

**IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT JABI, ABUJA**

BEFORE HIS LORDSHIP: HON. JUSTICE D. Z. SENCHI

COURT CLERKS: T. P. SALLAH & ORS

COURT NUMBER: HIGH COURT NO. 13

DATE: 17/03/ 2020

BETWEEN:

FCT/HC/CV/1062/18

**1. BAKARE G.B. ADEKOYA
2. BAKARE JOSEPH OLUWADAMILARE**) **CLAIMANTS**

AND

BLACKGOLD GLOBAL SERVICES LIMITED DEFENDANT

JUDGMENT

The instant suit was originally commenced by the Claimants against the Defendant under the undefended list procedure of this Honourable Court vide writ of summons and affidavit in support to which the Defendant filed notice of intention to defend and affidavit with leave of Court. Upon consideration of the affidavits, the suit was transferred by this Court to its general cause list on 18th April, 2018 for proper trial and pleadings was ordered to be filed and exchanged by parties.

By their Statement of Claim filed on 19th November, 2018 (deemed properly filed by this Court), the Claimants seek the following reliefs against the Defendant:-

- a. A declaration that the money had and received without consideration in the sum of N2,010,000.00 (Two Million, Ten Thousand Naira) only, paid by the Plaintiffs to the Defendant for the purchase of the 2 Plots of land purportedly said to situate at Block A Plot 9 and Block A

Plot 8, situated at Diamond Villa Estate, Lugbe 1, Gosa, Abuja, Federal Capital Territory, to wit, the Defendant held out to belonged to it and for sale, but the Plaintiffs were never given physical possession and allowed occupation up till date, since 2012 amounts to breach of contract by the Defendant.

- b. An Order of Court directing the Defendants to refund the total sum of N2,010,000.00 (Two Million, Ten Thousand Naira) only, which the Defendant collected from the Plaintiffs without consideration with 10% (Ten Percent) Post judgment interest until the judgment sum is fully liquidated.
- c. Cost of this action.

Despite the specific order of this Court for pleadings to be filed, the Defendant did not file any statement of defence to the Claimants' statement of claim.

One witness testified at the trial of the matter. The 1st Claimant gave evidence as PW1 in support of the Claimants' case. The following documents were tendered through him and admitted in evidence at trial:-

1. Exhibit 1:- Three original cash receipts all dated 11th May, 2012 issued by the Defendant to the Claimants
2. Exhibit 2:- Two original letters of allocation issued by the Defendant to the Claimants.
3. Exhibit 3:- Photocopy of demand letter dated 1st October, 2016 written by Claimants' solicitor to the Defendant.

It is relevant to note that although the Defendant was aware of this case and had notice of hearing dates, it refused/failed to participate at the trial of this case. Even though the 1st Claimant was made available for cross-examination by the Defendant, the Defendant failed to make use of that opportunity.

At the close of trial, written address was ordered pursuant to which the Claimants filed their Counsel's final written address with leave of Court. The Defendant did not file any written address.

Counsel to the Claimants formulated an issue for determination to wit:-

"Whether based on the totality of the pieces of evidence before this Honourable Court, the Claimants are entitled to their claim against the Defendant."

I hereby adopt the above issue as formulated by the claimants Counsel in determination of this instant suit.

The Claimants' brief case is presented by their pleadings and the evidence of the 1st Claimant (PW1). The 1st Claimant adopted his witness statement on oath deposed to on 19th November, 2018 in this case as his oral testimony. The 1st Claimant testified that the Defendant-company was introduced to him as having an estate development at Diamond Ville Estate, Lugbe 1 Extension, Abuja in which he took interest and applied to the Defendant to purchase two plots of land within the said estate for himself and his son i.e. the 2nd Claimant. Pursuant to the applications, the 1st Claimant was directed by the Defendant to pay N5,000 each (which he did pay) for each application form for the two plots and he was issued receipts. It is the 1st Claimant's testimony that he filled the two application forms for himself and his son (the 2nd Claimant) and returned same to the Defendant. Pursuant to the Defendant's further directions, the 1st Claimant paid a total sum of N2,000,000 for the two plots of land of 100x50 and receipt was issued to the Claimants. The receipts for the application forms and land purchase receipt were all admitted in evidence collectively as Exhibit 1. The total sum paid by the Claimants to the Defendant in respect of the two plots of land thus came to N2,010,000. The Defendant consequently issued the

Claimants with two letters of allocation dated 14th May, 2012 (admitted in evidence collectively as Exhibit 2) by which a Block 'A' Plot 9 was allocated to the 1st Claimant while Block 'A' Plot 8 was allocated to the 2nd Claimant respectively.

