



**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDING AT MAITAMA
BEFORE HIS LORDSHIP: HON. JUSTICE H. B. YUSUF**



SUIT NO: FCT/HC/CV/1419/2013

BETWEEN:

MR AMEDU DOMINIC.....PLAINTIFF

AND

1. MR. EMMANUEL NWODO)
2. CONUELS GLOBAL RESOURCES LTD).....DEFENDANTS

JUDGMENT

A brief fact of this case is simply that the Plaintiff was engaged by the Defendants sometime in July 2011 to market the 2nd Defendant's Housing Scheme known as "Defenders Assurance Home Scheme." This private home scheme has landed properties in three different locations in Abuja, and the Plaintiff was to receive commission in percentage based on the number of subscribers he introduced to the scheme and who actually purchased plots of land from the 2nd Defendant's housing scheme. In addition to the commission aforesaid, the Plaintiff was to receive three separate plots of land in each of the 2nd Defendant's three housing scheme respectively. The three locations of the house scheme are:

- (1) Site A & B.
- (2) Site C; and
- (3) Pykasa

According to Plaintiff, he received allocation of plots as agreed in one location (i.e. Site A & B) leaving out the remaining two sites of the scheme. Plaintiff also alleged that the commission which accrued to him through the subscribers he introduced to the scheme, has not been paid despite repeated demands. He has also alleged that rather than discharge their obligation to him, the Defendants instigated a petition to the FCT Police Command which led to the arrest, detention and torture of the Plaintiff. This action was filed to seek redress against the Defendants jointly and severally as follows:

- 1. An Order of this Honourable Court mandating the Defendants jointly and severally to pay to the Plaintiff the sum of Ten Million, Seven Hundred and Twenty Thousand Naira (N10,720,000.00) only as sum due to the Plaintiff as agency fee for facilitating the purchase of plots of land in the Defendant's Estate by subscribers introduced by the Plaintiff.**

- 2. An Order of this Honourable Court mandating the Defendants jointly and severally to pay to the Plaintiff the sum of Five Hundred Thousand Naira (₦500,000.00) only as general damages for his unlawful arrest, detention and psychological torture by the Defendant.**
- 3. An Order of this Honourable Court mandating 2nd Defendant to allocate three plots of land in each of the two sides (i.e. sites C and Pykasa) to the Plaintiff as agreed on terms by parties.**
- 4. The sum of Three Hundred Thousand Naira (₦300,000.00) as cost of this action.**

The Defendants denied the claims of the Plaintiff in their 22 paragraphs Joint Statement of Defence, and also Counter Claimed against the Plaintiff as follows:

- (a) The sum of N8,670,000.00 being the excess of the sum paid to the Plaintiff.**
- (b) The sum of N50,000,000.00 as general damages to the Defendant's business goodwill.**

The Plaintiff also filed a Reply to Statement of Defence and Defence to Counter Claim, and denied liability to the Counter Claimant. The matter proceeded to trial where the Plaintiff testified for himself as

PW1. The Defendants were afforded the opportunity to cross-examine the PW1, but eventually foreclosed having failed to take advantage of the opportunity. Similarly, the Defendants failed to lead evidence in support of their pleadings. They were therefore foreclosed and the Court adjourned for adoption of Final Written Addresses.

The Learned Counsel to the Plaintiff filed his final written address on 02/03/2018 which was duly served on the Defendants, but there was no response of any kind. At the end of the day, the learned Counsel to the Plaintiff adopted his Final Address in the open Court. The issues raised for determination are:

- i. Whether from the totality of the case presented before this Honourable Court, the Plaintiff has been able to prove the existence of a contract between himself and the Defendants, and whether the parties are bind by the terms of the contract thereto.**
- ii. Whether the acts of refusal/neglect of the Defendants to lead evidence in support of their pleadings, does not amounts to abandonment of their case.**

iii. Whether the uncontroverted and unchallenged evidence of the Plaintiff before this Court is sufficient in proof to entitle him to the reliefs sought in this suit.

I have read the pleadings of the Plaintiff and calmly reviewed the evidence of the PW1 and taking into account the state of pleadings, I form the view that the issue for determination ought to be:

Whether the Plaintiff has led cogent evidence as required by Law to warrant the grant of the reliefs sought against the Defendants.

