

IN THE HIGH COURT OF JUSTICE
OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT KUBWA, ABUJA
ON THE 7TH DAY OF FEBRUARY, 2020
BEFORE HIS LORDSHIP: HON. JUSTICE K. N. OGBONNAYA
COURT 26.

SUIT _____ NO.:

FCT/HC/CV/753/2020

BETWEEN:

CAFON BUILDERS ----- PLAINTIFF

AND

CQ2 PROPERTY & INVESTMENT CO. LIMITED -----
DEFENDANTS

RULING/JUDGEMENT

On the 7th day of January, 2020 the Plaintiff – Cafon Builders Ltd instituted this action against C2Q Property & Investment Co. Ltd seeking the following:

- (1)Thirty Million Naira (N30, 000,000.00) being the money paid and now being refunded as balance payment for the development of a housing Estate in Abuja which the Defendant has conveyed to the Claimant.
- (2)The Plaintiff is also claiming 10% per annum on the Judgement Sum from the date of Judgement until the debt is fully liquidated.

Plaintiff supported this with Affidavit of 6 paragraphs deposed to by Perpetual Agueze.

He attached 2 letters of acknowledgement of payments dated 17/3/11 and 21/3/11, all written by the Defendant and addressed to the Plaintiff. These letters were signed by Akande Omoniyi. He also attached a Fidelity Bank Cheque for Ten Million Naira (N10,000,000.00) issued to the Plaintiff by the Defendant dated 14/3/11. The Plaintiff equally attached a play in slip dated 16/3/11.

There are 2 letters both of which are update on the contractual agreement between the Plaintiff and Defendant both written by the Defendant to the Plaintiff.

The first letter was dated 2/2/17 while the other was dated 17/5/17. The Plaintiff also attached GT Bank Statement belonging to Ulofu Peter Francis for period of 1 – 30 September, 2019.

The last document attached by the Plaintiff is a Final Letter of Demand from Don Ulofu Chambers. It was addressed to the Defendant and was dated 20/11/19.

Because their claims is predicated on a debt which is purely liquidated and to their minds the Defendant has no defence to it, the Plaintiff's Writ was marked undefended. The Plaintiff had urged the Court to Order the Defendant to pay or refund the said money which is Thirty Million Naira (N30,000,000.00) without further delay since to the Plaintiff the Defendant has no prima facie defence to that claim.

The Defendant was served and upon receipt of the Writ it filed a Notice of Intension to defend the Suit of the Plaintiff. It supported the Notice with an Affidavit of 24 paragraphs deposed to by Haruna Umar the company Secretary of the Defendant. He attached 10 documents marked as **EXH D1 – D10**.

The Exhibits are Minutes of Meeting of 7/3/17, Application for Building Plan Approval, communicated to the Plaintiff Co-operative

dated 26/3/12. Withdrawal of Request to make Refund dated 21/5/18. Contract of Allocation to Sell Plot 158 post-dated Cheque for Fifteen Million Naira (N15, 000,000.00) dated 31/10/19. Two other post-dated Cheques for Fifteen Million Naira (N15, 000,000.00) and Ten Million, Nine Hundred Thousand Naira (N10, 900,000.00) for 30/4/19 and 31/10/19. Cheque of N7.6million due for 29/10/19 and 30/12/19. Another post-dated Cheque of N1.2million due for 30/12/19.

According to the Plaintiff, he paid a total sum of Thirty Million Naira (N30, 000,000.00) to the Defendant for the development of a housing estate. The payment was made in three (3) installments of Ten Million Naira (N10, 000,000.00) each going by the document evidencing the acknowledgement marked as **EXH DON A1 – A2**. He paid in the said Thirty Million Naira (N30, 000,000.00) in Fidelity Bank and Cafon Microfinance Bank Ltd deposit slip which they attached as **EXH DON B1 & DON B2**. But the Defendant failed to perform and fulfill their own obligation.

In a letter dated 2/2/17, the Defendant offered to make a refund and actually refunded Three Million Naira (N3, 000,000.00) only on the 27/11/19 after several demands as evidenced in **EXH. DON E**. the Plaintiff attached the letter as **EXH. DON C** and their own acceptance and acknowledgement of the Letter of Refund marked **EXH. DON D** which was dated 17/5/17. The said payment was made via GT Bank transfer.

In a letter dated 20/11/19, the Plaintiff demanded for the payment of the said balance of Twenty Seven Million Naira (N27, 000,000.00) in a document attached as **EXH. DON F**. In the letter the Plaintiff threatened to take legal action because of the delay in refunding the money which the Defendant had on a letter of 2/2/17 agreed to refund. It was after this threat to take legal action that the Defendant paid the said **Three Million Naira (N3, 000,000.00)**

on 27/11/19, Seven (7) days after the Letter of Final Demand was written.

It was based on the failure to live up to their promise that the Plaintiff instituted this action seeking the payment of Twenty Seven Million Naira (N27, 000,000.00) being the outstanding balance in the money paid to Defendant for the said development of the estate. Being a Debt and the money being very liquidated, the Suit was marked "Undefended". To the Plaintiff, the Defendant has no prima facie defence to the Suit.

In their notice to defend, the Defendant attached the Agreement for sale and development of the estate entered into on 7/3/12. They submitted that due to the change in government policy, they asked the Plaintiff to pay Five Hundred Million Naira (N500, 000,000.00) for the land or take a refund. The Plaintiff opted for refund. That they agreed to refund them Thirty Four Million Naira (N34, 000,000.00) based on the meeting of 9/5/17 as averred in **paragraph 9** of Affidavit in support of the Notice of Intention to defend. But the Defendant could not and did not refund the said Thirty Four Million Naira (N34, 000,000.00) as promised. They urged Court to transfer the case to general cause list to enable parties file and exchange their pleading and call evidence.

