IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA

BEFORE HIS LORDSHIP: THE HON. JUSTICE PETER O. AFFEN

THURSDAY, FEBRUARY 27, 2020

SUIT NO. FCT/HC/CV/506/2019

BETWEEN:

SULEIMAN MAHMUD … … … CLAIMANT

AND

YEMISI ADEBAYO PAYNE … … … DEFENDANT

J U D G M E N T

1. THIS SUIT was entered for hearing on the Undefended List by the Judge-in-Chambers pursuant to **Order 35 Rule 1** of the High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules, 2018 (hereinafter "CPR"). The Claimant initiated this action by a writ of summons issued out of the Registry of this Honourable Court on 4/12/19, claiming against the Defendant the following reliefs:

    1. The Plaintiff claims against the defendant the liquidated sum of ₦14,480,000 (Fourteen Million Four Hundred and Eighty Thousand Naira only) being sum due to the Plaintiff for facilitating the reinstatement of the landed property of the Defendant which was revoked (known as Plot No. 818 within Asokoro District) vide letter of revocation dated 21st May 2014.
    2. An Order directing the Defendant to pay to the Plaintiff 10% interest from the date of Judgment until the Judgment sum is liquidated.

2. At the hearing on 6/2/2020, *Chris Ohene, Esq.* of counsel for the Claimant relied on the 10-paragraphed affidavit in support of writ

deposed on 4/12/19 by the Claimant [*Suleiman Mahmud*] as well as Exhibits A - G annexed thereto. Citing ***GAKUWA PINA v MIANGWA [2018] 15 NWLR (PT. 1643) 431 at 444 E-G (SC),*** he argued that the Defendant's Notice of Intention to Defend and accompanying affidavit did not disclose any genuine defence on the merit to the liquidated claim and urged the court to enter judgment for the Claimant as claimed. On his part, *T. O. Omotayo-Ojo, Esq.* of counsel for the Defendant relied on the Notice of Intention to defend dated 5/12/19 but filed on 11/12/19 and the accompanying 18-paragraphed affidavit [particularly paragraphs 6 – 13] deposed by the Defendant [*Oluwayemisi Adebayo Payne*] as well as Exhibits DW1 annexed thereto; and urged the court to transfer the suit to the ordinary/general cause list for trial.

3. The Claimant's case (as disclosed in the supporting affidavit) is that the Defendant was allocated Plot No. 818 within Asokoro District , Abuja vide a Right of Occupancy dated 27/6/05 [Exhibit A) and issued with a Certificate of Occupancy dated 27/7/07 [Exhibit B] upon payment of requisite fees, but the said title was subsequently revoked by a letter dated 24/5/14 [Exhibit C) for overriding public interest as the land was said to be required by the Government of the Federation for security purposes at the Presidential Villa, whereupon the Defendant engaged his services [for valuable consideration] to deploy contacts and goodwill to facilitate the reinstatement of her title; that a Memorandum of Understanding (MoU) dated 19/3/18 [Exhibit D] was executed between them and he did deploy his goodwill and contacts and eventually facilitated the reinstatement of the plot to the Defendant as evidenced by letter of reinstatement dated 15/5/19 [Exhibit E]; that he demanded payment of the agreed facilitation fee of ₦15m, but the Defendant appealed to be given some time to raise the money and he obliged her;

that from the reinstatement of the land till date, only ₦530,000 has been paid to him as shown in his EcoBank account statement [Exhibit F]; that despite repeated demands, including a demand letter dated 25/7/19 issued by his solicitors [Exhibit G], the Defendant has refused and neglected to pay this liquidated sum, and he believed that the Defendant has no defence to this action.

4. The Defendant's reaction [as contained in the affidavit in support of Notice of Intention to Defend] is that she is the owner of Plot 818 within Asokoro District and close to Aso Rock in Abuja; that she had an understanding but not a contract with the Claimant for the full reinstatement of her land which is covered by a certificate of occupancy dated 27/5/07 which was revoked by the Federal Capital Territory Administration via a letter dated 21/5/14 due to public interest; that in furtherance of their understanding, she paid ₦530,000 to the Claimant for the process; that she also sent one *Paul* [who is her Personal Assistant] on several occasions to the Claimant with cash payment totalling ₦450,000.00; that the understanding between them was that payment will be made on demand whenever money was needed; that the Claimant also gave her a duration of six months (6) within which to complete the entire process but the entire process took more than a year from February 2018 to 14/6/19; that the Claimant equally agreed that all ground rent and statutory fees would be paid in order for the land to be "fully reinstated"; that she visited the Land Registry on 5/12/19 and discovered that ground rent and other statutory bills were still outstanding to the tune of more than ₦2,713,172.54 as shown Exhibit DW1; that paragraph 2 of Exhibit "E" annexed to the Claimant's affidavit states that *"you are therefore advised to immediately take steps*

