

Propriety Of Claiming Solicitors Fees_2018

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Introduction

It is trite law that where there is a legal wrong there must be a remedy as aptly captured in the latin maxim *ubi jus, ibi remedium*. It is also trite that costs follow events and a successful party is entitled to cost which he should not be deprived of except for a good or special reason.² If the Claimant's case seeking payment of outstanding sums in a civil matter succeeds, it is the writer's humble view that the claim for expenses and costs (including legal or solicitor's fees) ought to be awarded as prayed as there would not have been a need to incur legal or solicitor's fees whatsoever had the defendant (losing side) paid the Claimant (winning side) before the latter approached the court.

The above was the line of submissions in the final written address in respect of a recent matter in which the Claimant later won on all grounds except on the award of the solicitor's fees in respect of which the above argument was put forth by the present writer. The court's reasoning for not awarding the solicitor's fees was that though properly pleaded as part of special damages, with the fees agreement with the Claimant duly tendered and received in evidence, it was not strictly proved as the Claimant only tendered the fees agreement between the Claimant and solicitor in evidence. The Claimant was adjudged not to have shown evidence that the expense was incurred. This write-up thus attempts to interrogate our courts' general reluctance to award appropriate costs in deserving events; and particularly the court's decision regarding whether fees agreement between the Claimant and solicitor is not sufficient proof that the Claimant had incurred expenses. Conversely, can expenses incurred but not yet paid be considered as not incurred solely on the basis that same is to be paid later? Or does the fact that an expense incurred has not been paid mean that the expense has not been incurred?

Claiming Solicitor's Fees from the losing litigant: Unethical Practice or Special damage?

Claiming Claimant Solicitor's fees from the defendant under Nigerian law was initially considered to be against public policy and unethical in a line of writer authorities, including the case of Guinness Nigeria Plc v. Nwoke³ where it was held that as unethical and an affront to public policy for a litigant to pass on the burden of his solicitor's fees to his opponent in a suit.

However, that position has since changed, and solicitor's fees is now considered as a claim within the realm of special damages which, must be pleaded specially and evidence adduced to prove same specifically. In the case of S.P.D.C. Nig. v. Okonedo,⁴ it was decided that special damages must be specifically pleaded and specially proved. The current state of the law on granting solicitor's fees is that upon proper pleading and once it is established that the Claimant suffered a wrong as a result of the Defendants' refusal to pay their indebtedness, evidence of the solicitor's fees like every other special damages only need be provided on the balance of probability in all civil cases.

This position is confirmed by the writer authority of the case of Int'l Offshore Const. Ltd v. S.L.N. Ltd⁵ where the Court of Appeal, placing reliance on the Supreme Court decision in Rewane v. Okotie-Eboh⁶ held that:

"Under Nigerian Laws expenses incurred on services of counsel are reasonably compensated. Thus the costs will be awarded on the ordinary principle of genuine and reasonable out of pocket expenses and normal counsel cost is usually awarded for a leader and one or two juniors. In the instant case, the trial court was perfectly right in the award it made in respect of expenses incurred by the respondent for services of solicitors"

Footnotes

1 Notary Public for Nigeria and Senior Associate with the Dispute Resolution Department of S. P. A. Ajibade & Co., Lagos Office, Nigeria.

2 See Saeby v. Olaogun 1999 10 12 SC 45, 59, and Ladega v. Akinliyi 1969 2 SC 91.

3 2000 15 NWLR Pt. 689 . See also A.C.B. Ltd. v. Ihekwoaba 2003 16 NWLR Pt.846 249 and Nwanji v. Coastal Services Nig. Ltd 2004 11NWLR Pt.885 552.

4 2008 9 NWLR Pt. 1091 85 at 122 123 paras. H D; Lonestar Drilling Nig. Ltd v. New Genesis Executive Security Ltd 2011 LPELR 4437 CA .

5 2003 16 NWLR Pt. 845 157 at 179 paras. A D.

6 1960 SCNLR 461.

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The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.