

**IN THE HIGH COURT OF JUSTICE, EDO STATE OF NIGERIA  
IN THE BENIN JUDICIAL DIVISION, HOLDEN AT BENIN CITY  
BEFORE HIS LORDSHIP, HONOURABLE JUSTICE E. F. IKPONMWEN –  
CHIEF JUDGE**

**FRIDAY, 28<sup>TH</sup> APRIL, 2017**

**SUIT NO. B/58/2011**

**BETWEEN:**

PROFESSOR W.O. ADEROUNMI í í í í í í í í CLAIMANT  
(Trading under the Name and Style of  
OASIS Ventures and Consultancy Services)

**AND**

THE ATTORNEY-GENERAL AND COMMISSIONER  
FOR JUSTICE, EDO STATE í í í í í í í í DEFENDANT

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

The Claimant commenced this action vide a Writ of Summons filed on 25/1/2011. By paragraphs a ó d of the extant statement of claim filed on 15/4/2014, the Claimant claims as follows:

- (a) AN ORDER that the claimant is entitled to the sum of ₦8,887,120 being balance of ₦10,035,200 (ten million thirty five thousand and two hundred naira only) which is the value of the 100,352 copies of Primary Science Series I ó VI books which Claimant supplied to the Defendant.
- (b) An Order directing the Defendant to pay to the Claimant the sum of N8,887,120 being the balance of the sum of ₦10,035,200 which is the value of the 100,352 copies of Primary Science Series I-VI books supplied to the Defendant.
- (c) Payment of Interest rate at 21% per annum on the said sum of ₦8,887,120 from the last day of payment which is 11<sup>th</sup> day of

April, 2003 until judgment is delivered and until the amount is satisfied.

- (d) ₦2,000,000 as general damages against the Defendant.

The defendant filed its statement of defence on 3/2/2014.

The issue arising for determination in this case are those filed by the defendant on 27/11/2013 thus:

- (1) Whether there is a valid contract between the Claimant and Defendant.
- (2) Whether the letter of approval dated the 16<sup>th</sup> September, 2003 confers or serves as an agreement between the claimant and the defendant.
- (3) Whether the claimant is entitled to the sum sought in his claim in this suit.

The Claimant, Professor William Olu Aderoumi opened his case on 15/12/2014 by adopting his statement on oath filed on 4/8/2014. He stated that on the 16<sup>th</sup> September, 2003, he was given an approval by the Defendant to supply 600,000 copies of his book titled "Primary Science Series I-VI." He supplied a total of 100,352 copies of the book to the defendant between 10<sup>th</sup> October, 2003 and 11<sup>th</sup> December, 2003. Whenever he supplied the books to the defendant, he issued cash/credit sales invoices to the defendant. The cost of the 100,352 books which he supplied to the defendant is ₦10,035,200 out of which he was paid the sum of ₦1,148,080 through Standard Trust Bank's deposit receipt. Standard Trust Bank is now merged with United Bank for Africa Plc. He made demand for the payment of his money but was rebuffed by the defendant. Mrs. Idundun who is a staff of the defendant called him and made an offer to him that she could assist him

to sell the remaining books to other schools and individuals. She requested him to permit her to sell the books at ₦200.00 per copy with the Ministry taking ₦100.00 as commission.

On 11<sup>th</sup> January, 2007, he received a text message from Mrs. Idundun titled "Happy New Year Prof. I have not heard from you for a long time. Primary Science is not sold. Approve or write for retrieval and collection by you so as to avoid colossal loss." As a result of the text message, in April, 2007, he was in Mrs. Idundun's office to inform her that the removal of the books was not acceptable to him. In May, 2007, he again visited Mrs. Idundun in her office to tell her that it was inappropriate for her to ask him to remove the books which he had earlier supplied in 2003. On 20<sup>th</sup> May, 2007, he wrote a letter to Mrs. Idundun stating that the retrieval of the books was unacceptable to him. On 5<sup>th</sup> of July, 2007, he instructed his counsel to write a letter to the defendant for the payment of the books he supplied. On 18<sup>th</sup> September, 2007, his counsel also wrote again to demand for the outstanding balance owed him by the defendant but the defendant refused to pay the sum. He tendered Exhibits A, B, C1, C2, C3, C4, C5, C6, C7, D, K, K1 and K2.

