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/1776/2015

BETWEEN:

DUMPET NIGERIA LIMITED……………………………………….PLAINTIFF

AND

1. FED. CAPITAL TERRITORY ADMINISTRATION)
2. FED. CAPITAL DEVELOPMENT AUTHORITY).DEFENDANTS

JUDGMENT

The Plaintiff is a Limited Liability Company registered with the Corporate Affairs Commission, with an office address at Suite No. 43, Neighborhood Centre, Area 3, Garki, Abuja. Sometimes on the 29/06/2005, it applied to the 1st Defendant for allocation of a Commercial Plot. It filled and submitted an application for the grant of Statutory Right of Occupancy (admitted as Exhibit DNL-1) in this case to the Defendants. The application was duly received and acknowledged on the 08/10/2002.

On the 10/08/2009, the 1st Defendant approved the application and granted the Plaintiff a Right of Occupancy over Plot No. 54, Cadastral

Zone C04, Dape District, covering an area of 3, 128 Square Meters. This letter of grant was admitted as (Exhibit DNL-4). A premium of N100 per square meter was calculated over the total area of the land as fee for the Certificate of Occupancy and other sundry fees amounting to N425, 790. (Four Hundred and Twenty-Five Thousand, Seven Hundred and Ninety Naira) and given to the Plaintiff to pay. This was on the 10/08/2009. This Certificate of Occupancy bill was admitted as Exhibit DNL-6. The Plaintiff paid the bill on the 19/11/2009.

The Plaintiff was also issued demand for ground rent letters at various times which it paid upto 2015. However, despite the payment for the processing of Certificate of Occupancy by the Plaintiff, the Defendants did not release same to the Plaintiff. Instead, it was issued with a fresh Statutory Right of Occupancy bill dated 25/02/2015 which required it to pay the sum of N15, 329, 190. 00 (Fifteen Million, Three Hundred and Twenty-Nine Thousand, One Hundred and Ninety Naira) (Exhibit DNL-11).

The Plaintiff is contending that it had paid the appropriate fees for the Certificate of Occupancy in 2009 and that Exhibit DNL-11 cannot be issued to have retrospective effect. It has now approached this Court to seek the following reliefs:

(1) A declaration that having paid the sum of N425, 790. (Four Hundred and Twenty-Five Thousand, Seven Hundred and Ninety Naira) only, which the Plaintiff was given as the bill for the preparation of the Certificate of Occupancy in respect of Plot No. 54, Cadastral Zone CO4, Dape District, Abuja which bill was given to the Plaintiff by the Defendants, the Plaintiff is entitled to be given its Certificate of Occupancy in respect of the said land.

(2) A declaration that having settled the Certificate of Occupancy bill issued to the Plaintiff by the Defendant since 2009, the Defendants cannot issue a fresh bill to the Plaintiff in 2015 for the same Certificate of Occupancy in respect of Plot 54, Cadastral Zone CO4, Dape District, measuring 3, 128 square meters, which land was granted to the Plaintiff on the 10th day of August, 2009 on any condition the Plaintiff having paid for the Certificate of Occupancy upon a bill issued by the same Defendants on the same plot of land.

(3) An Order directing the Defendants to forthwith release to the Plaintiff its Certificate of Occupancy in respect of Plot 54, Cadastral Zone CO4, Dape District, Abuja the Plaintiff having paid for same since 2009.

(4) N20, 000, 000 as damages for loss of use of the Certificate of Occupancy from 2009 untill it is release to the Plaintiff.

The Defendants denied liability to the claims of the Plaintiff. A joint statement of defence was filed on behalf of the Defendants. In their defence, they alleged that the bill in Exhibit DNL-6 was given to the Plaintiff in error, as the Right of Occupancy fee had been reviewed upward as at the time that Exhibit DNL-6 was issued. Exhibit D1 was relied upon.

One witness testified on either side. The witness for the Claimant is Dominic Agu Uchenna. He is the Managing Director of the Plaintiff's Company. He told the Court how he applied for the land from the 1st Defendant and Plot 54, Cadastral Zone CO4 located at Dape District was allocated to the Plaintiff. He testified that he was given Statutory Right of Occupancy bill of N425, 790. (Four Hundred and Twenty-Five Thousand, Seven Hundred and Ninety Naira) which was paid on the 19/11/2009. He stated that despite the payment, the Certificate was not issued to him. Instead, in 2015 he was issued another bill for the Certificate of Occupancy.