From the totality of the summary of the Affidavit of the Defendant in support of their notice to defend vis-à-vis, the Affidavit of the Plaintiff calling for Summary Judgement should this Court grant the Summary Judgement as sought? Has the Affidavit of the Plaintiff in support of this Writ marked undefended show enough reason that there is actually no defence on the part of the Defendant?

Or should this Court transfer this Suit to the general cause list as the Defendants are postulating, in that there is prima facie defence to the case of the Plaintiff in this Suit?

But differently, is there a prima facie defence in this Suit? Should this Court grant the application and enter Judgement in favour of the Plaintiff as sought?

It is my humble view that Defendant has no prima facie defence in this Suit because Parties are bound by the contract/agreement they have entered into. It is not in doubt that the parties entered into agreement to develop Estate. It is not also in doubt that the Plaintiff paid the Defendant some money on 3 installments all totaling Thirty Million Naira (N30, 000,000.00). It is equally not in doubt that the Defendants upon realizing that they cannot fulfill their obligation under the development of the Estate agreed in a letter dated 2/2/17 as shown in paragraph 5e and evidenced in **EXH "DON C"**. The Defendant confirmed this in paragraph 8 of their Affidavit in support of the Notice to defend, stating thus:

"That the Defendant then wrote to the Plaintiff giving the 2 options of either to pay a bill of Five Hundred Million Naira (N500, 000,000.00) ... only or be refunded the money pay ..."

The Defendant further stated in paragraph 9 thus:

"That a meeting was held on the 9th day of May, 2017 Cafon ... requested a refund of the sum ... Thirty Four Million Naira (N34, 000,000.00)".

Again in paragraph 10, the Defendant stated thus:

"As a result of the request by Cafon dated 21/5/18, the Defendant was liable to ... make a refund".

As earlier stated in this Ruling, there is no doubt that the Defendant was paid the sum of Thirty Million Naira (N30, 000,000.00) by the Plaintiff. In a letter of acknowledgement from the Defendant to the Plaintiff which Plaintiff attached it is stated:

"We write to acknowledge the receipt of Twenty Million Naira (N20, 000,000.00) paid by direct transfer into

our account maintained at Cafon Microfinance Bank Ltd ... in trenches of Ten Million Naira (N10, 000,000.00) each on 11th & 17th March 2011 respectively”.

The letter went on to state the reason for the payment of the money thus:

“These payments are in partial fulfillment of acquisition of two (2) parcel of land identified and known as Plots 157 & 158 GRA Layout, Abuja”.

Again the letter of 21st March, 2017 further established that payments were made by the Plaintiff to the Defendant. The letter states thus:

“We write to acknowledge the receipt of your Cafon Microfinance Bank Cheques for Ten Million Naira (N10, 000,000.00) being part payment in respect of Ten (10) Hectares (Plot 157 & 158) ...”

The content of these two (2) letters puts no one in doubt about the payment and the reason or purpose of the payment.

For clarity the money was for the payment of the said Plot 157 & 158. The Defendant had not denied these payments made to them. As already stated above, they agreed to refund the money when they failed to fulfill their obligation to the Plaintiff.

It is important to note that the Defendant agreed to refund Plaintiff the sum of Thirty Four Million Naira (N34, 000,000.00) since 2/2/17. They failed, refused and neglected to do so.

The Defendant had anchored on the letter of 21/5/18 as an excuse for not fulfilling their obligation to the Plaintiff but that defence is belated and cannot exonerate them from fulfilling their obligation to the Plaintiff because Parties are bound by the agreement they entered into. In the letter which the Defendant now anchors on as ground for Court to refuse entering Judgement Summary, it states thus:

“It has come to our attention that you have failed till date to refund the said money to our client”

The above says it all. The Defendant had also stated in their Affidavit:

“... the Defendant was unable to take steps to sell the Plot 157 & 158 ... and make refund to Cafon”.

The Defendant emphasizing on dealing with Cafon Co-operative and Cafon Builder cannot hold water because if the two are different the Defendant would have filed a Motion for joinder of the Co-operative as a party. Moreover, the Defendant knows that the two (2) entities are one and the same person, if not the Cafon Builders would not have the effrontery to take this action against the Defendant.

Interestingly, the Cheques which the Plaintiff attached to show evidence of payment were all Cheques belonging to the Cafon Builder who is the Plaintiff in this case. Even the direct payment made was also from the Cafon Builders. So the Defendant claiming that they receive demand from the Cafon Co-operative and that they have dealings with the Cafon Co-operative and not Cafon Builders Limited is disappointingly misleading because the Defendant had dealings with Cafon Builders who paid them the sum of Thirty Million Naira (N30, 000,000.00) for the Estate Development of Plot 157 & 158.

The Defendants are indebted to the same Cafon Builders Ltd. They are liable to refund the money as they have agreed to do since 2017. So this Court holds. The money is a debt and the debt is liquidated. So also this Court holds.

That being the case, this Writ CANNOT be transferred to the general cause list as the Defendants are postulating. Retaining the Writ under undefended list is the right thing to do, because the

Defendant has no prima facie defence to the case of the Plaintiff. So this Court holds and orders:

This Writ is therefore retained under the undefended list.

That being the case the Notice to Defend filed by the Defendant lacks merit. It is therefore dismissed.

This is the Ruling of this Court.

Delivered today the ----- day of ----- 2020.

K.N. OGBONNAYA
HON. JUDGE