legal service, that it was fully completed having carried out the search at the Land Registry, held meetings with the parties and finally drafted the agreement requested. The Claimant submits that the fact that the agreement was not executed, does not affect the payment of the professional legal fees, particularly since it is not within the powers of the Claimant to compel the parties to execute the agreement.

I have carefully reviewed the evidence led by the parties and the written submissions in coming to my decision. I do not believe the Defendants when they say they never instructed the Claimant to draft any agreement. I believe that there was an instruction from the Defendants to the Claimant because they admitted that based on the Claimant's verbal search report they went ahead to prepare a bank draft of N23,000,000.00 in favour of the owner of the property, Mr. S.A. Idehen.

I disbelieve the 2nd Defendant when she said that she discovered through their investigation and the help of the Vendor's lawyer that the property was encumbered. Her version of the facts of this case is not believable; if there was a Vendor and his lawyer, it shows that there existed moves to sell the property, which for one reason or the other did not finally materialize.

There is no evidence before this Court that the property was encumbered. There is evidence that tenants were living on the premises, but that is not a legal encumbrance under the law.

I must not fail to comment on the language of Don Ikediashi Esq. which I find very abusive to the person of the Claimant, who is his professional colleague and I found it very difficult to read. For example his opening address reads:

'This matter arose out of an uncompleted Solicitor's since 2009 in which the Claimant after thinking of a way to make money felt he could demand for his legal fees after two years for an uncompleted

Solicitors job in which he had complete and full knowledge of the transaction that failed because the owner refused to sell his property.'

Another example is of his submission is:

'My Lord preparing a deed of assignment for the Defendants to execute and asking for legal fees in writing after two years of a failed and frustrated transaction, without taking the interest of the Defendants who were his clients into consideration, as the legal transfer failed, to the knowledge of the Claimant, is not legal practice but wickedness and an attempted act of stealing.'

I find the language used in his Statement of Defence and address as very unprofessional and most unbecoming of a senior lawyer, calling the Claimant wicked, using words such as 'stealing', 'pen robbery', 'dupe', 'greedy' when referring to the Claimant. As a senior member of the legal profession, such conduct and attitude is very unbecoming and unfortunate.

From 2nd Defendant's evidence it is clear that she confused a property with tenants as being an encumbered property. That is however not the position of the law, a property is regarded as being encumbered in law, where there exists a charge or mortgage on the property which is usually registered in the Lands Registry. I do not believe 2nd Defendant when she said that they did not instruct the Claimant to draft an agreement, but what they asked Claimant to do was to photocopy the bank draft and then the Vendor will sign on the photocopy. That would be most unprofessional for a lawyer, not to prepare a legal agreement for the transfer of property worth 23million naira. I find that there was an instruction from the Defendants because they admitted that based on the Claimant's verbal search report, they went ahead to prepare a bank draft of N23,000,000.00 in favour of the owner of the property, Mr. S.A. Idehen .

I do not believe the 2nd Defendant when she said that the Claimant prepared a deed on his own and fixed the amount on his own. The 2nd Defendant under cross examination stated that they went to the Vendor's office with the bank draft and photocopy of the title deeds. For them to have had photocopy of the title deeds shows that there was actually an ongoing transaction for the sale of property. The 2nd Defendant further stated that the Vendor gave them the name to put on the bank draft. It shows that there was a serious transaction for the purchase of property which eventually was not concluded. This from the evidence led was due to no fault of the Claimant.

The evidence before this Court was that the Claimant was contracted by the Defendants to render legal services, the Defendants admitted this in paragraphs 1, 3 and 12 of their Amended Statement on Oath as well as in paragraphs 2, 6, 9 and 16 of the Amended Statement of Defence, that indeed they contracted him to render some form of legal services.

2nd Defendant admitted during cross examination that the vendor gave out his name to her to enable the Defendants raise a bank draft in that name, after such which he turned around to reject the N23 Million Naira Bank Draft on the ground, that there are tenants on the premises.

I find from the evidence led, that the Claimant rendered professional services to the Defendants.

This is a special type of service which involves series of meetings, legal advice and strategies for which exact fees are hardly known or determinable until completion of the contract. The important point to consider is whether the parties during the time of entering into the contract discussed fees or expected that fees would be paid. The Claimant knew that he was not rendering a gratuitous service. All through the transaction I find that he acted in his professional capacity.

There was evidence before this Court that the Claimant was not paid for his legal fees. The Defendant under cross examination said the Claimant collected fuel money. I hold that payment for fueling a car is not payment for professional fees rendered.

