

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

CLERK: CHARITY
COURT NO. 15

SUIT NO: FCT/HC/CV/4169/2013

DATE 09/12/2020

BETWEEN:

PROF. IDRIS MOHAMMED PLAINTIFF

AND

- 1. GTHOMES LTD**
- 2. NUZAQ INVESTMENT NIG. LTD**
- 3. HON. MIN. FED. CAPITAL TERRITORY**
- 4. FEDERAL CAPITAL DEV. AUTHORITY DEFENDANTS**

JUDGMENT

(DELIVERED BY HON. JUSTICE S.B. BELGORE)

By a 22 paragraphs Statement of Claims, these three plaintiffs namely; (1) BENJAMIN AONDONA INIENGER (2) PROF. IDRIS MOHAMMED (3) EFFECTIVE CAPITAL LIMITED claim against four defendants to wit; (1) GTHOMES LIMITED (2) NUZAQ INVESTMENT NIG. LTD; (3) HONOURABLE MINISTER, FEDERAL CAPITAL TERRITORY and (4) FEDERAL CAPITAL DEVELOPMENT AUTHORITY the following reliefs jointly and severally as follows:

1. A declaration that the 1st defendant's exercise of the Mortgage's Power of Sale by which it sold the entire 7 units of 4 - bedroom house developed by 2nd plaintiff at Plot 105 Wuye District Abuja was wrong.
2. A declaration that the 1st defendant's purported sale of the entire 7 units of 4 - bedroom house developed by 2nd plaintiff at Plot 105 Wuye District Abuja to the 2nd defendant or any third party is not registrable.
3. An order nullifying the 1st defendant's purported sale of the entire 7 units of 4 - bedroom house developed by 2nd plaintiff at Plot 105 Wuye District Abuja to the 2nd defendant or any third party.
4. An order of perpetual injunction restraining the 3rd and 4th defendants from registering the purported interest of the 2nd defendant (or any person claiming through the 1st defendant) in the 7 units of 4 - bedroom house developed by 2nd plaintiff at Plot 105 Wuye District Abuja.

ALTERNATIVELY, TO 3.0 AND 4.0 ABOVE

5. An Order directing the 1st defendant to pay to the plaintiffs jointly and severally N585,000,000.00 (Five Hundred and EightyFive Million Naira) as damages being the value of the 7 units of 4 - bedroom house developed by 2nd plaintiff at Plot 105 Wuye District Abuja.

6. An Order directing the 1st defendant to pay to the plaintiffs jointly and severally pre-judgment interest at 10% of N585,000,000.00 (Five Hundred and EightyFive Million Naira) being the value of the entire 7 units of 4 – bedroom house developed by 2nd plaintiff at plot 105 Wuye District Abuja.

7. An Order directing the 1st defendant to pay to the plaintiffs jointly and severally post-judgment interest of 10% of the judgment sum from date of judgment to the date that the judgment sum is fully paid.

The plaintiff's learned Counsel to my surprise only appeared 4 times before he disappeared into thin air unannounced. And that was on 17/7/13, 7/11/13, 3/12/13 and 29/1/14 respectively.

On the 29/1/14, the pending Motion on Notice filed by 1st and 2nd defendants/counter claimants learned Counsel asking the Court to strike-out the names of 1st and 3rd plaintiffs from this suit having not been privy to the contract in focus was granted by the Court leaving Professor Idris Mohammed as the only plaintiff in this case.

On the 13/4/15, another interesting event unfold. Mr. F. D. Esume Esq. appeared before the Court for a party seeking to be joined with a Motion No. M/1373/14 dated 30/10/14 to that effect. The Court graciously joined the party as a 5th defendant

after listening to the arguments and submissions of Counsel from both sides in its well considered bench ruling delivered on the same day. And the matter was adjourned to 15/6/15.