Mr. Zaoceus Akanu testified for the Defendants. He is a Principal Estate Officer with the 2nd Defendant. His testimony was simply that the bill which the Plaintiff paid in 2009 was issued to it in error and

that the 1st Defendant had got approval for an upward review of land rent to N5000 per square meter and same was operational when the wrong bill was given out. A copy of the Reviewed Fee was tendered and admitted as Exhibit D1.

At the end of the trial, parties filed their final written addresses, which they exchanged. In her written address, the learned counsel to the Defendants raised three issues for the determination of the case. These are:

(1) **Whether the reviewed rate was given retrospective effect with regards to the Plaintiff's premium for allocation?**

(2) **Whether the Court has jurisdiction to Order for rectification of a mistake in a contract document; and**

(3) **Whether the Plaintiff is entitled to the Certificate of Occupancy without satisfaction of all requirements necessary?**

Similarly, the learned senior counsel to the Claimant, Mr. A. O. Maduabuchi SAN, listed three issues as relevant for the determination of the case. They are:

(1) **Whether in the circumstances of this case, the Claimant having paid the bill of N425, 790. (Four Hundred and Twenty-Five Thousand, Seven Hundred and Ninety**

Naira) as issued by the Defendants in 2009 had paid for the issuance of Certificate of Occupancy in respect of the said plot of land since 2009?

(2) If the answer to the above is in the affirmative, should the Claimant be made to pay twice for the same Certificate of Occupancy in respect of the same plot of land in 2015?

(3) Is the Claimant entitled to damages for loss of use of the Certificate of Occupancy from 2009 until it is release to it?

SUBMISSION OF LEARNED COUNSEL

ISSUE ONE (I)

Whether the reviewed rate was given retrospective effect with regards to the Plaintiff's premium for allocation?

On issue one, it is submitted by the learned counsel to the Defendants, Mrs. Ekpene Esor, that Courts have established through a plethora of cases that there is a general presumption against retrospective legislation, and that unless expressly stated laws are not to have retrospective effect. The cases of **MBACC 1 & ORS Vs AG ANAMBRA STATE & ANOR (2016) LPELR 41020; BB APUGO**

& SONS LTD Vs OHMB (2016) LPELR 40598 and SPDC NIG Vs ANRO (2015) 12 NWLR (PT. 1472) 122 at 179 were cited.

Counsel further submitted that the power to demand and review rates in (sic) land issues is vested by Section 5 (1) (c) and (d) of the Land Use Act on the Governor. That in the Federal Capital Territory this power is vested on the Minister of the FCT by virtue of Section 45 (1) of the Land Act. She also submitted that the power to make regulations for the purpose of carrying into effect matters listed under Section 46 (1) (a) and (b) of the Land Use Act, which the Act vested on the National Council is in the Federal Capital Territory. She submitted that it is in carrying this function that the Federal Executive Council increased the premium on lands in the Federal Capital Territory from N2000, per square meter to N5000 per square meter on 5th day of August, 2009 and stating expressly that the review was to take effect from 7th of August, 2009. Learned counsel argued that since the change took effect after two days of its approval, it is not correct to say that the review was applied to the Claimant with retrospective effect. Counsel submitted that the witness statement on Oath of the Plaintiff and Exhibit DNL-6 are clear to the effect that the billing for payment of the erroneous fee was given to the Claimant on 10/08/2009, three days after the review fee had come into operation, and therefore it cannot be argued that the document was applied retrospectively. Counsel

attributed the wrong billing which was paid by the Plaintiff as a clerical error, as the Defendants never at any time before charged N100 per square meter as premium on lands and as ground rent for lands situated in Dape District. She therefore contended that in this suit, the Claimant is seeking to profit from the mistake.

ISSUE TWO (2)

Whether the Court has power to Order for rectification of mistake in a contract document?

