

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT MAITAMA COURT 4, FCT., ABUJA

BEFORE HIS LORDSHIP: HON. JUSTICE O. O. GOODLUCK

MOTION NO. FCT/HC/M/009/2018

B E T W E E N:

OKOPEDEHE A. UMOBONG

}

PLAINTIFF

AND

POST SERVICE HOUSING DEVELOPMENT LTD.

}

DEFENDANT

J U D G M E N T

The Defendant/Applicant is by the Notice of Preliminary Objection under reference M/457/2018 praying this Court to dismiss this suit on account of its being statute barred.

The identified two grounds for filing this objection;

1. That the Defendant's relationship with the Plaintiff is based in simple contract.
2. That the Plaintiff/Respondent instituted this suit beyond the 6 six years period as required by law.

In support of the application, one Barrister Eze Joseph Ajalli, the Defendant's Assistant Company Secretary deposed to a nine paragraph

affidavit dated 12th November, 2018. The facts that are contained in the affidavit in support in summary are that the Plaintiff applied to the Defendant for the purchase of a 3 bedroom semi detached apartment at the Defendant's Estate in Kurudu II, Abuja which was conveyed in an allocation letter dated 16th October, 2008 issued by the Defendant and endorsed by the Plaintiff.

By a letter dated 29th September, 2010 attached as Exhibit B, the Plaintiff request for a three bedroom bungalow was granted by the Defendant. The deponent maintains that the terms and conditions for the allocation of the three bedroom bungalow was contained in Exhibit B. The letter dated 29th September, 2010 containing the terms and conditions for the sale of the bungalow was endorsed by the Plaintiff after the inspection of the apartment.

It is the Defendant's case that the Plaintiff's suit was filed over 6 years after the cause of action in this suit.

The Plaintiff in reaction filed a counter affidavit of 5 paragraph deposed to by Akan Essien a legal practitioner in the firm of S. Imoke & Co. dated 21st November, 2016.

There, it is disclosed that the Defendant made an offer in respect of the semi detached bungalow vide a letter dated 16th October, 2008. The objective of the offer was for the Defendant to complete the property

within 180 days. The Plaintiff contends that it was due to the inability of the Defendant to fulfil its obligations under the contract that made the Plaintiff to apply for an upgrade from a semi detached to a fully detached bungalow. The Plaintiff maintains that the offer letter of 29th September, 2010 is different from the terms of offer noted in annexure 3 also dated 29th September, 2010.

The Plaintiff also asserts that it was after 7 years of entering the contract in respect of the property that the Plaintiff decided to take over the property in the expectation that the Defendant would pay the Plaintiff the cost of completion. The Plaintiff relied on his letter dated 27th December, 2017.

The Plaintiff maintains that the cause of action between the Defendant and himself is on the evaluation of the cost of completing the 3 bedroom bungalow which arose in 2017 after he took over the uncompleted 3 Bedroom Bungalow. Both Counsel filed and exchanged written addresses.

A.I. Abbas Esq., Counsel for the Defendant's objector in his written address dated 12th November, 2018 formulated a lone issue for determination that is;

Whether the Plaintiff suit as presently constituted is statute barred.

Victor Ojeifo Esq., Counsel for the Plaintiff adopted the Defendant's lone issue for determination in his written address dated the 19th November, 2018. The Defendant's Counsel thereafter filed additional authorities to the preliminary objection dated 28th January, 2019.

Counsel for the Plaintiff rightly referred to the decision in **AREMO ii v. ADEKANYE (2004) 42 W.R.N. 1 SC** which clearly defines an action that is statute barred. It was held:

"To determine whether an action is statute barred all that is required is for one to examine the writ of summons and the statement of claim alleging when the wrong was committed when gave the Plaintiff a cause of action and comparing that date with the date on the writ of summons was filed. If the time on the writ is beyond the period allowed by the limitation law, then the action is statute barred"

Learned Counsel for the Plaintiff also referred to Section 7(1)(a) of the Limitation Act, Laws of the Federation which limits actions that are predicated on simple contract to 6 years from the date the cause of action.