Under cross-examination by Airende Esq., Claimant stated that it is not correct that he was to supply the books to Ethiope Publishing Company rather through the company to the Ministry of Education. Ethiope Publishing Company was not to be responsible for the payment of his money. He identified Exhibit B and paragraph 2 thereof. In 2003, his book Primary Science Series Books I to VI was approved for use in Primary Schools in Edo State. The approval was for him to supply 600,000 copies at the price of ₦100 per copy. He was to supply through Ethiope Publishing

Company and they were not to be responsible for the collection of proceeds for sales and payment to him. He gave a break down of how he supplied the books through Ethiope Publishing Company. There was no written agreement between Ethiope Publishing Company and his company. He does not know if Ethiope Publishing Company is a limited liability company. He only knows it is an agent of the State Government. He complied with the directive of the Ministry. He had no relationship with Ethiope Publishing Company. On 24/8/2004, he wrote Exhibit L to the Ministry requesting that they assist him in distributing the books to schools. He agreed with Mrs. Idundun in August, 2004 and privately arranged that the copies be sold for ₦220 per copy and the Ministry would retain ₦120 while he would retain ₦100. It is not true that his arrangement with Ethiope Company broke down hence he wrote Exhibit L. Exhibit L was dictated to him by Mrs. Idundun while he was in her office and she signed same. It is not true that it was in order to avoid colossal loss to him that the arrangement was made for the Ministry to assist him in selling the books. The books were moved from Ethiope Publishing Company to Planning Resource Centre in the Ministry of Education. He facilitated the movement of the books. There was no agreement by the Ministry for this movement. He gave his bank account number to Mrs. Idundun. He wrote Exhibit L1. He identified Exhibit L2 and L3.

He stated further that there was no time frame for the supply of the books in the letter of award. The award was not for supply for 2003 and 2004 academic years. Authors send in their books in January for assessment and procurement. He does not know the educational policy of Edo State as he is not a public servant. He is not aware that U.B.E. Law was passed in

2005. He was not informed by Mrs. Idundun to collect the books he supplied in 2005 but in 2007 when the books could no longer be sold. The arrangement between himself and Mrs. Idundun was verbal and distinct from the supply of 100,352 books he made through Ethiope Publishing Company to the Ministry of Education. He does not agree that 14,750 copies were sold for ₦120 per copy and the proceed of ₦1,770,000 paid into his Standard Trust Bank account rather ₦1,148,000.80k was paid into his account for 100,352 copies of his book.

At the close of the Claimant's case, the Defendant opened its case on 29/11/2016 with DW1 Mrs. Florence Idundun adopting her statement on oath filed on 3/2/2014. She stated that the Claimant did not enter into any contractual agreement with the Edo State Ministry of Education or the Defendant in this case. Sometime in 2003 during a general Books Review Exercise conducted by the Edo State Ministry of Education, Benin City, the Claimant forwarded samples of the book, Primary Books 1 ó VI, authored by him to the Edo State Ministry of Education, Benin City for review and possible recommendation for use in the Primary School System in Edo State. After the Books Review Exercise in 2003, the books were approved for use in Primary Schools in Edo State vide Exhibit B. Exhibit B was issued on the condition that the books would be supplied through the Ethiope Publishing Corporation, Benin which would in turn distribute the books to the schools and take responsibility for the remittance of monies to the claimant. The Claimant failed to reach an agreement with Ethiope Publishing Corporation in compliance with Exhibit B. The Claimant never supplied any books to the Edo State Ministry of Education in the year 2003. In a letter dated 24<sup>th</sup> of August, 2004, the claimant having failed to arrive at an agreement with

