

IN THE MAGISTRATE COURT OF RIVERS STATE OF NIGERIA
IN THE PORT HARCOURT MAGISTERIAL DISTRICT
HOLDEN AT PORT HARCOURT

RESUMED ON THE 25TH DAY OF SEPTEMBER 2023
BEFORE HIS WORSHIP A.O. AMADI-NNA, ESQ.
SITTING AT CHIEF MAGISTRATE COURT 10, PORT HARCOURT

SUIT NO: PMC/SCC/37/2023

BETWEEN

MR. STANLEY CHINEDU OBI
VS.
MR. GODPOWER JONATHAN

Defendant present

Claimant absent

Uzoma O. Benjamin appear for the Claimant

Matter is for judgment.

JUDGMENT

The Claimant claims against the Defendant as follows:-

1. The sum of ₦1,377,500.00 (One Million Three Hundred and Seventy Seven Thousand, Five Hundred Naira) being the amount the defendant refuses to remit to the Claimant and being the balance due to the Claimant after the deduction of 5% percent being ₦72,500.00 (Seventy Two Thousand, Five Hundred Naira).
2. The sum of ₦200,000.00 (Two Hundred Thousand Naira) as damages.
3. The sum of ₦100,000.00 (One Hundred Thousand Naira) as cost of litigation.

The Defendant filed a counter claim against the Claimant for the sum of N1,300,000.00 (One Million, Three Hundred Thousand Naira) as follows:

The sum of N300,000.00 as outstanding debt and the sum of N1,000,000.00 (One Million Naira) as special damages.

The Defendant pleaded not liable to the Claimant's claim.

In proof of his claim the claimant was the only witness who gave evidence in support of his claim and tendered 6 exhibits. Exhibits 'A', 'B1' - 'B4' and 'C' while the Defendant gave evidence as DW1 and was also the only witness who gave evidence in support of his case and did not tender any exhibit.

CW1 Mr. Stanley Chinedu Obi the Claimant said he and his younger brothers. Mr. Martin Obianu and Mr. Kenneth Obi donated a Power of Attorney to the Defendant to manage a flat situate at No. 25 Chinda Avenue, off Stadium Road Elekahia and a written agreement was entered into as to how he was to manage the flat. He tendered the Power of Attorney as Exhibit 'A'. He further said that it was agreed that 5% percent of the rent accruable from the flat will be given to the defendant as professional fee. That in particular Flat 1 and Flat 2 belong to him and the rent accruable in Flat 1 is N750,000.00 while Flat 2 is N700,000.00. It was also agreed that they could also terminate the agreement with the Defendant either written or orally. That at the beginning everything seemed fine but along the line the Defendant collected the rent but did not remit it. That the rent that the defendant remitted was not what was agreed which led to his brother terminating the agreement with the defendant orally. He further gave the defendant an opportunity but the Defendant was still not remitting the actual amount agreed. And based on this he approached the Defendant and told him that after collecting the 2022/2023 he will take his 5 percent which is N72,500.00 for the 2 Flats and remit N1,377,500.00 as the balance from the 2 flats. That the Defendant

collected the rent from the 2 flats deducted his own 5 percent but still refused to remit the money. He approached the Defendant and informed him orally that he no longer wishes to continue with his services and asked him to remit the money to him but he refused. After terminating the Power of Attorney he approached some leaders of their church to talk to the Defendant to release his money but the Defendant did not, so he told his lawyer Barrister Uzoma to write the Defendant which the lawyer did terminating the agreement and for him to remit the money after which his counsel issued a demand letter through the Court Bailiff to him. After the Defendant still refused to remit the money they issued summons to him. He tendered the letter from his lawyer and the Demand notice as Exhibit 'D' and 'C'.

He pleaded not liable to the Defendant's counter claim and said the Defendant is the one owing him money and he does not owe any money to the Defendant. That the Defendant collected money from his 2 Flats and his 5% percent management fee but has refused to remit the money to him. That in 2021 the Defendant collected N750,000.00 as rent from one of the flats and instead of collecting the agreed 5 percent of the rent which is N37,500.00 and remitting the balance N712,500.00 he only gave him (claimant) the sum of N10,000.00 and when he inquired why he paid him only this amount, the Defendant alleged that he used the remaining balance for repairs which the Claimant believes him as his preacher and his spiritual Father. Further that in 2022 again the Defendant after collecting N37,500.00 from the same flat remitted the rent but collected as much as 10 percent contrary to the agreed 5 percent and further in 2023 when the next rent was due and paid by the tenants occupying, Flats 1 and 2 owned by the Claimant being N700,000.00, the Defendant collected the entire rent and refused to remit any amount to him he also said that prior to this incident the Defendant had long been

relieved by his brothers due to his insincerity in managing the properties. He prayed the court to compel the Defendant to pay him the sum of N1,377,500.00 after he has deducted his 5 percent management fee and also pay him the sum of N200,000.00 as damages and N100,00.00 as the cost of litigation making it gross total N1,677,500.00.