Before I delve into the above issue for determination, I find it expedient at this point to dispose of a preliminary point which was raised as Plaintiff's issue 2, to wit: Whether the acts of refusal/neglect of the Defendants to lead evidence in support of their pleadings does not amount to abandonment of their case.

It is now trite Law that pleading not supported by evidence is deemed abandoned. Although, the 1st Defendant (Mr. Emmanuel Nwodo) filed a witness statement on Oath but he failed to appear in Court to adopt the said witness statement on Oath. In effect, the pleadings of the Defendants are deemed abandoned. See the case of **THE ADMIN AND EXECUTOR OF THE ESTATE OF ABACHA**

(DECEASED) Vs DIETTE SPIFF & ORS (2009) 7 NWLR (PT. 1139) 97 where **Ogbuagu, JSC** stated thus:

“It is now settled that pleadings, do not constitute evidence. Where pleadings are not supported by evidence, such pleadings are deemed to have been abandoned. See the cases of AJUWON & 4 ORS. V. AKANNI & ORS. (1993) 9 NWLR (PT.316) 182; (1993) 12 SCNJ 32; ESEIGBE V. AGHOLOR & ANOR. (1993) 9 N.W.L.R (PT.316) 128; (1993) 12 SCNJ 82.”

See also the cases of **NSIONU V. NSIONU (2011) 16 N.W.L.R (PT.1274) 431** and **FUNTUA V. TIJJANI (2011) 7 N.L.W.R (PT.1245) 1** ably cited by the learned Counsel to the Plaintiff on the above principle of Law.

In this case, it is clear to me that the Defendants have abandoned their joint statement of defence/counter claim, having failed to lead oral evidence in support. If that be the case, I hold that the Defendants’ pleadings cannot survive in the absence of oral evidence in support. This now takes me to the main issue for determination.

SUBSTANTIVE ISSUE

Whether the Plaintiff has led cogent evidence as required by Law to warrant the grant of the reliefs sought against the Defendant.

The point must be made that the Plaintiff who has alleged the existence of a contract between parties and founded his claim on breach of the said contract has a duty to prove his claim. If he fails to discharge this burden, his claim would naturally collapse. Thus, in **CARDOSO V. DANIEL & ORS (1986) 2 N.W.L.R (PT.20) 1** Karibi-Whyte, JSC re-echoed the Law as follows:

“It is well settled principle of the Administration of Justice that a party who sets out to assert the existence of claim bears the burden of establishing the claim, and must fail if he does not succeed in establishing what he has undertaken to do.”

It is also imperative to point out that where the Defendant fails to defend the action as in this case, the onus of proof is naturally discharged on a minimal proof. Although, the case of the Plaintiff will still fail if the minimal burden of proof is not discharged. On this point of Law, see the case of **BALOGUN Vs UBA LTD (1992) 6 N.W.L.R (PT. 247) 336 at 354; and CHIEF DUROSARO Vs AYORINDE (2005) 3-4 SC 14.**

The testimony of the Plaintiff as PW1 is that he had an oral agreement with the Defendant to market 2nd Defendant's Housing Scheme for a consideration of 20% commission per plot sold through the Plaintiff, in addition to three separate plots at each of the three sites of the housing scheme. In essence, for every subscriber introduced to the 2nd Defendant by the Plaintiff, the said Plaintiff was to draw a commission of 20% of the purchase price of the plot. The Plaintiff pleaded and testified that he introduced several purchasers to the 2nd Defendant. In specific terms, the Plaintiff pleaded at paragraphs 6 - 8 of his Statement of Claim as follows:

- 6. That based on the following agreement, the Plaintiff facilitated/introduced 175, 67, and 26 purchasers for site A and B, C and Pykasa.**
- 7. That the purchase price for Site A and B is Two Hundred Thousand Naira (N200,000.00) only while the purchase price for Site C and Pykasa is also Two Hundred Thousand Naira (N200,000) only.**
- 8. That after the said transactions which ended in July, 2012. The Plaintiff was only allocated plots of land in Sites A and B. further that after waiting for a reasonable time without any action from the**

Defendants, He made a formal demand of his accrued commission via a letter of Demand dated 25th August, 2012. A copy of the said letter is hereby pleaded.