Ethiophe Publishing Corporation appealed to the Ministry of Education to assist him with the sales of the books. Based on the appeal made by the Claimant, the Edo State Ministry of Education, Benin City agreed to assist him and consequently the claimant moved 100,259 copies and an additional 1,286 copies of his books to the Educational Resource Centre (ERC) of the Ministry for assistance with their sale to primary school pupils. A total of 101,545 (one hundred and one thousand, five hundred and forty five) books were supplied by the Claimant to the ERC. The arrangement with the Claimant was that the offices of the Chief Inspectors of Education would be used as outlet for the sales of the books to primary school pupils in Edo State. In 2005 when the Universal Basic Education Law came into effect in Edo State prohibiting the collection of fees in the State primary and junior secondary schools under any guise, the management of the E.R.C. made several requests to the claimant retrieve for the unsold copies of his books. In all 14,750 (fourteen thousand, seven hundred and fifty) copies of the books were sold at ₦120.00 per copy on behalf of the claimant for a total sum of ₦1,770,000.00 (one million seven hundred and seventy thousand naira). By letters dated 30/9/2004 and 30/10/2004, the Claimant requested the Honourable Commissioner, Edo State Ministry of Justice to pay the proceeds from the sale of the claimant's books into his Standard Trust Bank Account No. 04902974001102 which was paid at various times between 13/12/2004 and 30/8/2007. The Claimant wrote to the Director, Educational Research Centre (ERC) on 22/11/2004 to find out whether the books supplied by him had been paid for by the schools. The Claimant never came to collect the 86,795 (eighty six thousand seven hundred and ninety five) unsold copies even after she requested him to do so to prevent them from

deteriorating. The then Director, Educational Resource Centre (ERC) of the Edo State Ministry of Education never received any letter dated 20/5/2007 from the claimant but only received two letters dated 05/07/2007 and 18/9/2007 from the office of Falana and Falana (Solicitors) demanding the payments of some sum of money alleged to be owed the Plaintiff. No amount of money is yet to be paid to the Plaintiff by the Edo State Ministry of Education, Benin City. She tendered Exhibits M, M1 and N1 ó N44.

Under cross examination by Okukpon Esq. DW1 stated that she was not the person that gave the claimant the approval in Exhibit B. It is not correct that the claimant was directed through their letter to make his supplies through their agent Ethiope Publishing Company. This letter was not brought to her attention until much later when she saw the letter from claimant's counsel. She was not aware of the letter when claimant came for a review of his book. She does not know if claimant complied with paragraph 2 of Exhibit B. The claimant did not supply the books through Ethiope Publishing Company. She does not know if the Claimant supplied the books as directed in Exhibit B. The 600,000 copies were to be supplied to Ethiope Publishing Company which is a limited liability company. The books supplied for sales by the Claimant were approximately 100,000 copies. Her department was not privy to the supply to Ethiope Publishing Company. The Claimant **brought 22,102 books not 100,000 books**. On receipt of Exhibit L she was directed by the Commissioner for Education, Mrs. Lucy Omagbon to distribute Claimant's books through the Chief Inspectors of Education which was done and monies recovered from the sale paid into claimant's account. It was not three years after the U.B.E. Law took effect that they asked the claimant to retrieve the books, they had been

in communication with the claimant from 2005. She was not privy to where the claimant got his books from that were brought to her department. It is not true that she facilitated the movement of the books from Ethiope Publishing Company to her department. They never had any contract with Oasis Venture.

At the close of evidence, both learned counsel adopted their written addresses on 1/3/2017.

In his written address filed on 6/2/2017, O.O. Iyamu Esq. of counsel to the defendant adopted the issues for determination as his issues in his written address.

Learned counsel submitted on issues (a) and (b) that the transaction between the claimant and the defendant cannot be regarded as a valid contract enforceable between the parties relying on Blacks Law Dictionary sixth Edition at page 322, Exhibit B and the case of **Akinyemi v Odu'a Investment Co. Ltd** (2012) 210 LRCN page 180 at 203. According to him, Exhibit B falls short of the definition of what a contract document should be and urged the court not to attach any probative value to it. See **SPDC Nig. Ltd v Emeh Uru** (2007) 5 NWLR (pt. 1027) page 347 at 367. Learned counsel submitted that Exhibit B does not create agency relationship between Ethiope Publishing Company and the Ministry of Education as such agency relationship never existed between the company and the ministry. The Claimant was to conclude the transaction with Ethiope Publishing Company since he was to make supply to Ethiope and Ethiope in turn will distribute and make payment to Claimant and the claimant does not have any recourse again to the Ministry of Education but Claimant failed to reach an agreement with Ethiope Publishing Company. See **Osigwe v PSPLS Mgt.**