Under cross examination CW1 said he reported this matter to Deeper Christian Life Christian Bible church with the belief that the church will look into the matter but the church never came to a conclusion and was one sided so he decided to use the services of a lawyer. That the agreed percentage in the Power of Attorney as agreed with the Defendant is 5 percent for each of the flat. He took the Defendant to the church because he had collected the rent but refused to remit it. They had agreed that he will pay the Defendant 5 percent of the annual rent of the 2 flats. They come to any conclusion concerning the matter at the church.

This is the case for the claimant, I now go to the case for the Defendant.

DW1 Godpower Nmam Jonathan said he is a property consultant and he helped the Claimant and members of his family resolve the issue of their Father's estate after their father died intestate. Before the issue was resolved he and the Claimant had agreed that he will be paid the sum of N2 Million as professional fees. When the Claimant could not pay this amount at a later date, the Claimant pleaded with him to pay the sum of N1.4 Million instead and he agreed and accepted.

Further that the issue was resolved through a consent Judgment of the court and the claimant and his younger ones got all their entitlements as stated in the consent judgment. That after the matter was resolved through the consent judgment, the Claimant and his mother bought a property at Otogbo Rumuigbo and refused to settle him. That after the

work he had done for them the Claimant and his younger ones said he should take over the management of the estate at 5 percent as management fee. The claimant later said he should take 10 percent as management fee pending when they will pay the professional fee, hopefully when the land at Otogbo will be sold. They eventually sold the land at Otogbo but did not pay him. That when he confronted the Claimant he said when the buyer of the property complete the payment he will pay him his balance. That in November 2022 when they got the balance they did not pay him. Further that between December and February 2023 he received the sum of N1.1 Million as rent at the Estate at No. 25 Chinda Street, off Elekahia Road in the estate he was given to manage. The claimant now came for remittance of the rent and he told him off. Also that the claimant also got N1 Million cash through his company's effort. The claimant and his brother got their right in their late father's property due to his company's effort through his consultation. That he was also handed over the property at Otogbo Street, a Plot of land by their mother to manage. Through his personal efforts and money, he evacuated tenants on the property who refused to pay. He also helped the claimant and his family to execute the consent

Judgment and also used the a police to quit the tenants at No. 25 Chinda Avenue. That they also later sold the land at Otogbo which they promised to settle him without giving him any thing. Further that the leadership of the church headed by Pastor Endwell Chinda came up with a resolution that the claimant should pay him the sum of N1.4 Million after the claimant reported him to them and the claimant said he can pay it and accepted this. He tendered the documents he mentioned as Exhibit "B1" - "B4" and "C". He prayed the court to compel the Defendant to pay him his outstanding balance of

N300,000.00. He also prayed the court to award him special and general damages for deceit and misrepresentation of facts.

Under cross examination DW1 said he settles every problem involved in the claimant's family apart from property. The claimant has also been coming to him for help outside property. He does not belong to the Nigerian Institute of Estate surveyors and Valuers. He further said, that the claimant did not venege from the proceedings of the panel on noticing that there was bias.

Counsel for the claimant and the defendant adopted their final written addresses as their final argument in this case on the 7th day of August 2023.

The claimant's final written address is filed on the 6th day of July, 023 while the defendant's final written address is filed on the 24th day of July, 2023.

In his address claimant's counsel raised one issue for determination, That is "whether from the totality of evidence before this Honourable court the claimant his proved his claim against the defendant's counter claim to be entitled to the judgment in his favour?"

Claimant's counsel submit that the claimant has proved his claim as his evidence is explicitly unassailable that the defendant was his spiritual father who he later engaged together with his brothers the mange his portion of his inherited property being flats 1 and 2 of No. 25 Chinda Avenue, off Stadium Road, Elekahia, Port Harcourt, Rivers state on a fee of 5% of the rent collected. That this is evidenced in the Power of Attorney Exhibit 'A' before the court that due to the deviation from the terms of the contract, his other brothers disengaged the defendant but being his spiritual father he still retained him expecting a change which the defendant continuously breached by taking 10 percent other then the agreed 5 percent

especially the respective rents of N700,000.00 and N750,000.00 collected from flats 1 and 2 and to heighten the breach, the Defendant collected the 2022 rent of one flat and 2023-2024 rent of the second flat but refuses to remit any amount at all to the claimant. That this piece of evidence remained unscathed even after cross examination. Refer to the claimant's evidence on 17/05/2023. Counsel submits that in a contractual agreement, parties are bound by the terms of the contract and no one either the offeree or offeror is called to unilaterally alter the terms of the contract as doing so would amount to breach of contract with resultant damages. Counsel referred to the case of **AZUBUIKE & ANOR VS. GOVT OF ENUGU STATE & ANOR (2013) 1 PELR 20381 (ca)**. Also referred to **ARFO CONSTRUCTION CO. LTD V. MINISTER OF WORKS & ANOR (2018) LPELR - 46711 (CA)**. Submit that Exhibit 'A' clearly spells out the terms of the contract between the claimants and the Defendant and the Defendant's unilateral alteration of the 5 percent to 10 percent is a breach and the refusal to even remit the last rents collected completed the breach which warrants not just be termination of the said contract but also damages in favour of the claimant.