to fulfil all your obligations to the FCTA within the covenanted terms of the Right of Occupancy" and that non-payment of statutory fees is a breach of the covenant between her and FCTA; that there are discrepancies in the figures presented to the Honourable Court and the claim comprises figures sought to be imposed on her without any valid basis; that the claim is not such as may be brought under the undefended list; that the Claimant has not concluded the process of reinstatement as stated in Exhibit D; and that the claim which is speculative, spurious, ludicrous, frivolous, holds no water, and nothing but a complete sham should be dismissed with substantial and punitive costs.

5. The foregoing are the depositions in the Claimant's affidavit in support of writ of summons, and the Defendant's affidavit in support of notice of intention to defend. Undefended list is a unique procedure designed for the expeditious disposal of cases involving debts or liquidated money demand where the issue is straightforward, uncontested and incontestable. It is a truncated form of the civil litigation process peculiar to the adversarial judicial system under which normal hearing is rendered unnecessary due, in the main, to the absence of an issue to be tried. Essentially, therefore, Undefended List is designed to secure quick justice and to avoid the injustice likely to occur when there is no genuine defence on the merits to the claim. See ***INTERNATIONAL BANK FOR WEST AFRICA LIMITED v UNAKALAMBA [1998] 9 NWLR (PT. 565) 245.*** The undefended list procedure spares the court the tedium of hearing evidence and sham defences mounted by a defendant who has no genuine defence to an action. See generally: ***WEMASEC v NAIC [2015] 16 NWLR (PT. 1454) 93, UBA PLC & ANOR v JAGARBA [2007] 11 NWLR (PT 1045) 247 at 272, AGUNEME v EZE [1990] 3 NWLR (PT 137) 242*** and ***BANK OF THE NORTH***

LTD v INTRABANK SA (1969) 1 ALL NLR 91. Where this is so, the court proceeds to enter judgment for the claimant as provided in ***Order 35 Rule 4 CPR 2018*** without calling upon the claimant to field witnesses to formally prove his case.

6. However, the speedy disposal of a case under the Undefended List is short-circuited where the defendant is able to disclose a defence on the merit, in which case the court is obligated to transfer the matter to the ordinary cause list for plenary trial. See ***JOS NORTH v DANIYAN [2000] 3 WRN 60*** and ***UBA PLC v MODE NIGERIA LTD [2001] 13 NWLR (PT. 730) 335.*** A defence on the merits is an issue raised by way of defence which *prima facie* sounds plausible and which would necessitate the court to require further explanation from the claimant. In ***FMG v SANI [1990] 4 NWLR (PT 147) 688 at 699***, *Uwais, JSC* (as he then was) described a defence on the merit as a triable issue. In ***DALA AIR SERVICES v SUDAN AIRWAYS [2005] 3 NWLR (PT 912) 394 at 410 & 413***, a defence showing a triable issue was described as facts, which if established, would defeat the claim or exonerate the defendant. The point must be made that in determining whether a defence on the merit has been disclosed, it is not necessary for the court to consider whether the defence has been proved: a complete defence need not be shown at this stage. It suffices if the defence set up shows that there is a triable issue or question or that for some other reason there ought to be a trial. See ***OKAMBAH v SULE [1990] 7 NWLR (PT 160) 1*** and ***YAHAYA v WAJE COMMUNITY BANK [2001] 46 WRN 87 at 96.*** It is not necessary that the defendant's affidavit disclosing a defence on the merits should provide a cast-iron defence before the case is transferred to the general cause list. See ***V. S. STEEL (NIG) LTD v GOVT. OF ANAMBRA STATE [2001] 8 NWLR***