**Cons Ltd** (2009) 171 LRCN 94 at 116; **Uwah v Kpabio & Anor** (2014) 229 LRCN 1 at 20. He submitted that the proper party like Ethiope Publishing Company was not sued in this case since it is a limited liability Company. He submitted that the remedy the Claimant seeks if there exist any is against Ethiope Publishing Company and not Ministry of Education having regard to the evidence adduced. See **Obla v Otagoyi** (2007) 5 NWLR (pt. 1027) 304 at 323.

On issue C learned counsel submitted that the claimant is not entitled to any sum of money as far as the claim relate to any book allegedly supplied to the Ministry through Ethiope Publishing Company. The defendant cannot be responsible for the payment of 100,352 copies of Primary School Science Series 1 ó VI allegedly supplied Ethiope Publishing Company in 2003 as the wording of the document is very clear. A written document cannot be varied with oral evidence. See **A.G. Bayelsa v A.G. Rivers** (2007) 144 LRCN 357 at 370. If any book was supplied to Ethiope Publishing Company in 2003 there ought to be an agreement between the Claimant and Ethiope Publishing Company for which basis he can sue Ethiope Publishing Corporation. He submitted that the only payment the Claimant is entitled to, is the payment made by the pupils who bought the books supplied to the Ministry of Education in 2004 on two installments through the Director of Education Resources Centre (ERC). He submitted that the sum of ₦1,770,000.00 was paid into the account of the claimant for two supplies made on 7/10/2004 for 100,259 copies and 1786 copies on 3/12/2004. If any contract exists it has been frustrated by the U.B.E. policy which took effect in 2005. See **Total (Nig.) Plc. v Akinpelu** (2004) 17 NWLR (pt. 903) page 509 at 523. He urged the court to hold that the

Claimant is only entitled to the payment already paid into his account through exhibit N1-N44 being the proceed from the sale of Claimant's book as he directed.

In conclusion, learned counsel urged the court to dismiss the case of the claimant with cost.

In his written address filed on 15/2/2017, Alfred O. Okukpon Esq. of counsel to the Claimant adopted the issues for determination as his issues in his written address.

Learned counsel submitted on issue 1 that there is a valid contract between the claimant and the defendant relying on Exhibits B, C1 ó C7 and the cases of **Dr. M.O. Omidiji v Federal Mortgage Bank and 2 Ors** (2001) 40 W.R.N. page 130, **Damina v Akpara** (2011) All FWLR (pt. 580) page 298 at 1308; **Dahiru v Kamole** (2001) FWLR (pt. 62) 1853.

Okukpon Esq. submitted on issue 2 that Exhibit B is an agreement between the claimant and the defendant. The conduct of the parties to the agreement shows clearly that there was an intention on their part to enter into a binding relationship. The parties are well known. According to him, it is unnecessary to make Ethiope Publishing Company a party to this agreement as it is an agent of the defendant. It is trite law that where there is a disclosed principal, the agent need not be made a party in a case or be held liable for its breach. See **Takum L.G. v U.C.B. Nig. Ltd** (2003) NWLR (pt. 846) 288 at 301 ó 302; **Vulcan v Gesselchaft** (2001) 26 W.R.N. 1 at 35. He maintained that by Exhibit B there is a valid agreement and contract between the parties. The claimant has fulfilled his part of the contract and deserved to be paid by the defendant. See **M.O. Omidji v Federal Mortgage Bank and 2 Ors** (supra); **Sanyima v A.I.B.** (2000) 6 W.R.N. 23

at 38 ó 39; **Onyemelukwe v Alberto & Anor.** (2001) 26 W.R.N. 140 at 160.