Counsel submit that the settlements/arbitration report tendered by the Defendant is not binding on the claimant as same is invalid and must be referred by this Honourable Court. Refer to **IWUOHA & ANOR V. OHAZURUIKE & ORS (2016) LPELR 40513 (CA)**. That the claimant and defendant's evidence clearly show and confirm that there was a rejection of the decision of the panel by the claimant and particularly Exhibit 'B', claimant's solicitors letter to the Defendant dated 21/2/2023 which was served on the Defendant but he refused to endorse. Counsel refer to the claimants evidence on 25/5/2023 which show that Exhibit B, predated the last day of final sitting of the panel.

Defendant in his final address stated that an agreement or contract can be oral or written which the claimant consented to when he told the panel that he will be able to pay N1.4 Million as against the N2 Million he claimed. That the panel report/judgment the parties agreed to submit themselves to should be binding and that the panel came up with the decision after evaluating the evidence of the parties and gave their decision and the parties accepted the decision.

That the report of the panel was accepted by both parties because the panel only entered judgment of the agreement reached by both parties without prejudice or bias because they are men of integrity and God fearing.

Further that the statement the claimant never denied that there was an agreement and that even when the Power of Attorney has been signed by the parties he was taking 10 percent against 5 percent and he never denied it neither did the claimant take any legal action against him. That even as the claimant came to claim unremitted rents, he never included it in his claim. That during cross examination of the claimant, the claimant claim only said he cautioned him and over looked it when he asked him why he did not include the 10 percent management fee he collected in 2021 and 2022.

Defendant states that it is evidenced in his statement of account from UBA Bank in 2021 - 2022 of the N750,000.00 paid he remitted N650,000.00 after collecting 10 percent of N750,000.00 and the other flat after collecting N700,000.00 he remitted N130,000.00 after 10 percent deduction which is N70,000.00. That then N350,000.00 paid he remitted N5,000.00 after 10 percent deduction of N35,000.00.

That N315,000.00 was to be remitted but N300,000.00 was used to off set outstanding PHCN bills under the claimant's express instruction as he had and admitted in evidence before the claimant.

Defendant further states that he the Claimant only came to court after the panel report was given and the demand letter of the claimant's lawyer came on the 21st February 2023, 2 days after the panels decision on 19/2/2023 and report was given which shows clearly that. Claimant is the one owing him outstanding balance of N300,000.00. Further that the claimant did not miss any of the panels sitting on the 5th, 12th and 19th days of February, 2023.

I have reviewed the evidence of the CW1 the claimant and DW1 the Defendant. I have also taken into consideration Exhibits 'A', 'B1' - 'B4', and 'C' tendered by the claimant.

The two issues that arise for determination are "Whether from the totality of evidenced the claimant has proved his claim to be entitled to judgment?"

(2) /whether the Defendant's entitled to his counter claim.?"

The totality of evidence before the court shows that the parties entered into an agreement which is a Power of Attorney Exhibit 'A' donated by the claimant to the Defendant to manage the property. Exhibit 'A' is the Power of Attorney which states the Terms and conditions of the agreement. Exhibit 'B4'. The bank statement of the Defendant from the United Bank for African shows that the Defendant remitted the moneys paid by rent by the tenants to the Defendant. PW1 had admitted under evidence in chief on 26/5/2023 that he permitted the Defendant to use some of the N700,000.00 paid as rent by a tenant to use the sum of N350,000.00 from that N700,000.00 to settle PHCN bills. The bank statement of the Defendant is evidence that has remitted the rent paid to him by the tenants that he was approved to remit to the Claimant under the term and conditions of Exhibit 'A' the Power of Attorney. The claimant however collected 10 percent management fee instead of 5 percent which is in breach of the

terms and conditions and the claimant having terminated, the agreement, and not having taken any action when the Defendant first collected 10 percent management fee in the 2021-2022 rent period thus condoning this act, he cannot be heard to complain afterwards and is stopped from raising the issue. He has waived his rights to the issue. See the case of **MAIYEGUN V. GOV. LAGOS STATE (2011) 2 NWLR (PT 1230) OAGE 154**. See also **ARIORI V, EZEMO (1983) 1 SCNLR 1**. Further a person who takes steps in the proceeding even with the knowledge of the alleged irregularity must be taken as having waived his rights. See **ONUNEYE V. F.R.B. (2014) 3 NWLR (PT 1425) P.545**.

Finally the claimant attended the proceedings of the panel set up by the church to resolve the issue, through he said he later abandoned the panels sittings. However the claimant only came to court after the panel's report was made. Exhibit B2 the demand letter from the claimant's lawyer was sent to the Defendant after the panel decision on 19/2/2023. The claimant therefore cannot now say he did not take part in the panel decision.

Accordingly from the foregoing I hereby hold that the claimant has failed to prove his claim to be entitled to judgment.

I also hold that the Defendant is not entitled to his counter claim.

Court: this court is hereby dismissed.

The Defendant's counter-claim is also dismissed.

Signed
A.O. AMADI-NNA, ESQ
(Chief Magistrate Gd.1)
25/9/2023