(PT 715) 454. What is more, the courts are liberal in considering whether a defence on the merit has been disclosed [see ***IMONIYAME HOLDINGS v SONEB ENTERPRISES LTD [2002] 4 NWLR (PT 758) 618****]*, but it is not enough to merely assert that there is a good defence without furnishing full particulars of the actual defence. See ***A.C.B. v GWAGWADA [1994] 5 NWLR (PT 342) 25 at 36*** and ***PLANWELL WATERSHED LTD v OGALA [2003] 12 SC (PT II) 39 at 43-44.*** Where particulars of actual defence are given, it must condescend on particulars: the defence must be clearly and concisely stated with facts supporting it. See ***NISHIZAWA v JETHWANI (1984) 12 SC 234 at 260, MACAULAY v NAL MERCHANT BANK LTD [1990] 4 NWLR (PT 144) 283 at 306 - 307*** and ***PLANWELL WATERSHED LTD v OGALA supra at 47.*** It is not enough for the defendant to merely deny the claim without more *[see* ***FRANCHAL (NIG) LTD v N. A. B. LTD [1995] 8 NWLR (PT 412) 176 at 188****]*, and the defence must not be a sham that is designed to frustrate and dribble the plaintiff. See ***BATURE v SAVANNAH BANK [1998] 4 NWLR (PT 546) 438.*** A defence on the merits may encompass a defence in law as well as on the facts. The defendant must put forward some facts which cast doubt on the claim. But a defence on the merits is not the same as success of the defence in litigation: all that is required is to lay the foundation for the existence of a triable issue(s). See ***ATAGUBA & CO v GURA (NIG) LTD [2005] 8 NWLR (PT. 927) 429 at 456 - 457.***

7. In applying the above principles to the facts of this matter, the question that arises is whether the matter is straightforward, uncontested and incontestable and whether there is a plausible defence on the merit. From the affidavit in support of the notice of intention to defend it is common ground that the Defendant's title to Plot 818 within Asokoro District, lying

close to Aso Rock Villa in Abuja was revoked, whereupon the Defendant engaged the services of the Claimant to facilitate its reinstatement under the terms and conditions set out in a Memorandum of Understanding (MoU) dated 19/3/18, which is annexed to the supporting affidavit as Exhibit D. The Defendant did not disavow the MoU but contends that it is a mere understanding that did not create any binding contract. She also contends that aside from the ₦530,000 acknowledged by the Claimant, she made further cash payments of ₦450,000 to him through her Personal Assistant, and that the land has not been fully reinstated as there is outstanding ground rent of over ₦2,713,172.54 which constitutes a breach of the covenant between her and FCTA. I must state right away that the foregoing assertions do not constitute triable issues or defence on the merits to warrant transferring this suit to the ordinary cause list for plenary trial. First, the contention that the relationship between the parties is a mere understanding that does not create a binding contract is overly misconceived. Whilst it is correct that a letter of intent or memorandum of understanding properly so-called merely sets down in writing what the parties intend will eventually form the basis of a formal contract between them and speaks to the future happening of a more formal relationship between the parties and the steps each party needs to take to bring that intention to reality [see ***BPS CONSTRUCTION & ENGINEERING CO. LTD v FEDERAL CAPITAL DEVELOPMENT AUTHORITY [2017] 10 NWLR (PT 1572) 1 at 28-29*** *–per Kekere-Ekun, JSC*], the existence of a binding contractual relationship is not determined by reference to what name the parties decide to call the document embodying their relationship, but by reference to the actual contents thereof. The intention of parties to a contract or other written instrument is always garnered from the document itself and the court is not at liberty

to go outside of it in search of other documents or facts not forming part of their agreement. See ***NIKA FISHING CO. LTD v LAVINA CORPORATION [2008] 16 NWLR (PT. 1114) 506, DALEK (NIG.) LTD v OMPADEC [2007] 7 NWLR (PT. 1033) 402*** and ***NNEJI v ZAKHEM CONST. (NIG) LTD [2006] 12 NWLR (PT. 994) 297.*** The court is merely obligated to construe the words used in the written instrument [see ***DANTATA v DANTATA [2002] 4 NWLR (PT. 756) 144***], and it is a cordial rule of construction that the provisions, clauses or paragraphs thereof are not to be construed in isolation but as part of a greater whole with effort being made to achieve harmony amongst the parts in order to garner the true intention of the parties. See ***MBANI v BOSI [2006] 11 NWLR (PT. 991) 400, ARTRA NIGERIA LTD v NBCL [1998] 4 NWLR (PT. 546) 357 at 379, JAMES ORUBU v NEC & ORS [1988] 5 NWLR (PT. 94) 323*** and ***ADIGUN v IBADAN NORTH LOCAL GOVERNMENT (2016) LPELR-41385(CA).***

8. In the instant case, even though Exhibit D is captioned as a Memorandum of Understanding, its contents are unequivocal and leave no one in doubt that the parties had reached a complete agreement. The operative part provides that "*in consideration of the foregoing, the Client [i.e. Defendant] shall pay the Consultant (i.e. Claimant) a sum of N15,000,000 (Fifteen Million for each plot should be paid (sic) when each plot is fully reinstated*" and that "*[t]his MOU is made in good faith legally binding and being coupled with interest shall remain and is hereby declared irrevocable*". It is therefore obvious the MoU in Exhibit D is not a mere understanding as alleged by the Defendant. Quite the contrary, it creates a 'legally binding' contractual relationship capable of being enforced by the parties.