The Claimants' case is further that despite the allocations, they were neither allowed to take physical possession of the properties by the Defendant nor were they given any further information on the properties by the Defendant. After waiting a long time with no information from the Defendant, the Claimants went ahead to engage the services of Counsel who wrote a letter of demand to the Defendant on behalf of the Claimants and some other persons with similar claims against the Defendant. A copy of the said letter of demand was admitted in evidence at trial as Exhibit 3. The 1st Claimant testified that from investigations carried out at the Abuja Geographical Information Systems, he discovered that the Federal Capital Development Authority had taken over all lands within Kiami District along Airport Road, including the Defendant's estate from which it made the allocation to the Claimants. That all efforts to get the Defendant to pay back the money paid by the Claimants for the land proved abortive as the Defendant rather proposed an alternative land beside Living Faith Church, Lugbe, Abuja. The Claimants are however not interested in the Defendant's proposal as they no longer have confidence in the Defendant, having discovered that the Defendant had no valid title to the land it allocated to the Claimants in the first place. The 1st Defendant testified that the Defendant has means of settling the debt but has wilfully refused to do so and this has seriously affected the Claimants emotionally, psychologically and economically.

In his final written address arguing the sole issue for determination, learned Counsel to the Claimants submitted that the standard of proof required in civil cases, as in the instant case, is on the balance of probability. He relied on Section 134 of the Evidence Act 2011 and the case of

SECURITIES SOLUTION LTD V. ADAMU OLADIRAN (2016) ALL FWLR (pt. 836) P. 520. He contended that the Claimants have discharged the burden and have proved their case successfully through credible, cogent, reliable, unchallenged and convincing evidence to entitle them to all their claims before this Court. He urged this Court to hold as such and further submitted that the Defendant has admitted all evidence adduced.

In determining the above sole issue, it is established position of the law that the general burden of proof in civil cases lies on the party against whom judgment would be entered if no evidence was adduced by either party. – see the cases of **EZINWA V. AGU (2004) 3 NWLR (PT. 861) P. 431** and **UZOKWE V. DENSY IND. (NIG.) LTD. (2002) 2 NWLR (PT. 752) P. 528**. The general burden of proof principally therefore lies on a Plaintiff as the initiator of a claim – see the case of **IZE-IYAMU V. ALONGE (2007) 6 NWLR (PT.1029) P. 84**. It is also elementary principle of law that he who asserts must prove – see **R.E.A.N. PLC V. ANUMNU (2003) 6 NWLR (pt. 815) P. 52**.

In considering the claim before this Court, it must be noted that the first and principal relief of the Claimants' Statement of Claim is for a declaratory relief. The position of the law is that a party seeking a declaratory relief must succeed on the strength of his own case and not on the weakness of the defence as a declaratory relief is not to be granted to a party on the admission or default of defence of the other party. – see the cases of **MRS. OLORUNSHOLA GRACE & ORS V. OMOLOLA HOSPITAL & ANOR (2014) LPELR-22777(CA)**, **ADU V. GBADAMOSI (2009) 6 NWLR (PT. 1136) P. 110** and **ALAO V. AKANO (2005) 11 NWLR (PT. 935) P. 160**. The implication of this is that the Claimants must prove their entitlement to the declaratory relief sought by cogent and satisfactory evidence irrespective of the fact that the Defendant failed to file a statement of defence to the Claimants' claim.

The Claimants in this case did call evidence in support of their case against the Defendant. Although the Defendant was duly served with the statement of claim, it failed to appear to defend the case made against it. The onus of proof on the Claimants is therefore watered down and they are bound to succeed on minimal proof adduced in support of their claims in the circumstances – see the case of **S.P.D.C., NIG. V. OKONEDO (2008) 9 NWLR (PT. 1091) P. 85 at P. 119**. In the case of **OGUNJUMO V. ADEMOLU (1995) 4 NWLR (PT.389) P. 259**, the Supreme Court held that it is indisputable that *where a Defendant took no part in a proceedings or offered no evidence in his defence, the evidence before the Court goes one way and there would be nothing to put on the other side of the imaginary scale or balance as against the evidence for the Plaintiffs*. The onus of proof in such a case is therefore discharged on a minimal of proof. See also **ASAFI FOODS FACTORY V. ALRAINE (NIG.) LTD. (2002) 12 NWLR (PT.781) P. 353**.

The 1st Claimant's evidence was neither challenged nor subjected to discredit under cross-examination. In the circumstances, this Court must believe and act on his evidence – see the cases of **EGBUNIKE V. A.C.B LTD (1995) 2 NWLR PT.375 P. 34** and **BALOGUN V. E.O.C.B. (NIG.) LTD. (2007) 5 NWLR (PT. 1028) P. 584 at P. 601 paragraphs. E-F**. In the case of **S.P.D.C.N. LTD V. ESOWE (2008) 4 NWLR (PT. 1076) P. 72**, it was held that an uncontradicted or unchallenged evidence must be used against the party who ought to have contradicted or challenged the evidence but failed to do so.

