

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT MAITAMA

BEFORE HIS LORDSHIP: HON. JUSTICE Y. HALILU

COURT CLERKS : JANET O. ODAH & ORS

COURT NUMBER : HIGH COURT NO. 22

CASE NUMBER : SUIT NO: CV/252/19

DATE: : TUESDAY 8TH DECEMBER, 2020

BETWEEN

EWUZIE CHARLES IKEOKWUADIM.... CLAIMANT

AND

WINNING CLAUSE LIMITED DEFENDANT

JUDGMENT

By a Writ of Summons dated 6th November, 2019 and filed on the same day, the Claimant initiated this suit against the Defendant claiming the following reliefs:-

- a. The sum of N7,500,000.00 (Seven Million, Five Hundred Thousand Naira) only being the total sum for the use and occupation of the Claimant's property for five (5) years from 1st March, 2014 to 1st March, 2019.
- b. The sum of N9,500.00 (Nine Thousand, Five Hundred Naira) daily as mense profit from 2nd March, 2019 till possession is given up.
- c. Possession for personal use.

- d. 10% interest on the judgment sum until same is fully liquidated.
- e. Cost of this action.

In response to the suit of the Claimant, Defendant filed a statement of defence on the 6th day of December, 2019. The Defendant contested the suit on the basis of the said statement of defence dated 6th December, 2019 and filed on the same date.

In response to the Defendant's statement of defence, Claimant filed a reply.

At the trial, Claimant called one witness, Charles Uzoka, who testified as the PW1. The said Charles Uzoka is one of the legal practitioners briefed by the Claimant to prosecute this suit. The said PW1 tendered the following documents:-

1. Terms of Settlement – Exhibit ‘A’
2. Judgment of the FCT High Court – Exhibit ‘B’
3. Consent Judgment – Exhibit ‘C’
4. Writ of Summons – Exhibit ‘D’

On her own part, the Defendant called one witness, Chris Afunogu, who testified as DW1 and tendered one document, a certified true copy of a notice of appeal which was admitted in evidence as Exhibit ‘E’. In the course of the cross – examination of the DW1, the following documents were tendered through him by the Claimant:

1. Originating Processes in Suit No. **FCT/CV/1624/2015** and Suit No. **FCT/HC/CV/252/2019** – Exhibit ‘F’.

2. Uncertified photocopies of the Claimant's International Passport and Resident Permit – **Exhibit 'G'**.

The facts of the Claimant's case is as thus;

That Claimant bought a parcel of land within a large estate plot from one Saraha Homes Nigeria Limited for the construction of a four bedroom duplex sometime in the year 2010, and succeeded in erecting the building without any disturbance whatsoever from any quarter not until the Defendant came sometime in the year 2012 and started laying claim to the ownership of the estate where the building was erected.

It happened that after the Claimant and other subscribers to the estate had paid Saraha Homes Nigeria Limited and completed most of their

buildings; the Federal Capital Territory Administration (FCTA) went and for whatever reasons, allotted the same parcel of estate land to the Defendant herein sometime in 2012, and that led the Defendant on record to sue as Plaintiff in Suit No: **FCT/HC/CV/3913/2012** wherein the matter was amicably settled and it was agreed that all the subscribers that had completed payment will have their payment transferred to the Defendant herein; while those with outstanding balance should now pay directly to the Defendant.

Claimant in this case having paid his full amount to Saraha Homes Nigeria Limited, expected to have quiet enjoyment of his house as what he had paid was passed to the Defendant in line with the

terms of settlement and consent judgment in **FCT/HC/CV/3913/2012**.

It was when the Defendant herein started making further subtle demands on the Claimant to pay more money that he came to court as Plaintiff in suit No. **FCT/HC/CV/1624/2015** for the interpretation of the consent judgment entered in **FCT/HC/CV/3913/2012** as it relates to his interest wherein Judgment was entered in the Claimant's favour.

Whereas it is the case of the Defendant as distilled from the witness statement on oath of DW1 that the Defendant did not forcefully take possession of the Claimant's property but Plot 67, Kafe District, Abuja was allocated to the Defendant for Mass Housing Development by the Hon. Minister of FCT.

And that without the consent of the Defendant, One Sahara Homes Limited trespassed on the said plot, and sold same to numerous subscribers including the Plaintiff.

Defendant avers that in an effort to recover its land from Sahara Homes Limited instituted **Suit No. CV/3913/2012 WINNING CLAUSE LIMITED VS SAHARA HOMES LIMITED & 3 ORS** at the High Court of the FCT and that based on the Judgment of the trial court, Sahara Homes Limited vacated the said plot and yielded possession thereof to the rightful owner. The Defendant took over the property and assumed full ownership, control and administration of the property.