The PW1 further testified that he wrote a letter of demand for the payment of his accrued commission in the sum of ₦10,720,000.00 (Ten Million, Seven Hundred and Twenty Thousand Naira) Only. That rather than pay him what was due to him, the 1st Defendant instigated a trumped up petition against the Plaintiff which led to his arrest, detention and torture by the Police. The Plaintiff tendered his letter of demand admitted as Exhibit P1 dated 25th August, 2012. The Exhibit read as follows:

“DEMAND OF THE SUM OF ₦10,720,000.00 AS MY COMMISSION”

The above subject matter refers.

Sequel to your refusal to honour my oral demand for the payment of my accrued commission and engagement fees of N10,720,000.00 I hereby formally demand that you pay the above fees as the cumulative of my earnings as agree (sic) at the contract time. This should be done soonest as envisaged by our agreement.

Thank you.

Signed

Amedu Dominic.”

In reaction to Exhibit P1, the Defendants forwarded Exhibit P2 dated 29/10/2012 to the Plaintiff where the Plaintiff's entitlement to 20% commission across the board was weakly contested. The relevant part of exhibit P2 is set out below for ease of understanding.

"RE: PRELIMINARY ACCOUNT REPORT ON ALLOCATION"

Please be reminded that the allocation fees was N150,000.00 and that your group's commission on the said amount is 10% (N15,000.00) Fifteen Thousand Naira Only, except on Site C where the fee is N200,000.00 and your commission is 20% (N40,000.00).

The Plaintiff also tendered Exhibit P1A which captured the breakdown of his claim. The breakdown at the different sites of the 2nd Defendant's housing scheme sums up to 268 (Two Hundred and Sixty-Eight) Plots. Arithmetically 20% of N200,000.00 is N40,000.00 and when multiplied by 268 Plots the sum total is N10,720,000.00 (Ten Million, Seven Hundred and Twenty Thousand Naira) Only. There was no serious correspondence by the Defendants to suggest that the Plaintiff's breakdown is not correct.

Defendants did not testify before the Court to dispute the evidence led by the Plaintiff. I must also add that the Defendant's refusal to defend this action left the Court with a one sided story on the imaginary scale of Justice, whereby Plaintiff is required to succeed on minimal proof. If that be the case, I am satisfied that the 1st leg of the Plaintiff's claim is proved. For the avoidance of doubt relief (1) is for an Order of this Honourable Court mandating the Defendants jointly and severally to pay to the Plaintiff the sum of Ten Million, Seven Hundred and Twenty Thousand Naira (₦10,720,000.00) only as sum due to the Plaintiff as agency fee for facilitating the purchase of Plots of Land in the Defendant's Estate by subscribers introduced by the Plaintiff.

Having satisfied the minimal burden of proof, I find merit in relief (1) which is hereby granted as prayed.

Plaintiff's second relief is for an Order of this Honourable Court mandating the Defendants jointly and severally to pay to the Plaintiff the sum of Five Hundred Thousand Naira (₦500,000.00) only as general damages for his unlawful arrest, detention and psychological torture by the Defendant. I have carefully considered the pleadings and evidence let in support of this claim, and I have no hesitation whatsoever in holding that the claim is misconceived.

On this point, I need to remind the Plaintiff that this action which was commenced by Writ of Summons is principally founded on breach of contractual obligation between parties. Consequently, if the Plaintiff is convinced that the Defendants herein conspired with the Police to infringe on his fundamental right, the proper thing to do is to file a separate action against the affected Defendants in line with the stipulation of the Fundamental Right (Enforcement Procedure) Rules, 2009. In essence, the claim for violation of right is not well constituted. Furthermore, the point must be made that even if the claim is properly constituted, evidence has not been led to show that the Police takes instruction from the Defendants.

The Law is settled, that a Complainant who simply lodged a report with the Police without more cannot be held liable for infringement or violation of right. On this point of Law, I take the liberty to refer to the case of **ABUGO V. AROMUAINO (2018) LPELR-46142 (CA)** where the Court of Appeal stated the Law thus:

“Whilst it is the duty of a citizen to report, what happens after the report, is entirely the responsibility of the Police. See FAJEMIROKUN V. C.B. (NIG) LTD (2009) 5 NWLR (Pt.1135) 588.”