Surprisingly again, the learned Counsel appeared only on the 28/1/16 for the 5th defendant that was joined by the Order of the Court stopped coming to Court without any reasonable excuse put forward to Court. I must say that the conduct of Mr. Steve E. Eke and F. D. Esume Esq., in excusing themselves from coming to Court without due courtesy to Court is unprofessional.

Be that as it may, it is on that date that upon application of learned Counsel to the 1st and 2nd defendant/counter claimant that the Court struck-out the plaintiff's Writ and the Statement of Claim and Mr. Ehis Agboga Esq. was granted leave by the Court to proceed and proof their counter-claim. However, the counter-claimants cannot proceed that day because the 5th defendant's Counsel was not ready. And the matter was adjourned to 19/5/16 for hearing of the counter-claim of the 1st and 2nd defendants.

In a 35 paragraphed of 1st and 2nd defendants' statement of defence and counter claim, the counter-claimants claim the following against the sole plaintiff:

- (a) An Order of this honourable Court that the Sale of the property i.e. one block of 7 units of 4 bedrooms apartments by the 1st counter-claimant vide the Deed of Assignment executed by and between the 1st defendant-by-counter-claim and the 2nd counter-claimant is valid and proper.

- (b) An Order directing the 2nd defendant-By-Counter-Claim, or any other Minister charged with the responsibility, to consent to the sale of the property i.e. one block of 7 units of 4-bedroom apartments by the 1st counter-claimant to the 2nd counter-claimant vide the Deed of Assignment executed by and between the 1st defendant-By-Counter Claim and the 2nd Counter-Claimant.

- (c) An Order directing the 3rd Defendant-By-Counter-Claim, or any other government Ministry, department, agency or parastatal, including but not limited to Abuja Geographic Information Systems (AGIS) charged with the responsibility to recognise and register the 2nd Counter-Claimant's Ownership of the property i.e. One block of 7 units of 4-bedroom apartments.

- (d) An Order that the 1st Counter-Claimant deduct the sum of N5,000,000.00 (Five Million Naira) from the 1st Defendant-By-Counter-Claim's account being cost of defending the plaintiffs' suit and prosecuting its counter-claim.

In proof of the 1st and 2nd defendants' counter-claim, on the 10/5/17, Mr. Muyiwa Aromire gave evidence in Court.

As DW1, Mr. Aromire sworn with the Bible to speak the truth. He works with the 1st defendant/counter-claimant. He referred to his earlier filed statement on Oath which he adopted as his evidence in this case. And through this witness exhibits A, B, C, D, and E were admitted as evidence.

Exhibit A - Is a letter headed "Offer Letter" dated 29/6/10.

Exhibit B - Is a deed of Assignment between the plaintiff and Nuzaq Investment Limited which is undated.

Exhibit C - Is a letter headed, "Application for consent to register title dated 6/6/13.

Exhibit D - Is a letter headed, "Appointment as External Solicitor for Suit No. CV/2104/2009: MR. BENJAMIN INIENGER & 2 ORS VS. GTHOMES LTD & 3 ORS dated 21/8/13.

Exhibit E- is a bundle of E-mails from Biola Aruna to Linda Tobi Jerry Mbaso on 2/7/13.

With the testimony of this witness the 1st and 2nd defendants/counter-claimants closed their case and we adjourned to 22/6/17 for cross-examination of DW1 by the plaintiff and 3rd and 4th defendants.

On the 27/9/17, due to absence of the plaintiff and 3rd and 4th defendants in Court, the learned Counsel to the 1st and 2nd defendants/Counter-Claimants applied orally to foreclose the right of the plaintiff to cross-examine the DW1 which was graciously granted by the Court. The matter was adjourned to 31/10/17 for defence of 3rd and 4th defendants.

On the 31/10/17, the 3rd and 4th defendants were not represented in Court despite the service on them of the hearing notice. Following their absence, the Court granted the prayer of the 1st and 2nd defendants/Counter-Claimants' learned counsel request to foreclose their defence. The case was adjourned to 24/1/18 for the defence of the plaintiff 3rd and 4th defendants to the Counter-Claim.

