

**IN THE HIGH COURT OF JUSTICE OF THE F.C.T.**

**IN THE ABUJA JUDICIAL DIVISION**

**HOLDEN AT KUBWA, ABUJA**

**ON WEDNESDAY, THE 18<sup>TH</sup> DAY OF MAY, 2020**

**BEFORE HIS LORDSHIP: HON. JUSTICE K. N. OGBONNAYA**

**JUDGE**

**SUIT NO.: FCT/HC/CV/1114/19**

**BETWEEN:**

**HON. UBONG ETIEBET**

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**PLAINTIFF**

**AND**

**THE ESTATE OF LATE MR. IGE OLADIPO**

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**DEFENDANT**

**(REPRESENTED BY HIS WIFE,**

**MRS. IRENE BOLAJOKO OLADIPO)**

## **JUDGMENT**

On the 15<sup>th</sup> day of February, 2019 the Claimant, Hon. Ubong Etiebet instituted this Originating Summons against the Estate of Late Mr. Ige Oladipo (represented by the wife of the deceased Mrs. Irene Bolajoko Oladipo) seeking the interpretation of the following questions:

- (1) Whether** upon the proper interpretation of the Land Swap/Collateral Agreement executed between the Claimant and the Late Oladipo Ige the Defendant is not to forfeit and transfer the title in Plot 347C situate at Dawaki Extension (Relocation Extension) Abuja to Claimant forthwith.

- (2) Whether** upon the proper interpretation of the Land Swap/Collateral Agreement executed between the Claimant and the Late Oladipo Ige the Claimant is not entitled to take immediate and vacant possession of the Plot 347C situate at Dawaki Extension (Relocation Layout) Abuja and process title documents in his name.

The Claimant had also asked for the following Consequential Reliefs if the Court determine these questions in the affirmative and in his favour. The reliefs are as follows:

- (1) A Declaration** that upon the proper interpretation of the Land Swap/Collateral Agreement executed between the parties, the Defendant is liable to forfeit and transfer the legal title in the said Plot 347C (herein after called the Res) in favour of the Claimant.
- (2) A Declaration** that upon the proper interpretation of the Land Swap/Collateral Agreement executed by the parties, the Claimant is entitled to take possession of the Res and process title of all relevant documents in his name.
- (3) An Order** directing the Defendant to immediately execute all necessary instruments of conveying title to the Res in his favour.

He supported the Suit with an Affidavit of 14 paragraphs. He attached the Agreement of the Land Swap/Collateral and 3 other documents. In a 2 pages

Written Address he raised a Sole Issue for determination which is:

**“whether the Claimant has proven his case on preponderance of evidence”.**

It is the story of the Claimant that sometime in 2015 the deceased Defendant approached him to use his Claimant’s Certificate of Occupancy of his house as Collateral to enable him secure a loan from Jaiz Bank of Forty Five Million Naira (N45, 000,000.00). The loan is to enable the Defendant abridge his company working capital so as to purchase stocks – (Petroleum products, chippings, bitumens, etc) and LPOs issued to the company.

The Defendant, based on the understanding, entered into the Agreement (EXH. A) with the Claimant. The Agreement is for Land Swap/Collateral. The Certificate of Occupancy was released upon the execution of the Agreement. The Defendant also executed a Power of Attorney in favour of the Claimant over this Plot 347C which is the Res in this case which is for partial security for the facility. That document is attached as EXH. B.

The Power of Attorney EXH B gave the Claimant the right to collect the Certificate of Occupancy of the Res from the Abuja Area Council Title Regularization Scheme.

The Defendant also agreed to perform his obligation to the Jaiz Bank PLC to ensure that the deed of

release is executed to enable the release of the Certificate of Occupancy to be returned to the Claimant. The Defendant also assured the Claimant about the amortization of the loan. The Defendant also assured the Claimant that he had paid same and would soon recover the Certificate of Occupancy used as Collateral for the loan of Forty Five Million Naira (₦45, 000,000.00). When the Defendant died in the course of this business the Claimant realized that there is no how the Defendant can complete the retrieval of the process, he retained the service of Nsikak Udo to write to the Bank.

The Barrister wrote to the Bank as instructed. The Bank informed them in writing that the Claimant cannot retrieve the Certificate of Occupancy because the Defendant is indebted to the Bank to the tune of One Hundred and Ninety Five Million Naira (₦195, 000,000.00) which is in violation of paragraph 5 of the Agreement EXH A. The said letter and the responses from the Bank were attached as EXH.C & D respectively.

As a law abiding and sincere citizen, shocked, disappointed and betrayed, the Claimant instituted this action strongly believing that he is entitled to the Reliefs sought and the Consequential Orders too. That he is entitled to the 3<sup>rd</sup> Relief which is for an Order directing the Defendant and or his heir, successor, beneficiary, representative to execute all

necessary instruments conveying title in the Res in favour of the Claimant immediately.