9. Although the Defendant alleged that she made further cash payments of ₦450,000 to the Claimant through one Paul [who is said to be her Personal Assistant], she has failed to substantiate the said payments. A bare assertion of payment without furnishing any proof will certainly not suffice because the law, as I have always understood it, is that a person who claims to have made payment ought to furnish the court with deposit slips, receipts or other acknowledgment or proof of payment. Failure to produce proof can only mean that no payment has been made. See ***ODUTOLA v PAPERSACK [2004] 13 NWLR (PT. 891) 509***.

10. What is more, the Defendant's contention that the land has not been fully reinstated owing to non-payment of outstanding ground rent which constitutes a breach of her covenant with FCTA is non-sequitur. Exhibit E is a letter dated 15/5/19 issued by the Department of Land Administration of FCTA showing that "*the Minister of Federal Capital Territory has approved the reinstatement of your title over Plot No. 818 within Asokoro District (104) District*" and advising the Defendant "*to immediately take steps to fulfil all your obligations to the FCTA within the covenanted terms of the right of occupancy*". Exhibit E did not make payment of ground rent a precondition for the reinstatement; it simply says the Honourable Minister has approved the reinstatement. Exhibit E constitutes a clear evidence that the Claimant discharged his part of the bargain: he has earned his hire. There is nothing in Exhibit D which suggests even remotely that the Claimant would be responsible for payment of ground rent or that the agreed payment for facilitating the reinstatement is conditional upon fulfilment of the Defendant's "obligations to the FCTA within the covenanted terms of the Right of Occupancy". To sustain the Defendant's contention would mean that notwithstanding that the Claimant the plot of

land has been reinstated through the exertions of the Claimant, he will still not be entitled to any payment from the Defendant for services rendered until and unless the Defendant discharges her obligations to FCTA. That is not the contemplation of Exhibit D. It must not be!

10. It therefore seems to me obvious that no triable issue and/or genuine defence on the merit is disclosed in the affidavit in support of notice of intention to defend, and the Defendant merely seeks to dribble and frustrate the Claimant from obtaining judgment to which he is eminently entitled. See ***SPDC (NIG) LTD v ALLAPUTA [2005] 9 NWLR (PT. 931) 475 at 504*** and ***BATURE v SAVANNAH BANK supra.*** This is therefore a proper case in which the court ought to proceed to enter judgment for the Claimant pursuant to Order 35 Rule 4 CPR 2018 without the tedium of conducting a plenary trial. See ***BEN THOMAS HOTELS LIMITED v SEBI FURNITURE LIMITED supra.***
11. The Claimant claims post-judgment interest of 10% interest on the judgment sum until the same is liquidated. By ***Order 39 Rule 4 CPR,*** the Court may order interest at a rate not less than 10% per annum to be paid as statutory interest on any judgment debt from the date of it or afterwards as the case may be. The beneficiary of statutory interest is neither required to specifically claim statutory interest nor plead the fact or grounds of his entitlement thereto. See ***EKWUNIFE v WAYNE WEST AFRICA LTD [1989] 5 NWLR (PT. 122) 422 at 454-455*** and ***TEXACO UNLIMITED v PEDMAR LTD [2002] 45 WRN 1 at 45.*** The exercise of the court's discretion to award post-judgment interest arises at the point where it is found that the claimant is entitled to judgment. See ***EBERE v ABIOYE [2005] 41 WRN 172 at 197.***

12. In the light of everything that has been said in the foregoing, judgment will be and is hereby entered in favour of the Claimant against the Defendant in the following terms:

    (i) The Defendant shall pay forthwith to the Claimant the sum of ₦14,480,000 (Fourteen Million Four Hundred and Eighty Thousand Naira) only being the outstanding balance of payment due and owing to the Claimant by the Defendant for facilitating the reinstatement of Plot No. 818 within Asokoro District, Abuja which was earlier revoked by the FCTA.

    (ii) The Defendant shall pay to the Claimant post-judgment interest of ten percent (10%) *per annum* on the said sum of ₦14,480,000 (Fourteen Million Four Hundred and Eighty Thousand Naira) only with effect from today until the entire sum is liquidated.

    (iii) I assess the costs of this action at ₦100,000.00 (One Hundred Thousand Naira) only in favour of the Claimant against the Defendant.

PETER O. AFFEN
Honourable Judge

Counsel:

Chris Ohene, Esq. (with him: ***Margarita Essien, Esq.***) for the Claimant.

T. O. Omotayo-Ojo, Esq. (with him: ***Ifeoma Okere, Esq.*** and ***Mowa Bojuto, Esq.***) for the Defendant.