On the 24/1/18, Mr. Ehis Agboga due to the absence of the plaintiff, 3rd and 4th defendants prayed the Court to foreclose their rights to defence which was granted by the Court and the matter was adjourned to 20/3/18 for address.

Finally, on the 12/10/20, Mr. Ehis adopted his final address dated and filed on 23/2/18 and urged the Court to enter judgment in favour of 1st and 2nd defendants/Counter-Claimants.

Before I proceed further, I think it is appropriate at this juncture to briefly state the facts that culminated into this action as

could be gathered from the evidence of the sole witness in the proof of the 1st and 2nd defendants/counter-claimants.

Pursuant to the sale of the property to the plaintiff by Mr. Benjamin Inienger who was the former owner of the property, the plaintiff applied for and was granted a mortgage construction facility by the 1st defendant which facility was evidenced by a letter of offer dated June 29, 2010. The terms and conditions governing the facility were itemised in the said Letter of offer and same was freely accepted by the plaintiff who executed the Letter of Offer (Exhibit A).

The said exhibit A constitutes the contract and regulates the relationship by and between the 1st defendant and the plaintiff.

It is pertinent to mention that pursuant to the paragraphs in the mitigated damages section of exhibit A, the 1st defendant was empowered to sell the property upon the occurrence of any one of the Events of Default. But to give the plaintiff some measure of comfort that 1st defendant will carry him along in the event of a sale.

Consequently, in a meeting by all parties at the property site in Abuja, it was agreed that if the plaintiff either directly or through his Consultant could sell any units before 25th June, 2013, the 1st defendant would accept the sale and use the proceeds to offset the overdrawn balance in the loan account

but if by 25th June the plaintiff could not sell the property 1st defendant would exercise its power of sale under exhibit A and sell the entire property. This information was related to the plaintiff vide email of June 26, 2013 before the sale was carried out by the 1st defendant.

Equally, the outstanding indebtedness of the plaintiff as at June 27, 2013 which was in the sum of N195,997,009.92 (One Hundred and Ninety Five Million, Nine Hundred and Ninety Seven Thousand, Nine Naira, Ninety Two Kobo) principal plus interest was related to the plaintiff vide email of that date.

Upon the sale of the property, the 1st defendant deposited the N315,000,000 (Three Hundred and Fifteen Million Naira) sales proceeds into the plaintiff's account and first applied same to the payment of the outstanding indebtedness of N195,997,009.92 thus bringing the balance in the loan account to N119,002,990.08 (One Hundred and Nineteen Million, Two Thousand, Nine Hundred and Ninety Naira, Eight Kobo).

The following deductions were made from the balance in the loan account:

- (a) N6,300,630.00 - as agency fees and transfer charge
- (b) N19,705,000.00 - paid into a suspense account for funding the perfection of titles over the property; perfection of title from 1st plaintiff to plaintiff; and title

from 2nd plaintiff to 2nd defendant and all legal works in relation to the above.

Following the above deductions, what was left of the loan account from the proceeds of the sale was now the sum of N92,997,360.08 (Ninety-Two Million, Nine Hundred and Ninety Seven Thousand, Three Hundred and Sixty Naira, Eight Kobo) which sum has been transferred into the plaintiff's account.

This in short is the gist or bird view of facts in the instant case.

Mr. Ehis Agboga, in his final written address, submitted the following issues for determination.

- (i) Whether the 5th defendant by reason of his failure to file a defence has not admitted the claims in the 1st and 2nd defendants' counter-claim?
- (ii) Whether the pleadings of the 3rd and 4th defendants have not been abandoned by reason of their failure to give evidence?
- (iii) Whether the plaintiff and the 3rd - 5th defendants by reason of their failure to cross-examine the 1st and 2nd defendants/counter-claimants witness have not admitted the evidence of the said witness?
- (iv) Whether the 1st and 2nd defendants/counter-claimants have proved their case and are entitled to the favourable Judgment of this Honourable Court?