On this issue, it is submitted that by virtue of Section 8 of the Land Use Act, a Statutory Right of Occupancy granted under the provision of Section 5 (1) (a) is subject to the terms of any contract which is made between the Governor and the holder. Counsel further submitted that parties are bound by their contract and that the Court will not vary such terms duly entered into by the parties. The following case was cited in support of this principle **NIKA PISHON COMPANY LTD Vs LAVINA CORP. (2008) 16 NWLR (PT. 1114) 30 to 31.**

That an exception to this Rule is that where there is a mistake in recording or writing the intention of the parties to a contract, the Court would in its equitable jurisdiction rectify the document to reflect the true intention of the parties. That the intention of the

parties was for the Plaintiff to pay the prevailing fees as a condition for the grant of Certificate of Occupancy and any amount as reviewed from time to time. That is clear from Exhibit D1, that the prevailing rate when the bill was given to the Plaintiff was N5000 per square meter, and the earlier one paid was a mistake which the Court could by virtue of the authority of the decision of the Supreme Court in the case of **THE VESSEL "LEONA" Vs FIRST FUELS LTD (2000) LPELR 1284**, rectify.

ISSUE THREE (3)

> **Whether the Claimant is entitled to the Certificate of Occupancy without satisfaction of all requirements necessary?**

On this issue, it is submitted that Sections 9 and 45 of the Land Use Act vest on the Governor, or a State Commissioner the power to issue a Certificate of Occupancy, subject to satisfaction of a prescribed fee which Sections 46 (1) (b) and (c) vest the National Council with the power to make regulations in relation to terms and conditions upon which special contracts may be made under Section 8 and grant of Certificate of Occupancy under Section 9 of the Act respectively. It was the contention of the learned counsel that the Plaintiff having not satisfied the condition prescribed in Section 9

(2) of the Land Use Act may have risk of having his allocation cancelled or revoked. Counsel finally urged the Court to dismiss the claims of the Plaintiff in its entirety, as it's lacking in merit.

PLAINTIFF'S ADDRESS

ISSUE ONE (1)

> **Whether in the circumstances of the case, the Claimant having paid the bill of N425, 790. (Four Hundred and Twenty-Five Thousand, Seven Hundred and Ninety Naira) as issued to it by the Defendants in 2009, had paid for the issuance of Certificate of Occupancy in respect of the said plot of land since 2009?**

In arguing this issue, the learned counsel acknowledged the fact that in civil cases, the burden of prove is on the balance of probabilities that is the preponderance of evidence. On this principle, the following cases were cited:

ISEOGBEKUN Vs ADELAKUN (2013) 2 NWLR (PT. 1337) 140 at 165 and AMICO CONSTRUCTION COMPANY LTD Vs AETEL INTERNATIONAL LTD (2015) 17 NWLR (PT. 1437) 146 at 187.

It is contended on behalf of the Claimant that the Plaintiff having paid the amount calculated and demanded of it by the Defendants, cannot unilaterally change the terms of the offer of grant which had been accepted and acted upon by the Plaintiff. It was argued that the Defendants do not have the power to change the rate to have retrospective effect as the Plaintiff had already paid as rated and demanded. According to the senior counsel, doing so would amount to rewriting of executed contract to the benefit of one of the parties to the grief of the other party. Counsel further argued that no Certificate is ever produced until all fees had been paid. That the production of the Plaintiff's Certificate in respect of the land is a conclusive proof, that the Claimant had satisfied all the conditions precedent to the production and issuance of the Certificate of Occupancy. Counsel also argued that the sum demanded of the Plaintiff now is the new rate which came into operation after it has paid the appropriate fee and that it is inappropriate to apply the new rate to its case. For the Plaintiff should not be made to suffer the indiscretion of the Defendants.

ISSUE TWO (2)

If the answer to the above is in the affirmative, should the Claimant be made to pay twice for the same Certificate of Occupancy in respect of the same plot of land again after paying for it in 2009?

The argument of the senior counsel to the Plaintiff is that Plaintiff having paid the prevailing rate for the processing of the Certificate of Occupancy when it did is not obliged to pay the revised fee which came into operation after the payment. According to him, the new rate is being made to have retrospective application, which is unconstitutional. On this, he cited the case of **FESTUS ADESANOYE & 2 ORS Vs PRINCE FRANCIS GBADEBO ADEUVOLE** (citation not provided) which decided that retrospective law is antithetical to the development of law and concept of fair hearing.

ISSUE THREE (3)

Is the Claimant entitled to damages for loss of use of the Certificate of Occupancy from 2009 until it is released to the Claimant?