The Court went further to state as follows:

“It is trite law that if a person orders a policeman to arrest another person, it is an imprisonment by the person ordering the arrest as well as by the policeman. They are joint tortfeasors and their conduct can ground an action in unlawful arrest and detention. However, merely making a report to a policeman who on his own responsibility takes the person into custody is not arrest or detention by the person who made the report. There is no doubt that someone who merely gives information without more, which information leads to the arrest of a suspect by the police acting within their mandate and responsibility, cannot be liable in an action for unlawful arrest or detention. See also AFRIBANK V. ONYIMA (2004) 2 NWLR (Pt.858) 654.”

Arising from the above position of the Law, I form the view that Plaintiff's relief 2 which is for damages against the Defendants for unlawful arrest cannot be granted. It is accordingly refused and dismissed.

The next relief is for an Order of this Honourable Court mandating the 2nd Defendant to allocate three Plots of Land in each of the two sites (i.e. Sites C and Pykasa) to the Plaintiff as agreed on terms by parties. I have considered this head of this claim, and it is clear to me that the Plaintiff both in his pleadings and evidence led in support stated that the Defendants agreed to give him three plots of land in each of the three sites of the 2nd Defendant's housing scheme. The sites are Site A & B, C and Pyakasa. Paragraph 5 of the statement of claim which captured this point read as follows:

“The said oral agreement also include an agreement as to payment of 15% of the purchase in respect of site A and B and 20% of the purchase price in respect of Site C and Pyakasa to the Plaintiff as commission based on the number of purchasers introduced by the Plaintiff and allocation of three plots of land to the Plaintiff in each of the sites.”

Plaintiff pleaded at paragraph 8 of his statement of claim and also led oral evidence to show that he got land allocation in Site A & B. That contrary to the agreement of parties, the Defendant failed to give him any land allocation at site C and Pyakasa respectively. The Defendants did not appear to give evidence to contest this head of claim. If that be the case, it is now trite Law that Courts are enjoined

to act on unchallenged evidence except where it is manifestly perverse and unreliable.

See the case of **NZERIBE V. DAVE ENGINEERING CO. LTD (1994) 8 NWLR (PT.351) 124 AT 137** where **Iguh, JSC** held as follows:

“Where evidence given by a party to any proceeding is not challenged, controverted or discredited by the opposite party who had the opportunity to do so, it is open to the Court seized of the matter to act on such unchallenged evidence before it.”

See also the cases of:

- 1. AYINKE V. LAWAL (1994) 7 NWLR (PT 356) 263; and**
- 2. OBEMBE V. WEMABOARD (1977) 5 S.C 115.**

The Plaintiff in my view has established his entitlement to the claim captured in relief 3, which is accordingly granted as prayed.

The last leg of Plaintiff’s Claim is for the sum of N300,000.00 as cost of action. I have considered this leg of claim and it is clear to me that it is neither supported by the pleadings and evidence led before the Court. The claim is in that wise not sustainable. It is refused and dismissed.

At the end of the day, the Plaintiff's claims succeed in part. For the avoidance of doubt, I make the following Order:

- 1. That the Defendants are hereby Ordered to pay to the Plaintiff the sum of N10,720,000.00 (Ten Million, Seven Hundred and Twenty Thousand Naira) Only being the outstanding cumulative commission due to the Plaintiff from facilitating the sale of 2nd Defendant's Estate land.**
- 2. That the Defendants are hereby directed to allocate three plots of land to the Plaintiff in 2nd Defendant's Estate land at Site C and Pyakasa respectively in line with agreement of parties.**
- 3. That the claim for damages for unlawful arrest and detention is refused and dismissed.**
- 4. That the claim for cost of action is also refused and dismissed for want of merit.**

SIGNED
HON.JUSTICE HUSSEINI B. YUSUF
(PRESIDING JUDGE)
25/09/2020

APPEARANCE

O.U. Salifu, Esq, for the Plaintiff
Defendants not represented.

SIGNED
HON.JUSTICE HUSSEINI B. YUSUF
(PRESIDING JUDGE)
25/09/2020