I have assessed both the oral and documentary evidence adduced by the Claimants in support of their case. It is trite that where documentary evidence supports oral testimony, such oral testimony becomes more credible as the documentary evidence serves as a hanger from which to assess oral testimony. – see the cases of **JERRY & ANOR V.**

IGP & ORS (2014) LPELR-24625(CA) and NDAYOKO V. MOHAMMED (2006) 17 NWLR (PT. 1009) P. 655.

The facts as established by the unchallenged oral and documentary evidence produced before this Court by the Claimants is that the Claimants had paid a total sum of N2,010,000 to the Defendant for the purchase of two plots of land sold to them by the Defendant. Exhibit 1 are the receipts issued by the Defendant to the Claimants for the total sum of N2,010,000 while Exhibit 2 are the allocation of the two plots of land by the Defendant to each of the Claimants. The Defendant however failed/refused to hand over physical possession of the said plots of land to the Claimants or refund them the purchase price despite demands. Exhibit 3 is a letter dated 1st October, 2016 to the Defendant in which the Claimants' names are mentioned demanding a refund. These are the established facts before this Court which are credible and unchallenged.

By the first relief of their statement of claim, the Claimants seek a declaration that the Defendant's failure to give physical possession of the land which the Claimants paid them for is a breach of contract by the Defendant. Part of the second relief of the statement of claim is for a refund of the money the Claimants paid to the Defendant for the purchase of the plots of land.

It is trite law that a party whose claim is based on contractual rights should plead the contract, the term which gave the right or created the obligation and what constituted the breach. – see the case of ***S.P.D.C.N. LTD. V. NWAWKA (2003) 6 NWLR (PT. 815) P. 184.*** Where the contract is in writing, a Plaintiff has to prove breach by leading evidence based on the written contract. – see ***ORJI V. ANYASO (2000) 2 NWLR (PT. 643) P. 1.***

Now, Exhibit 1 shows that the Claimants had made payment for the plots of land on 11th May, 2012 and the plots were

eventually allocated to them by the Defendant vide Exhibit 2 on 14th May, 2012. I have looked carefully at the letters allocating the plots of land to the Claimants (Exhibit 2). While Exhibit 2 clearly confirms the allocation of the plots of land to the Claimants and purchase by them thereof, there is nothing in Exhibit 2 which specifically provides that physical possession of the said plots will be handed over to the Claimants by the Defendant.

The position of the law is that a man who pays money for land is entitled in the normal course of events to value for his money, and a part of that value must be represented by the title which he acquires by purchase. One of the implied covenants in a contract of the sale of land is therefore that a vendor has title to the land he conveys and if that title is defective the purchaser is entitled to have the conveyance set aside. – see the Supreme Court’s decision in the case of ***IMANA V. ROBINSON (1979) LPELR-1498(SC)***.

It is clear and beyond any doubt in this case that there was a sale of two plots of land by the Defendant to the Claimants for which the Claimants paid the purchase price to the Defendant. In the circumstances, mere issuance of letters allocating the land does not end the transaction. The Defendant was obliged as vendor to hand over physical possession of the plots of land to the Claimants. Just because this is not expressly stated in the letters allocating the plots to the Claimants does not mean that the Defendant does not have an obligation to do so. By the very nature of the transaction between parties, this obligation is implied. – see the decision of the Supreme Court per Peter-Odili JSC in the case of ***UNION BANK OF NIGERIA V. AWMAR PROPERTIES LTD (2018) LPELR-44376(SC)***.

I find the Supreme Court’s decision in case of ***UNION BANK OF NIGERIA V. AWMAR PROPERTIES LTD (supra)*** very relevant. In that case, the Respondent had paid the Appellant the sum of N300,000,000 for the purchase of a

Filling Station. The Respondent instituted an action for a refund of the purchase price it paid because it had not been given physical possession of the Filling Station as at date of filing the action. Delivering the lead Judgment of the apex Court, Rhodes-Vivour JSC held as follows:-

"The Respondent wants his money back. So long as the suit between Yaman Nigeria Limited and the Appellant remains unresolved by the Courts, the Respondent cannot obtain possession and he should not be expected to wait indefinitely. Justice demands and common sense dictates that since consideration has failed woefully the Appellant should return the sum of N300 Million paid to it by the Respondent with interest.

Before I conclude, I ask the question, what is the purpose of buying property if the purchaser is never given possession. Possession does not necessarily have to be a term in the contract of sale, it is implied. In suit No. CV/546/15, Yaman Nig. Limited challenges the sale of its filling station by the Appellant to the Respondent. The Respondent is not a party in the suit. The Court may declare the sale invalid. While the suit remains unresolved would it be right to allow the Appellant hold on to the Respondent's N300,000,000 using it as it likes. If this is allowed, there would a fundamental defect in judicial proceedings akin to the Stone Age."