In the Written Address, he submitted that this case is a clear case of interpretation and application of the Terms of Agreement which is binding on the parties as contained in EXH A. That once the terms of contract is clear and unambiguous, the duty of the Court is to enforce same without undue delay.

That in this case it very evident that the parties entered into the Agreement EXH A voluntarily as the Bank Jaiz PLC has truly confirmed of being in possession of the said Claimant's Certificate of Occupancy.

Again that the Defendant did not amortize the loan facility upon which the Loan is predicated and which the Claimant helped him to secure using the said Certificate of Occupancy as Collateral. He urged Court to enter Judgement in his favour. He relied on the case of:

**Union Bank V. Ozigi  
(1994) 3 NWLR (PT. 333) 385**

He urged the Court to grant his Reliefs and after resolve the sole Issue in his favour.

It is imperative to state that the Defendant was served with the Originating Process via substituted means after several attempts to effect service personally failed. The Court in an Order made on the 8<sup>th</sup> day of

November, 2019 ordered that service be effected by Substituted Means – Pasting of the Processes and Hearing Notices at the Res Plot 347C Dawaki Extension (Relocation Layout) Abuja.

It is on record that Hearing Notices were served on the Defendant as per the Order of this Court made on the 8<sup>th</sup> day of November, 2019. On the 20<sup>th</sup> September 2019 – Personal Service attempt failed. On 11<sup>th</sup> November 2019, 25<sup>th</sup> November 2019, 28<sup>th</sup> November, 2019, 4<sup>th</sup> December 2019 and 26<sup>th</sup> February 2020 the Defendant was served with Hearing Notices. This is evidenced by the Affidavit of Services made by the Bailiff of this Court on those days as captured in the record of this Court.

The Defendant did not file any Process in response. They did not enter appearance personally or through a Counsel. They have no representation throughout the duration of this case.

It is also imperative to point out that this case was filed since the 15<sup>th</sup> day of February, 2019. That is over a year before the matter was heard. The Court ensured that as already stated that due process was diligently followed to ensure that the Defendant was given the time space and right to exercise his right to fair-hearing in this case. But for reason best known to the Defendant they failed, refused and deliberately decided to sleep on their right.

The Court cannot wait for them in perpetuity because the Claimant has a right to fair-hearing and justice, as justice delayed is worse than justice denied as the belated justice must have lost its efficacy because of the belatedness. Hence the hearing of the Originating Summons and this Judgement so reserved which is being delivered today. It is important to point out that the Defendant was served with Hearing Notice that this Judgement is to be delivered today as scheduled.

It is trite that once a matter is not challenged, the facts thereon are deemed to be admitted ordinarily by the Defendant as the case may be. But that does not mean that the Court will swallow hook line and sinker those facts which are deemed unchallenged and admitted. The Court is still bound to consider, analyze and evaluate such facts to determine the issues raised in the dispute together with the evidence – documentary and oral where necessary before it can come up with its final decision in that case.

So a call by the Claimant to enter Judgement in his favour is not automatic. It must be merited. This means that a Claimant has the herculean task to ensure that he supports his case with credible facts and evidence to establish his case on the preponderance of evidence.

This Court having ensured that due process was followed in the hearing of this case now goes into the full evaluation of the facts and evidence in form of the

documents attached by the Claimant in support of its case after which the Court will make its pronouncement or decision in the interest of justice having ensured that fair-hearing was duly observed.

The Claimant had attached an Agreement voluntarily entered into by the parties as EXH A. The document is titled Land Swap/Collateral Agreement between the parties. This document was signed by the parties sometime in 2015. The Defendant, Ige Oladipo, signed as the Offeror while the Claimant signed as the Offeree.

In the Agreement the expression of Offeror and Offeree included their respective “successor-in-title, agents, heirs, assigns, administrators, executors and all those deriving title from them and all those claiming through them”.

The implication of that is that all are equally affected as the parties.

In this case it is important to note that the Defendant died before the amortization and retrieval of the Certificate of Occupancy from the Bank. This means that notwithstanding the demise of the Defendant, his successors and heir etc, like his wife and family are liable as if the Defendant is still alive in this circumstance.

In the terms in EXH A, the parties fully spelt out in the Agreement, their respective obligation as concerns the loan and the purpose of the loan as well as the



amount involved which is Forty Five Million Naira (N45, 000,000.00).