That this Suit is caught up by the doctrine of res judicata having been earlier decided by the High

Court of the FCT in Suit No.
**FCT/HC/CV/1620/2015:EWUZIE CHARLE
IKEOKWUADIM VS WINNING CLAUSE LTD
& 4 ORS.**

At the close of the parties case, suit was adjourned for adoption of final written addresses.

The Defendant filed it written address wherein a sole issue to wit; *whether the Claimant has established his case on the preponderance of evidence and balance of probabilities thus entitling him to the reliefs sought.* Was formulated for determination.

Learned counsel submit that Section 126 of the Evidence Act 2011 provides as follows:-

“Subject to the provisions of part III oral evidence must in all cases whatsoever, be direct.

- a. *If it refers to a fact which could be seen, it must be the evidence of a witness who says he saw that fact;*
- b. *If it refers to a fact which could be heard, it must be the evidence of a witness who says he heard that fact;*
- c. *If it refers to a fact which could be perceived by any other sense or in any other manner, it must be the evidence of a witness, who says he perceived that fact by that sense or in that manner;*
- d. *If it refers to an opinion or to the grounds on which that opinion is held, it must be the evidence of the person who holds that opinion on those grounds”.*

That in the instant case, the evidence adduced by PW1 was hearsay and ought to be discountenanced. ***KALA VS POTISKUM (1998)3 NWLR (Pt. 540)1 at Page 15 – 16.***

Learned counsel submit further that hearsay evidence is all evidence which does not derive its value solely from the credit given to the witness himself, but which rests also in part, on the veracity and competence of some other person. And that the entire evidence of the Claimant's sole witness (PW1) is hearsay and therefore, inadmissible.

FUNTUA VS TIJANI (2011)7 NWLR (Pt. 1245)130 at 153.

It is further the argument of learned counsel that Exhibit 'G' consists of photocopies of the Claimant's International Passport and Resident

Permit and that these two documents which were neither pleaded nor frontloaded by the Claimant were tendered through the Defendant's witness (DW1). And that these two documents are clearly irrelevant in this case.

That photocopies of the Claimant's International Passport and resident permit, are purely public documents and only Certified True Copy (CTC) of its is admissible.

Learned counsel urged the court to dismiss this suit on the ground of the above.

On it part, learned counsel for the Claimant formulate a lone issue for determination to wit;

Whether or not the Claimant has proved his case on a preponderance of evidence to be entitled to Judgment on all the heads claim.

It is the argument of the learned counsel that he who alleges must prove and that a Plaintiff wins on the strength of his case and not on the weakness of the defence. Section 131(1) of the Evidence Act, 2011.

Learned counsel submit that it is in evidence that the Defendant has been in occupation of the Claimant's property since March, 2014 till date without any lawful justification was clearly unlawful.

Counsel contended that from the statement of claim, the Claimant is claiming the sum of N3,500,000.00 (Three Million, Five Hundred Thousand Naira) only per year which amount to N17,500,000.00 (Seventeen Million, Five Hundred Thousand Naira) for five years from 1st March, 2014 to 1st March, 2019 and that where rent is not fixed or agreed upon by parties, a court is at liberty to look at the facts and

other surrounding circumstances and fix a reasonable amount as the rent chargeable.

Learned counsel submit further that on the allegation of the Defendant that Section 38 provides that hearsay evidence is not admissible except as provided in this part or by or under any other provision of this or any other Act. And that the evidence of a statement made to a witness by a person who is not himself called as a witness may or may not be hearsay. It is hearsay and inadmissible evidence when the object of the evidence is to establish the truth of what is contained in the statement. ***OKPA VS STATE (2014)13 NWLR (Pt. 1424)225 at 249 Para C – D.***

Learned counsel submit that Exhibit ‘G’ which is copy of data page of the Claimant’s International

Passport and his Resident Permit in South Africa conclusively proves that the Claimant is indeed resident in South Africa and the contention by the Defendant that this court should not ascribe any evidential value to Exhibit 'G' on the ground that it ought to be certified as a public document is unfounded under our laws.

That Section 102 of the Evidence Act, 2011 clearly defines what a public document is and does not include a public document in private hands. ***A.G VS AGBAKOBA (1999)3 SCNJ Page 1.***

Learned counsel submit further that evidence elicited from witness during cross-examination can be used to obtain Judgment.

AKOMOLAFE VS GUARDIAN PRESS LTD. (2010)24 WRN Page 1.

Court was urged to grant the Plaintiff the reliefs sought.