Learned counsel submitted on issue 3 that the Claimant is entitled to the sum of ₦8,887,120 in his claim. He submitted that the contract was not based on sale or return basis. The supplies had been made and it is unreasonable to ask the claimant to collect books supplied in 2003 because of Edo State Universal Basic Education Law enacted in 2005. The contract was not frustrated as there was no clause in the agreement that all future laws made by the defendant would affect the agreement.

In conclusion, learned counsel urged the court to uphold Exhibit B as a valid document and to give judgment in favour of the Claimant in all the reliefs contained in his statement of claim.

I have carefully considered the evidence in this case as well as the legal submissions of both learned counsel. I have also examined the exhibits tendered. There are some basic principles that must be followed in contract cases. In the case of **Akinyemi v Odu'a Investment Co. Ltd** (2012) 210 LRCN 180 at 203 the Supreme Court held as follows: "What then is a valid contract? The Black's Law Dictionary, Eight Edition, defines a valid or binding contract to mean an agreement between two or more parties creating obligations that are enforceable or otherwise recognizable at law. It is elementary to state that there are three basic essentials to the creation of a contract agreement, contractual intention and consideration. And the normal test for determining whether the parties have reached agreement is to ask whether an offer has been made by one party and accepted by the other".

In the case of **Babatunde v Bank of the North Ltd & Ors** (2012) 206 LRCN 61 at 83 the Supreme Court stated as follows: "It is however trite

that a court of law must always respect the sanctity of the agreements reached by parties. It must not make a contract for them or re-write the one they have already made themselves. The court stated further at page 84 that "The law is that written contract agreement freely entered into by the parties is binding on them. A court of law is equally bound by the terms of any written contract entered into by the parties". The court went on to state as follows at page 101 "In the interpretation of contractual transaction, the court will always hold parties bound by the terms of their agreements when construed according to the strict, plain and common meaning of the words in the instrument as they stand".

I have therefore considered Exhibit B, which appears to me to be the contract document and required for the determination of this case. I reproduce it hereunder:-

Exhibit B reads thus:

"Ministry of Education  
P.M.B. 1058  
Benin City  
Edo State of Nigeria.

Our Ref: No. PS/ED/102/5  
Your Ref:

16<sup>th</sup> September, 2003

The Managing Director,  
Oasis Ventures and Consultancy Services,  
1, Olu-Aderounmu Close,  
P.O.Box 3116,  
Akure.  
Sir,

**APPROVAL FOR THE SUPPLY OF PRIMARY SCIENCE SERIES  
(1 ó VI) FOR EDO STATE PRIMARY SCHOOLS**

Further to the discussions in respect of the above and the positive Assessment of the Books, I am happy to convey to you Government

Approval to supply 600,000 copies of the Primary Science Series at N100.00 per copy to Primary Schools in Edo State.

2. The books are to be supplied through Ethiope Publishing Corporation of the State for the distribution to the Schools and will be responsible for the payment to your organization.

3. Kindly ensure the delivery as soon as possible. (Underling mine).

Dr. P.I. Osaghae,  
Permanent Secretary,  
For: Honourable Commissioner,  
Ministry of Education,  
Benin City.ö

The portions underlined by me are crucial i.e. öGovernmentö approval to supply 600,000 copies of Primary Science Series at N100 per copy to Primary Schools in Edo Stateö.

öThe books are to be supplied through Ethiope Publishing Corporation for distribution to Schools and will be responsible for the payment to your organizationö.

From the above, it does appear to me that the books were positively assessed by the Ministry of Education for the use of its Primary Schools, which approval I believe the claimant needed. The next requirement in the contract was for the claimant to supply the books **through** Ethiope Publishing Corporation for distribution to schools and the final stage of this contract was the fact that the said Ethiope Publishing Corporation would be responsible for the distribution of the books and payment to the claimant. By paragraphs 10 ó 14 of the statement of claim, the claimant pleaded that he supplied books to the defendant to the tune of ₦10,967,000 representing

109,674 book supplied for which he was paid only ₦1,240,000 leaving a balance of ₦9,718,000.