In paragraph 2 of the Agreement the parties agreed that:

**“The Offeror has now approached Jaiz Bank PLC for a credit facility in the sum of Forty Five Million Naira (N45, 000,000.00) and ... he has also agreed, approached the offeree for consent to lease the Certificate of Occupancy of his – (Offeree) property situate at No. 15 Joseph Waya Close ... as Collateral for the said facility”.**

### **Paragraph 3**

**“... the Offeree is willing to give his consent to the Offeror for the said Certificate of Occupancy to be used ... for the facility to be obtained from the Jaiz Bank PLC”.**

Of utmost importance and worthy of note and mention is the content of **paragraph 3** of EXH A which is:

**“... the Offeror SHALL also temporarily convey his personal property which is Plot 347C ... to the Offeree pending when the Offeror retrieves and returns the Certificate of Occupancy to the Offeree”.**

By paragraph 5(b) the Offeror is to release the said document to the Offeree the aforementioned

Certificate of Occupancy upon the execution of the Agreement. Also the agreement in paragraph 5 (b) the Offeror was also to execute Power of Attorney appointing the Offeree as his lawful Attorney over the said Plot 347C – the Res, the partial security for the loan facility. In the Agreement the parties in paragraph 5 (c) also agreed voluntarily that:

**“one of the clauses in the said Power of Attorney SHALL include a right given to the Offeree to collect the Offeror’s Certificate of Occupancy of the Res from the Abuja Area Council Title Regulation Scheme”.**

The Offeror executed the Power of Attorney which the Claimant attached as EXH B in this Suit. In the said Power of Attorney, the above cited term was spelt out clearly in paragraphs of the Power of Attorney. Again the Defendant/Offeror also:

**Paragraph 5 (a) EXH A**

**“... undertook to fully perform his obligation to Jaiz Bank PLC so as to ensure that a smooth execution of the Deed of Release which will in turn enable him retrieve the Certificate of Occupancy and return same to the Offeree”.**

The above cited paragraphs put no one in doubt as to the intention and agreement of the parties. It shows and confirm the claim of the Claimant that there exist a Contract Agreement between the parties. The

Agreement was registered on the 19<sup>th</sup> day of July, 2016.

Believing that the Facility has been amortized by Defendant, the Claimant through his lawyer had written for the retrieval of the Certificate of Occupancy as agreed by the parties in both the EXH A & B. This was done through the letter from the Solicitors of the Claimant to the Bank dated 24/12/18. There is evidence that the document – letter was received and acknowledged by the Bank.

In EXH D – the letter from the Bank to the Claimant in response of the Claimant’s letter of 24<sup>th</sup> December, 2018. By the letter dated 27/12/18, the Bank confirmed that the Defendant who is the customer in the loan facility where the Certificate of Occupancy was used as Collateral, is indebted to the Bank to the tune of One Hundred and Ninety Five Million Naira (₦195, 000,000.00) and as such:

**“... there is a continuing obligation on the part of the surety to secure the debt owed to the Bank...”**

as contained in paragraph 2 of the said letter from the Bank. That means that the mortgage is not yet discharged from the liability and the Bank cannot therefore release the Certificate of Occupancy as the money/loan facility remains unpaid by the Defendant. The implication is that the Defendant has failed to fulfil his side of the Agreement by his failure

to amortize the loan to set the Certificate of Occupancy free. Pacta Sunt Servaranda. Parties are bound by the Agreement they entered into.

By the content of the Agreement and the Power of Attorney, the Plaintiff has right over the said Plot 347C. He has a right and is entitled to take possession of the Res and to process all title documents in his name.

By failing to fulfil his obligation in the EXH A, the Defendant is liable without delay to forfeit and transfer the legal title of the Res to the Claimant and in favour of the Claimant.

Since the Agreement EXH A affects the successors-in-title, agents, heirs, assigns, administrators, executors and all deriving title from him and all claiming through the Defendant like Mrs. Irene Bolajoko Oladipo are bound to release the documents of title of the Res to the Claimant.

They are also bound to execute all necessary instruments conveying title in the Res and to process all relevant title documents in favour of the Claimant. This is because the parties particularly the Late Oladipo Ige had in both the Agreement for Land Swap/Collateral Agreement and the Power of Attorney voluntarily agreed that it shall be so. After all is the same person would have ordinarily inherited his Assets. So they should equally inherit his liabilities.

The doctrine of:

**Pacta Sunt Servaranda – (Parties are bound by the Agreement they entered into) even after they are dead as far and as long as they have agreed that the terms are binding on their successors, assigns, agents, executors, administrators as well as their heirs and beneficiaries.**

By the Agreement in EXH A, Late Mr. Oladipo Ige – (may his soul rest in peace) agreed that the same faith will befall his successors, heirs, etc.

The case of the Claimant is very meritorious and this Court has every reason to answer and hereby answers the 2 questions in the Affirmative. The Court has also answered and considered the sole question raised in the Written Address in the Affirmative and in favour of the Claimant.

That being the case, the Court hereby grants all the Consequential Orders as sought by the Claimant.

**This is the Judgment of this Court.**

**Delivered today the \_\_\_\_\_ day of \_\_\_\_\_ 2020 by me.**

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**K.N. OGBONNAYA  
HON. JUDGE**