Applying the foregoing to the facts of this case, I have been constrained to ascertain from the writ of summons when this action was instituted. It is noted that it was instituted on the 20th July, 2018. Having

carefully examined the writ of summons and statement of claim, I am not left in doubt that this suit is predicated on a breach of contract to develop fully the property sold to the Plaintiff by the Defendant. From what can be garnered from the pleadings, the Plaintiff initially purchased a three bedroom semi detached bungalow from the Defendant on the condition that the bungalow will be completed within 3 months or 180 days of purchase. The offer letter which the terms therein were duly accepted by the Defendant is dated October, 2008.

Following the delays and default of the Defendant to deliver the semi detached bungalow, timeously, the Defendant entered into a contract for the upgrade of her purchase to a three bedroom detached bungalow, the contract is dated 29th September, 2010.

Again, the Defendant defaulted on the completion time of the detached bungalow to the extent that the Plaintiff was constrained to apply to take over the completion of the bungalow in the expectation that the Defendant will refund the completion expenses. The Defendant handed over the premises to the Plaintiff in 2017 without completing the bungalow. I have also examined the Plaintiff's relief, the first leg is for a declaration that the Defendant was in breach of contract as stipulated under the house agreement by outright the purchase 10568 dated 16th October, 2008.

In leg two, the Plaintiff is praying for a declaration that the non delivery of the completed three bedroom detached bungalow upon the payment of ~~N~~525,000.00 (Five Hundred and Twenty-Five Thousand Naira) amounts to a breach of contract as stipulated under the offer by outright purchase agreement dated the 29th September, 2010.

The inescapable conclusion that can be reached upon the facts disclosed by the Plaintiff, the Plaintiff's pleadings and the reliefs sought is that the Plaintiff's action is predicated on breach of contract, in order words, the cause of action stems from the breach of the terms contained in the agreement respectively dated 16th October, 2008 and 29th September, 2010.

This suit in my own view and I will so hold was filed at least 8 years after the cause of action accrued against the Defendant. In the instant case the Defendant is by relying on the statute of limitations challenging the jurisdiction of this Court to entertain this suit see the case of **ADEKOYE v. FEDERAL HOUSING AUTHORITY (2008) ALL F.W.L.R. (PART 434) page 1452 at 1459 paras. C – D.**

I find the decision in **IWEKA v. SCOA (2007) 7 N.W.L.R. (PART 654) page 324** at 342 per Onu JSC; quite illuminating on this point. His Lordship held:

“It is settled law that in actions for breach of contract, the cause of action accrues for the Plaintiff’s benefit from the time the breach is committed and not when the damage is suffered”

The breach can be garnered from the statement of claim occurred in October 2008 as well as on 29th September 2010 it was on account of the breach of the first contract which was endorsed in October 2008 when after the 180 days noted as the completion date, the bungalow was not completed that the Plaintiff entered into the agreement of the 29th September, 2010 which again the defendant defaulted in its completion.

Defendant’s Counsel has submitted that the cause of action arose in 20th November, 2017 with the Defendant failed to respond to the Plaintiff’s demand for a refund and not when parties entered into an agreement.

I am disinclined to allude to the submission of the Plaintiff’s Counsel, clearly, Exhibit B, the letter dated 29th September, 2010 is the letter of allocation and it was duly signed in acceptance of the terms contained therein by the Plaintiff. Time begins to run from Exhibit B where it was noted that House C11 in the Nigerian Army NA Housing Scheme Kurudu II Abuja had been allocated to him. Time begins to run

from the 29th September, 2010 for the accrual of Plaintiff's right to sue on the contract of sale. However, he did not institute this suit until 2018.

Plaintiff failed to do so within the statutory period of 6 years accordingly this suit is incompetent.

The Preliminary Objection is sustained and this suit is accordingly dismissed.

**O.O. Goodluck,
Hon. Judge.
4th March, 2020.**

APPEARANCES

Parties absent

E.F. Solomon Esq.: For the Defendant

J. I. Esan Esq.,: For the Plaintiff