The Claimant admits in paragraph 21 of his pleading that he was sent a text message that the Primary Science is not sold. "Approve or write for retrieval and collection by you so as to avoid colossal loss". He wrote to protest the request for his retrieval of the books.

In his statement on oath which claimant adopted as his evidence in paragraph 12 thereof, the claimant said the "books which I supplied to the defendant are as follows:- í ö

In paragraph 14, he stated that "the cost of the 109,674 books which I supplied to the defendant is ₦10,967,000".

In my respectful view, the claimant deviated from the contract when he made supplies to the Ministry of Education if he did at all. The contract was for him to supply the books through Ethiope Publishing Co. Ltd. The supply to Ministry of Education appears to be a private arrangement. This can be gleaned from paragraphs 19 & 20 of the statement on oath of the claimant when he stated thus: "19 that one Mrs. Idundun who is a staff of the defendant who called me and made an offer to me that she could assist me to sell the remaining books to other Schools and individuals". "20 that the said Mrs. Idundun requested me to permit her to sell the books at ₦200 per copy with the Ministry taking ₦100 as commission".

I find that the claimant did not state whether he agreed or not but I am satisfied that he carried out this arrangement privately with the said Mrs. Idundun from 2004 ó 2007 as shown in the deposit slips tendered as Exhibits N1 ó N44. Mrs. Idundun and one Mrs. E.C. Iyoha were the ones making payments into the account of the claimant. When she got exhausted

apparently with the sales arrangement with the claimant she sent the text message to the claimant and asked him to retrieve his books which in her evidence she put as 86,795 unsold copies. I agree with the submission of the learned Solicitor-General of Edo State, Wole Iyamu Esq. that there was never an offer from the claimant to supply books to the defendant. There was no concluded bargain, as by the wordings of Exhibit B, the claimant was to supply his books through another body, Ethiope Publishing Corporation. This by itself meant that the claimant was expected to conclude the mode of supply of the books with that body. This in my respectful view did not create an agency relationship between the defendant and the Ethiope Publishing Corporation the claimant was asked to perform the contract through. The claimant cleverly was silent in his evidence in-chief as to what transpired between him and the recommended supplier. However, under cross examination he admitted that he was to supply the books through Ethiope Publishing Corporation but added that they were not to be responsible for collection of proceeds from sale and payment to him. This obvious lack of understanding of the terms of the contract is what has led to the institution of this suit. Exhibit B is very clear and unambiguous and must be given its ordinary meaning. The claimant by failing to abide by the terms of the contract cannot hold the defendant liable for the payment for the books supplied which he supplied to agents he created or recruited in the Ministry of Education by his own admission. The confusion of the terms of contract by the claimant is obvious on the face of Exhibits C1 ó C7 where the claimant purportedly made some supplies to Ministry of Education c/o Ethiope Publishing Corporation before mid way on 19/11/2003 making supplies to the General Manager Ethiope Publishing Corporation vide

Exhibit C5. Moreover the contents of Exhibit L contradicts the claim of the claimant, in that the last supply was made on 11/12/2003 by the claimant vide Exhibit C7, whereas by Exhibit L the claimant was requesting that Ethiope Publishing Corporation be allowed to distribute the books through the Ministry of Education. The claimant has not shown any response to his request in Exhibit L, rather he continued to deal privately with Mrs. Idundun DW1 vide Exhibit L3. The last effort by the claimant to get this payment from the defendant is seen in Exhibit D as he could not understand that he had to retrieve copies of his books he dumped on the DW1 following her call on him to do so.

From the above findings, it is clear that the claimant has failed to prove his claims on the preponderance of evidence and balance of probabilities. The claimant is not entitled to any of the reliefs claimed and his entire case lacks merit. I therefore have no option but to order the case of the claimant dismissed.

I make no order as to costs.

Hon. Justice E. F. Ikponmwen  
Chief Judge.  
28/4/2017

**Counsel:**

Alfred Okukpon Esq. for the Claimant.

M. O. Ariende Esq., Deputy Director with Ama Iyamu (Mrs.) Senior State Counsel for the Defendant.