Upon service, learned counsel for the Defendant reply on point of law wherein counsel submit that oral evidence of PW1 cannot be in line with Section 115(4) of the Evidence Act which deals with only affidavit evidence.

On admissibility of Exhibit 'G', counsel argued that there is nothing that stops a person to testify for another who is far away and not readily available to testify, however, the person testifying must testify as to facts within his personal knowledge, if he recites to the court what he heard from the party calling him, that of course is hearsay and inadmissible.

Court:- after evaluation evidence adduced by both Plaintiff and Defendant, the issue *whether Plaintiff*

has proved its case against Defendant to be entitled to the reliefs sought has been formulated by this Court for determination.

The position of law is that he who alleges a fact must prove by evidence is still the law.

The burden therefore is on Plaintiff to establish their claim.

The onus rests on the party that will fail if no evidence is led at all.

ARASE VS ARASE (1981)5 S.C 33 at 37 Section 131 – 134 of the Evidence Act, 2011.

Indeed, Plaintiff must therefore lead evidence to prove the facts on which he has premised his action, such evidence must be credible, valuable and of such quality as to have probative value. *FANNAMI VS*

***BUKAR (2004) ALL FWLR (Pt. 1619)1210 at 1260
– 1261.***

In establishing its case, plaintiff called a sole witness (Charles Uzoka) who was working at the Law Firm of Dux Ducis Chambers at the time the Claimant briefed the firm to represent him.

It is the contention of the Defendant that PW1 evidence amount to hearsay and therefore same should be expunged from the evidence.

Indeed, the law provides that evidence must in all circumstances be direct, it must be the evidence of the person who either saw, heard, perceived or held opinion whichever may be applicable. Section 126 of the Evidence Act, 2011.

***ZENITH BANK PLC. VS EKEREUWEM (2012)4
NWLR (Pt. 1290) 207 at 233.***

Section 37 of Evidence Act defined hearsay to means “a statement (a) oral or written made otherwise than by a witness in a proceeding or (b) contained or recorded in a book, document or any record whatsoever, proof of which is not admissible under any provision of this Act, which is tendered in evidence for the purpose of proving the truth of the matter stated in it”.

In ***OKPA VS STATE (2014)13 NWLR (Pt. 1424) 225 at 249 Paragraph C*** held as follows:-

“Evidence of a statement made to a witness by a person who is not himself called as a witness may or may not be hearsay. It is hearsay and inadmissible evidence when the object of the evidence is to establish the truth of what is contained in the statement. It is not hearsay and admissible when it is

proposed to establish by evidence, not the truth of the statement, but the facts that it was made”

The question is, does the evidence of PW1 amount to hearsay?

For avoidance of doubt, I shall reproduce the relevant paragraphs of PW1 witness statement on oath to ascertain whether same is a hearsay evidence.

Paragraph 1 ***“That I am a Legal Practitioner who was working at the Law Firm of Dux Ducis Chambers at the time the Claimant briefed the Firm to represent him over the issues he had with the Defendant herein”.***

Paragraph 3 ***“That except otherwise stated that all the facts deposed herein as related to me by the Claimant himself when he came to our Office at***

No. 9 Lumsarstreet behind Sheraton Hotel Zone 4, Wuse Abuja on Friday, 13th February, 2015 and further telephone conversation we had in the course of handling his case which I believe to be true and correct. I also gathered other facts in the course of being part of the Legal Team that prosecuted his case in Suit No. FCT/HC/CV/1624/2015”.

As stated in the preceding part of this Judgment, Evidence of a statement made to a witness by a person who is not himself called as a witness may or may not be hearsay. It is hearsay and inadmissible when the object of the evidence is to establish the truth of what is contained in the statement. It is not hearsay and admissible when it is proposed to establish by evidence not the truth of the statement but the fact that it was said.

It is instructive to state here that the object of the evidence of PW1 is not to establish the fact that the Claimant made some statement to PW1 but to establish the truth of what is contained in the said statement.

A piece of evidence is hearsay if it is evidence of the contents of a statement made by a witness who is himself not called to testify. ***UTTAH VS THE STATE (1992)2 NWLR (Pt. 223)257 at 273.***

I must observe here that Section 115(4) of the Evidence Act, 2011 does not apply to a witness statement on oath but applies to affidavit in originating summons and other proceedings conducted on affidavit evidence. A witness statement on oath is different from affidavit in that,

it is like pleading and may be said to be worthless until it is adopted by the Deponent.

FUNTUA VS TIJANI (2011)7 NWLR (Pt. 1245) 130 at 153.

From above, therefore, it is obvious that the entire evidence of the Claimants sole witness (PW1) is hearsay and therefore inadmissible contrary to Section 37 of the Evidence Act, 2011. I so hold.