I agree with the Claimant that the Lawyer does not have the power to lure or compel either of the parties to execute the agreement reached by them, in GTB PLC Vs. Anyanwu (2011) 46 WRN 159 @ page 164 the Court held that:

“A legal practitioner has a right to be remunerated for his services; he can either be paid in advance upon named fees or rely on the terms of any agreement reached for his fee. However if he has not received his fees and no agreement was reached as to what they would be, he must submit his bill of charges..... All the relevant authorities say that reasonable remuneration must be given for the actual work or services rendered by a Claimant on quantum meruit which in Latin means ‘as much as he deserved’.

It is clear that that where a person retains a Solicitor to assist him in the purchase of a property, a contractual relationship is created which obliges the Solicitor to exercise reasonable care and skill. Contrary to Barrister Don Ikediashi’s claim that there must be a written report from the Land Registry which ought to have been signed, stamped and paid, the usual practice is that the Land’s Registry Office never issues a search report. They only make their documents filed in the Registry available for public scrutiny at a fee. There is no written report from the Land Registry.

The evidence before this Court is that the Defendants received the Claimant’s Bill of Charges and did not respond. In the case of Trade Bank Plc Vs. Chami (2008) 42 WRN 129 and Interchemical Ltd Vs. Intercontinental Bank (2012) 16 WRN 131 @ 132 Ratio

2, the Court held that failure or neglect to answer the demand letter or Bill of Charges is tantamount to an admission of the assertion contained in it.

Upon rendering the legal services contracted by the Defendants, I hold that the Claimant is entitled to his wages (professional legal fees). The fact that the Defendants claimed that their contract with the Vendor was frustrated by non-execution of the agreement, does not affect the payment of legal services, already rendered by the Claimant.

I do not believe the Defendants, that they did not instruct the Claimant to prepare an agreement. If they did not instruct him, how did the Claimant get hold of photocopies of the Vendor’s title deeds

which he used to prepare the Deed of Conveyance. I hold that the Defendants are lying when they say they did not ask the Claimant to prepare a Deed, they had even gone as far as purchasing a bank draft in the sum of N23 million .It is unfortunate, that at the last minute the Vendor refused to sell the property. I find that the Vendor's refusal to sell the property was through no fault of the Claimant, neither was it through a fault of the Defendant also.

What was to be expected was that the parties should have met each other half way. By this, the Claimant should not have insisted on claiming 5% of the value of the property, knowing that the Vendor refused to sell again and the Defendants should have acknowledged that the Claimant had spent time and effort on their transactions, after they had briefed him and that he was therefore entitled to payment for services rendered. They should have therefore renegotiated new fees in view of the prevailing circumstances. The Defendants' refusal to pay the Claimant any money was most unfair to him because he is not running a charitable organization .The Defendants agreed that they went to Claimant's office and briefed him, to render legal services to them. It is clear that the Claimant was not rendering gratuitous services to the Defendants but professional services and he is entitled to his fees.

There is evidence before this Court that the Claimant actually rendered legal services to the Defendant. The evidence before this Court is that the Claimant conducted search, took the Defendants to the property in question and then drew up the agreement for the purchase of the property. There is evidence before this Court that the Defendants raised a bank draft in the sum of N23 million and they all went to the Vendor to conclude the transaction. It is at that point that the Vendor, Mr Idehen refused to sell the property. I hold that the refusal of the Vendor to sell was not due to the negligence or fault of the Claimant. All the relevant authorities say that reasonable remuneration must be given for the actual work or service rendered by a claimant on quantum meruit, which is Latin for " as much as he deserved' - see *SBN Ltd. V. Opanubi* (2004) 15 NWLR (Pt. 896) 437 .

Nonetheless, a Court can award reasonable fees or remuneration to a legal practitioner for his services actually rendered or admitted to have been rendered by him - see *Akingbehin V. Thompson* (supra), *SBN Ltd. V. Opanubi* (supra).

The fact the Defendants claimed that their contract with the Vendor was frustrated by non-execution of the agreement does not affect the payment of legal services already rendered by the Claimant. Counsel to the Defendant as a professional colleague and a senior one at that, he ought to have mediated in the matter, with a view to reaching an amicable settlement, instead adding fuel to the rather unfortunate situation.

Claimant's

Claim succeeds and I make the following orders:

1. N250,000 professional legal fees for drafting the agreement

2. 10% interest on the sum since 2009
3. 10% interest on judgment sum from judgment until liquidation.
4. N500,000 (Five Hundred Thousand Naira) being the cost of this suit.

HON. JUSTICE N. A. IMOUKHUEDE,  
J U D G E.  
22/9/15

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Esq

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Claimant

Don Ikediashi  
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