- (v) Whether Exhibit B is defective by reason of its being undated?
- (vi) Whether the handwritten endorsement in Exhibit E on the nature and state of the printer/computer from which it was printed qualifies as a Certificate of Compliance pursuant to section 84(4) Evidence Act 2011?

I agree with the learned Counsel to the 1st and 2nd defendants/counter-claimants that those are the issues that are for consideration in this case.

We should not forget that the main Writ of Summons, Statements of Claim and other originating process had been struck-out for want of diligent prosecution on the 28/1/16.

Consequently, what is left for determination is the counter-claim of the 1st and 2nd defendants

A counter-claim is a separate action which, for purposes of convenience, and to avoid delay, or the saving of cost and time of litigation, or to avoid multiplicity of action, the main claim and the counter-claim are usually tried together. See **IOS ELECTRICITY DISTRIBUTION PLC VS. MUHAMMED (2015) LPELR - 2446 (CA)**.

Mr. Ehis Agboga, in arguing the first issue submitted that 5th defendant not being a named defendant in the 1st and 2nd defendants' counter-claim has no business filing a defence to the said counter-claim. The said 5th defendant was joined as a defendant to the plaintiff's statement of claim on the 13/4/15 is not relevant to the counter-claim of the 1st and 2nd defendants having struck-out the statement of claim of the plaintiff. More importantly, the 5th defendant did not file any defence to the counter-claim of the 1st and 2nd defendant and has by implication admitted the claims in the 1st and 2nd defendants' counter-claim. He referred the Court to the unreported case of **OKEREKE & ANOR VS. ABA NORTH LOCAL GOVT. AUTHORITY CA/PH/179/2004.**

He finally urged the Court to hold that failure of the 5th defendant to file his defence as ordered by the Court upon his joinder has not only abandoned the proceedings but also admitted all the averments in the 1st and 2nd defendants' counter-claim.

I have considered this one-sided argument and it is elementary now that the basic principle of law is that where a defendant fails to file a defence, he will be deemed to have admitted the claim or relief in the statement of claim. See **OKOEBOR VS. POLICE COUNCIL & ORS (2003) LPELR - 2458 (SC).**

It is for the above reason that I hold the view and agreed with the submission of the learned Counsel that indeed the 5th

defendant had admitted the claims as contained in the counter-claim of the 1st and 2nd defendants.

ISSUE II

Whether the pleadings of the 3rd and 4th defendants have not been abandoned by reason of their failure to give evidence?

Mr. Ehis of Counsel to the Counter-Claimants submitted on this issue that 3rd and 4th defendants filed a statement of defence in this matter but did not give any evidence in proof of the defence they filed. Consequently, their defence is deemed abandoned. He called in aid the authority of DUROSARO VS. AYORINDE (2005) 8 NWLR (PT. 927) 407 where the Supreme Court held thus;

“It is elementary law that where a defendant fails to give evidence at the trial, his statement of defence is deemed abandoned. This is because pleadings, by their nature and character cannot speak. They speak through witnesses and as long as a party refuses or fails to call witnesses to articulate their content, they remain dormant process in the Court’s file. As a matter of law, they are moribund and no Court of law is competent to resuscitate or revive them”.

He argued further that based on the position of law, only one conclusion can be drawn which is the fact that 3rd and 4th defendants have abandoned their defence as well as equally did not challenge the claim of the 1st and 2nd defendants/counter-claimants.

I agree completely with the learned Counsel. The position of law remains as was pronounced in **OMOBORIOWO & ORS VS. AJASIN (1984) LPELR-2643 (SC)** at page 26 thereof that “pleadings are nothing but mere averments and Judgments on such pleadings are based strictly on evidence led.....Failure of the party to call evidence in support of his own averment which is denied by the adverse party in the adverse party’s pleadings is that such averment is deemed abandoned”.