The argument of the learned senior counsel on this issue is that since the claims of the Plaintiff is founded on contract, the Claimant is entitled to damages for breach of it. He submitted that the damage

recoverable by the Claimant is based on the principle of restitution in integrum. A number of authorities were cited in support of this principle. According to the learned senior counsel, the failure to release the Certificate to the Claimant has caused its damages. He also told the Court that the reputation and integrity of the Claimant has been affected and that the N20, 000, 000. (Twenty Million Naira) suit is meant to repair the damages by way of compensation. At the end, learned senior counsel submitted that the Claimant had proved its case for which the Court was urged to grant the reliefs sought

ISSUES FOR DETERMINATION

I like to thank the counsels for the parties for their submissions. Their addresses no doubt helped to shape my thought in the determination of this case. The claims of the Plaintiff as earlier set out at the threshold of this Judgment, essentially relate to a declaration by the Court, that the N425, 790. 00 (Four Hundred and Twenty-Five Thousand, Seven Hundred and Ninety Naira) only, which the Claimant paid to the Defendants, represents full payment for the grant of Certificate of Occupancy and a declaration that the Defendants cannot issue a fresh bill for the Certificate in 2015. It is

also seeking for an Order for release of the Certificate and damages of N20, 000, 000. (Twenty Million Naira).

The law is settled, that for a Claimant to succeed, it must adduce credible, positive and convincing evidence in support of its claim. See the case of **KODILINYE Vs ODU (1935) 2 WACA 336 1 ALL NWLR 457.**

In doing this, the Claimant must rely on the strength of its own case and not on the weakness of the defence. See **BASHUA VS MAJA (1976) 11 SC 143**.

Therefore, it follows that this case can be determined upon a consideration of one broad issue, whether or not the Claimant has proved its case by credible and convincing evidence to entitle it to the reliefs being sought. This broad issue essentially involves a determination of:

(a) Whether or not the sum of N425, 790. 00 (Four Hundred and Twenty-Five Thousand, Seven Hundred and Ninety Naira) which the Claimant paid was the prevailing fee for the Certificate of Occupancy as at 2009, and

(b) Whether it is entitled to be granted of Certificate of Occupancy upon the amount paid?

ISSUE A

Whether the Claimant fully paid the appropriate fee for the grant of Certificate of Occupancy?

The evidence led by the Plaintiff was that a Right of Occupancy over the plot in issue was granted on the 10/08/2009 (Exhibit DNL-4). That the premium on the land as contained on the letter was N100, per square meter, which it paid and obtained a receipt. The Statutory Right of Occupancy bill which the Defendants gave to it, which it paid was admitted as Exhibit DNL-6 and dated 10/08/2009. That upon inquiry it was informed by the Defendants that the Certificate of Occupancy which was approved and prepared sometimes on the 10/08/2009 was awaiting the Hon. Minister's signature. That sometimes in 2015, another Statutory Right of Occupancy bill dated 25/02/2015 was given to it based on N5000 per square meter.

The Plaintiff has contended that a bill which was prepared in 2015 cannot be made to have a retrospective effect, and that having paid the premium stated on its letter of grant, it was not obliged to pay the fresh bill which was generated in 2015. See paragraphs 6 to 15 of the Statement of Claim and paragraphs 8 to 17 of the PW1's evidence on Oath.

In response to this, the Defendants have averred that Exhibit DNL-6 was given to the Plaintiff in error, as the applicable premium to Dape District as at the date the Plaintiff paid the premium was N5000 and not N100 per square meter. Exhibit D1 was tendered to support this fact. This exhibit indicates that a revised fee of N5000 per square meter was approved for, in respect of the District on the 07/08/2009.

I have considered the evidence led and submissions of counsels and it could appear that the learned senior counsel to the Claimant has not got it right when he states that Exhibit D-11 is being applied to the claimed retrospectively. The correct view is that although, Exhibit D1 was dated, it actually came into effect on the 07/08/2009, three clear days before Exhibit DNL-6, which the Claimant paid on the 19/11/2009. Exhibit D-1, clearly revealed that the Hon. Minister of the Federal Capital Territory approved the review of premium of lands in the FCT, and particularly Dape, where the affected land is allocated to N5000 per square meter on the 07/08/2009. See annexure A to Exhibit D-1. As a matter of fact, the Claimant did not raise any objection to the existence of Exhibit D-1 in August, 2009 and or even November, 2009 when it paid the disputed premium of N425, 790. 00 (Four Hundred and Twenty-Five Thousand, Seven Hundred and Ninety Naira).