In that same case, the Supreme Court held per Okoro JSC that:-

"I agree with the Court below that the transfer of the property from the seller to the buyer in a document cannot be the end of the sale. The seller must take steps to put the buyer into physical possession free from all encumbrances. Where the seller fails to put the buyer in physical and peaceable possession of the property, the buyer is entitled to sue for damages plus restitution of the money paid to the seller with interest.

In Sabru Motors Ltd V. Rajab Enterprises Nig. Ltd (2002) 7 NWLR (Pt. 766) 423, also reported in (2002)LPELR-2971(SC) at pages 26-27 paragraphs F-B, this Court held as follows:-

"I think it is correct view of the law to state that where after the buyer has paid the price (or part of it) to the seller, the seller fails to deliver the goods, he may either sue for damage or for restitution of the money paid to the seller. If he sues for damages, the assessment should include the amount paid to the seller but he would have to prove and he is subject to all the rules on damages, such as remoteness of damage and the doctrine of mitigation."

See also ADESANYA V. OTUEWU & ORS (1993) 1 NWLR (Pt. 270) 414 also reported in (1993) LPELR-146 (SC) at page 33 paragraphs E-F.

I am fully in agreement that, the Appellant, having collected the sum of N300,000,000 being the purchase price of the filling Station from the Respondent, and having failed to put the Respondent in possession of the property due to the disagreement between the Appellant and his client the original owner of the filling station, the Respondent was firmly entitled to sue for the return of its money."

In the instant case, the Defendant received the total sum of N2,010,000 from the Claimants for the sale of its two plots of land. The Defendant had an implied duty to give physical possession of the said two plots of land to the Claimants. The Defendant however failed to do so till date and has also refused to accede to the Claimants' demand for a refund of their money. I therefore hold the view that the Defendant is in breach of its implied duty to put the Claimants in physical possession of the plots of land it sold to the Claimants, which duty it owed the Claimants under the sale of land

transaction between parties. The Claimants are thus entitled to the declaratory relief sought vide the first relief of their statement of claim and it is accordingly granted.

Having failed to deliver physical possession of the plots of land to the Claimants, the consideration for which the Claimants paid money to the Defendant has failed. The Defendant cannot in good conscience be allowed to continue holding onto the Claimants money in the circumstances. That is the essence of an action for money had and received. It is trite that one of the circumstances in which an action for money had and received would lie in law is where money was paid upon a consideration which happens to fail. – see the case of **C. N. EKWUOGOR INVESTMENT (NIG) LTD V. ZENITH BANK & ORS (2018) LPELR-46602(CA)**.

On whether a party is entitled to recover money had and received under an ineffective contract, the Court of Appeal held as follows in the case of **AGBONENI V. ALAKIU (2018) LPELR-44807(CA)**:-

"Undoubtedly, if the Lower Court had evaluated the evidence it would have been Apparent that the Respondent did not pass any title in the land to the Appellant. Indeed, the evidence is consistent with the fact that the Respondent has no title to the land and that having been paid the purchase price, he never put the Appellant into possession in the presence of witnesses and that the land was in actual possession and occupation of someone else.

*It is trite law that a party who has paid money to another person for a consideration that has totally failed under a contract is entitled to claim the money back: **NWAOLISAH VS. NWABUFOH (2011) LPELR (2115) 1 at 49, UKUTA VS. ALLIANCE INTERNATIONAL (NIG) LTD (1992) 8 NWLR (PT 259) 374, FIRST BANK VS. AFRICAN PETROLEUM (1996) 4 NWLR (PT 443)***

438 and FIRST BANK VS. OZOKWERE (2006) 4 NWLR (PT 970) 422. Accordingly, the evidence establishes the Appellant's entitlement to a refund of the sum of N7,000,000.00 which he paid as purchase price for the two plots of land, the consideration for which the payment was made to the Respondent having totally failed."

Consequently, the Claimants in the instant case are entitled to a full refund of the monies they paid to the Defendant under the contract to purchase the plots of land from the Defendant (the consideration having failed). The Claimants are therefore entitled to a refund of the sum of N2,010,000 which they had paid to the Defendant. Accordingly reliefs 1 and 2 are hereby granted as contained in the statement of claim. The Claimants are also entitled to 10% interest per annum from today the date of judgment in this case till same is finally and fully liquidated.

In the whole the sole issue for determination is hereby resolved in favour of the Claimants and against the Defendant.

In conclusion, judgment is hereby entered for the claimants as per reliefs 1 and 2 of the statement of claim.

**HON. JUSTICE D.Z. SENCHI
(PRESIDING JUDGE)
17/03/2020**

Secretary

Parties:- Absent.

UnekwuEnegbani:-For the claimants.

**Sign
Judge
17/03/2020**