Therefore, I hold the view that the 3rd and 4th defendants have abandoned their defence and admitted the claims of 1st and 2nd defendants as contained in the counter-claim.

ISSUE III

Whether the plaintiff and the 3rd – 5th defendants by reason of their failure to cross-examine the 1st and 2nd defendants

counter-claimants witness have not admitted the evidence of the said witness?

On this issue, Mr. Ehis submitted that failure of the plaintiff and the 3rd - 5th defendants to cross-examine the 1st and 2nd defendants' witness means nothing but tacit acceptance of the truth of the evidence of the witness. He referred the Court to the case of **GAJI & ORS VS. PAYE (2003) 8 NWLR (PT. 823) 583.**

I am in the same page with Mr. Ehis that the position of the law is that where the adversary fails to cross-examine a witness upon a particular matter, the implication is that he accepts the truth of that matter as led in evidence. See **D. MUSTAPHA & CO. (NIG) LTD VS. UNION BANK (2015) LPELR-40380 (CA).**

Consequently, and without much ado, I hold the view that the plaintiff and the 3rd - 5th defendants have accepted as true the evidence of Mr. Muyiwa Aromire.

I will like to re-arrange the remaining issues like this, issue v and vi shall be considered first as issue iv and v while issue iv as it appears on the written address shall be considered as the last issue in this judgment.

ISSUE IV

“Whether Exhibit B is defective by reason of it being undated?”

It is submitted by the learned Counsel that the fact that Exhibit B is undated does not derogate from the validity of the document nor does it affect the conveyance made thereby.

He said the law recognises the practice of not dating deeds or conveyancing instruments at the point of execution of the documents or of dating them after consent have been obtained but before the registration of such documents. He relied on the case of **ANUKU VS. STANDARD BANK OF NIGERIA LTD (1972) 2 UILR (PT. 2) 106**; a book authored by C. O. ADUBI Esq, titled “**Drafting, Conveyances & Wills** © 1995.

He argued further that there is no issue in law regarding the fact that a Deed is undated as the date is insignificant once the material parts of the deed are present and consistent with the law and practice. He concluded by saying that Exhibit B which is the Deed of Assignment is valid and suffers no legal defect or impediment on account of the fact that the copy tendered in Court is undated. He said position of the law is the same where the Deed is not an outright assignment or conveyance but a lease or sublease. He referred the Court to the case of **YONWUREN VS. MODERN SIGNS (NIG.) LTD (1985) SC** where the Apex Court held thus;

“It is trite law that a lease is completed upon the delivery thereof, after it had been formally executed, and it is immaterial to its validity and effectualness that the date of execution thereof is left blank, so long as the deed of lease contains all the essential requirements of a lease, namely, the identification of the lessor and lessee, the premises to be leased, the commencement of the term, and the duration of the term.....”

In the case of **ANUKU VS. STANDARD BANK OF NIGERIA LTD** supra, it was held as follows;

“It is common practice among conveyancers or solicitors to obtain the signatures of parties to a document before submitting such documents for stamping, registration or consent by anybody required by law to give such consent if necessary. It is when such consent had been obtained or document ready to be stamped or registered that a date is inserted... ..”

It is for the above reason that I hold that exhibit B as its presently constituted is valid in law.

ISSUE V

Whether the handwritten endorsement in Exhibit E on the nature and state of the printer/computer from which it was printed qualifies as a Certificate of Compliance pursuant to Section 84(4) Evidence Act 2011?