What led to the misconception of the learned senior counsel is that he reckoned with 25/02/2015 when Exhibit DNL-11 was issued as the take off date when as of truth the date relates to the date bill was given. That being the case, it is my finding that Exhibit D-1 is not being applied retrospectively. Of course, there is no doubt as stated by learned counsel to the Defendants that the Hon. Minister of FCT has power under the Land Use Act to review rent on land in the FCT. It follows that the argument of the learned senior counsel to the Plaintiff that the Hon. Minister cannot unilaterally review the rent payable on land in the FCT, is wrong.

As a matter of fact, Sections 5 and 46 of the Land Use Act which confer such power on the Hon. Minister did not say anywhere that in reviewing land rates, he should consult land allotees. All the authorities cited by the learned senior counsel on the bindingness of contract on parties and absence of jurisdiction on Courts to make contracts for parties are sound principles of law of contract and they represent what they say. But those authorities are inapplicable to this case in view of the provisions of Sections 5 and 46 (1) of the Land Use Act, which I earlier referred to. At the end, I find and hold that Exhibit D-1 is not issued with retrospective effect, it applies to the Claimant's allocation which was not paid for before Exhibit D-1 came into effect.

ISSUE B

Whether the Claimant fully paid the prevailing premium for the issuance of Certificate of Occupancy?

The evidence admitted shows clearly that the Claimant paid the sum of N425, 790. 00 (Four Hundred and Twenty-Five Thousand, Seven Hundred and Ninety Naira) for the Certificate on the disputed land on the 19/11/2009. As at that time, Exhibit D-1 had become operational. The payment it made was based on the old rate, which as stated by the counsel to the Defendants was given in error as the reviewed rate had become operational. That being the case, it is not true as contended by the learned senior counsel of the Claimant that the Claimant had paid fully for the Certificate of Occupancy. It is clear from Exhibit DNL-11 that after assessing the amount calculated on the land, the sum of N425, 790. 00 (Four Hundred and Twenty-Five Thousand, Seven Hundred and Ninety Naira) earlier paid was treated as deposit and deducted from the total sum. The Claimant is bound to pay the premium on Exhibit DNL-11, to be entitled to a Certificate on the land.

The evidence led by the Claimant that the Certificate was prepared because it had fully paid is not established, as it is merely speculative.

On the account of the above findings, I resolve this issue against the Claimant. The implication of the above findings is that reliefs one and two of the Plaintiff's claim are not established, and they are dismissed.

It follows that reliefs three and four which are predicated on the success of the declaration sought, will also not be granted. They are ancillary reliefs and the law is clear that where a party fails in his principal reliefs sought, there is no basis to honour it with any ancillary relief which must necessarily flow from the principal relief already refused. See the case of **NWAOGU VS ATUMA (2013) 11 NWLR (PT. 1364) 117 at 156.**

The principle on this point is that the principal reliefs haven fallen through, the adjunct will equally be taken away. See also the case of **ADEGOKE MOTORS Vs ADESANYA (1989) 3 NWLR (PT. 109) 250 at 269.**

Furthermore, the Claimant having not fulfilled the condition prescribed in Exhibit DNL-4 (offer letter), particularly paragraph 5 which require it to pay other fees and charges at a rate to be determined for the survey preparation and execution of the Certificate of Occupancy, cannot be entitled to the release of the Certificate in respect of the land. The consequence of failure of the Claimant to pay the prescribed fee for issuance of Certificate of

Occupancy can be imagined. Under Section 9 of the Land Use Act, a person granted a Certificate of Occupancy as evidence of his right over the land, shall pay a fee which may be prescribed and if he refuses to pay, the Governor, (Minister in the FCT) is empowered to cancel such Certificate. See Section 9 (1) (c) (2) and (3) of the Act.

In the end, I find the claims of the Plaintiff unmeritorious, and they are refused and dismissed.

Signed
Hon. Justice H. B. Yusuf
(Presiding Judge)
18/12/2020