On this issue, Mr. Ehis Esq. submitted that it is undoubtedly that the emails are computer generated evidence and that the legal requirement of a Certificate of compliance to accompany same as stipulated in S.84 (4) Evidence Act 2011 was satisfied by the handwritten endorsement on the Computer print out. He said the handwritten endorsement clearly identified the document and the printer used in printing same and stated that the printer was in good working condition and was used in the ordinary course of business. He cited the case of **BLAISE VS. F.R.N (2017) 6 NWLR (PT. 1560) 90** where it was held that:

“A Certificate, ordinarily defined, is a document providing official evidence in proof of something such as personal status, educational achievements, ownerships or authenticity and this includes in some way, endorsements made

*on documents in order to
give details and
authenticity....”*

It is for the above reason, that I agree with Mr. Ehis Esq. that the endorsement on Exhibit E satisfies the requirement of **S. 84 (4) Evidence Act 2011** as amended.

ISSUE VI

Whether the 1st and 2nd defendants have proved their case and are entitled to the favourable Judgment of this Honourable Court in terms of their counter-claim?

On this last issue, the learned counsel to the 1st and 2nd defendants/counter-claimants submitted rightly that in view of the plaintiff and the 3rd - 5th defendants' failure to file a defence or cross-examine the 1st and 2nd defendants are only required to give minimum evidence or show minimum proof in order to establish their claims and be entitled to a favourable Judgment of this Honourable Court. He cited the cases of **UNITY BANK PLC VS. ADAMU & ORS (2013) LPELR - 22047 (CA); S.T.B. LTD VS. INTER DRILL NIG. LTD (2007) All FWLR (PT. 366) 757.**

In **UNITY BANK PLC VS. ADAMU & ORS** (supra) it was held thus:

“... ..the law is also trite that where one side does not call evidence, the minimum or least evidence called by the other party satisfies the requirement of proof by it in civil cases. This is the minimum evidence rule. See Adewuyi Vs. Odukwe (2005) 7 SCNJ 227... ..”

He submitted further that another ground for entering Judgment in favour of the 1st and 2nd defendants as per the reliefs in their counter-claim is that the counter-claim is based on the enforcement of the items of the contract between 1st defendant and the plaintiff. He said it is trite that the duty of a Court is to give effect to the contract between parties. He relied on the cases of ANYAEGBUNAM VS. OSAKA (2000) 5 NWLR (PT. 657) 386; M.V. CAROLINE MAERSIL VS. NOKOY INVESTMENT LTD (2000) 7 NWLR (PT. 666) 597.

In conclusion, he urged the Court to grant all the reliefs of the 1st and 2nd defendant/counter-claimants as proved and are entitled to their reliefs.

In the absence of contrary evidence, the law enjoins the Court to believe the one sided evidence and act on it. See KOPEK

CONSTRUCTION LTD VS. EKISOLA (2010) LPELR - 1703
(SC) per Muhammad J.S.C held thus;

“I think the law is certain that where evidence before a trial Court is unchallenged, it is the duty of that Court to accept and act on it as it constitutes sufficient proof of a party's claim in proper cases... ..”.

It is therefore for the above reasons and without much ado that I grant all the reliefs in the counter-claim of the 1st and 2nd defendants.

1st and 2nd Counter-Claimants' Counsel: I am asking for a cost of N5,000,000. This case lasted 7 years. And I have been coming from Lagos. I made appearances of 17 times out of 19 court sitting. I filed some processes too.

Court: I have considered the application for cost of N5M. the counter-claimant counsel appeared diligent and professional in handling this case out of a total of 19 court sitting, he was present in court 17 times. And he was always coming from Lagos.

Furthermore, he filed some processes in court for which the party paid some fees as can be seen from the receipt in the record of the court.

Cost is not to be punitive against the losing party but it is just meant to indemnify the successful party of the expenses incurred in the prosecution of the case.

It is for the above reasons that I award a sum of N250,000 (Two Hundred and Fifty Thousand Naira) only against the plaintiff in favour of 1st and 2nd defendants/counter-claimants.

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S. B. Belgore
(Judge) 09-12-2020.