The implication is that said evidence shall be expunge. Consequently same is hereby expunge.

Having expunge the witness statement on oath, I shall beam my searchlight on the documents tendered before the court to ascertain whether same can sustain this Judgment. Documentary evidence is the best type of evidence, oral evidence is used as a hanger from which to test the veracity of evidence

whether oral or by deposition. ***GBILEVE & ANOR VS ADDING & ANOR (2012) LPELR 14281(CA).***

It is the argument of learned counsel for the Defendant that Exhibit ‘G’ admitted in evidence should be expunged as same was wrongly admitted.

I must observe that Exhibit ‘G’ are photocopies of the Claimant’s International Passport and resident permit. The Evidence Act clearly classify the two forms of documents in Section 102 and 103 as thus;

Section 102

The following documents are public documents

- a. Documents forming the official acts or records of the official act of
 - i. The sovereign authority
 - ii. Official bodies and tribunals or

- iii. Public Officers, Legislative, Judicial and Executive, whether of Nigeria or elsewhere, and
- b. Public records kept in Nigeria of private documents.

“Whereas Section 103 of the Evidence Act, 2011 provide that all documents other than public documents are private documents”

Indeed, a party relying on Secondary evidence of a public document as in the present case must produce the certified true copy and no other copy thereof is admissible. ***MINISTER OF LANDS, WESTERN NIGERIA VS AZIKWE (1969)1 ALL NWLR 49.***

It is not in doubt that the International Passport and Resident Permit of the Claimant are public documents as they are document forming the official

acts or records of the official acts of official bodies. The fact that they are in private hands or custody does not make them private document because a private document in custody of an official body is a public document Pursuant to Section 102(a)(ii) of the Evidence Act, 2011.

The law is that, where a Trial Court or a Tribunal erroneously admits a document that is patently inadmissible, it is legally bound to expunge or reject same when giving its final Judgment even if this amounts to overruling itself to so do. ***G&T INVEST. LTD. VS WITT & BUSCH LTD. (2011)8 NWLR (Pt. 1250) 500.***

Having finds that Exhibit 'G' ought not to be admitted in the first place, same is hereby expunge from the evidence.

Having expunged PW1 witness statement on oath and Exhibit 'G' in evidence where then stand the case of the Plaintiff in view of the position of law that he who allegemust proof ***OKI VS OKI (2001)13 NWLR (Pt. 783) 89 at 105.***

A court may act on evidence elicited under cross examination of witness only where the evidence so elicited was or is relevant to the issue on hand.

Evidence elicited during cross-examination is valid and authentic as evidence given during examination in chief. Consequently, evidence elicited under cross examination is admissible provided it is relevant to the facts in issue.

NYAVO VS LADING (2018) LPELR 44086 (CA).

I shall now turn to evidence elicited under cross – examination.

The following took place during cross examination of DW1

XXX:- How long have you been working with the Defendant's company?

Ans:- January, 2015.

XXX:- In otherwords you are not privy to what happened in 2013/2014?

Ans:- As a site Manager, I am aware of what happened in every file in the office.

XXX:- Can you describe the property in issue?

Ans:- 4 bedroom duplex.

XXX:- Is the Duplex empty or occupied?

Ans:- Not occupied because it is not finished.

XXX:- What is left to be done in the duplex?

Ans:- Some windows and doors are not there.

XXX:- Do you recall that sometime in March, 2019 officers of the Execution Unit came to the property to levy execution?

Ans:- I am not aware.

XXX:- Kindly tell the court when the FCT Minister gave Defendant the allocation?

Ans:- I think 2012 but cannot be precised.

XXX:- Is it correct that at the time your company took over, the building was already there?

Ans:- Yes but unfinished. It does not have gate and a lot of things.

XXX:- Do you know one EmekaElomba?

Ans:- Yes.. the General Manager.

XXX:- Are you aware he was witness in CV/1624/15?

Ans:- Yes.

XXX:- Does your company have duplexes rented out?

Ans:- No. we sell in carcass.

XXX:- By the time you started work in 2015, who was in possession of the property?

Ans:- The Defendant.

XXX:- Including individual houses in the estate?

Ans:- Yes.

XXX:- You said the parties in the present suit are same with parties in CV/1624/15 and subject matter same?

Ans:- Yes.

XXX:- Confirm the Defendant's Estate is in Kafe District?

Ans:- Yes.

XXX:- You said Claimant has not finished paying N26.5Million?

Ans:- Yes.

XXX:- Have you written any Demand Notice to pay the money?

Ans:- I have to see the file.

XXX:- You agree that Claimant has an interest in the property?

Ans:- Yes.

XXX:- You gave evidence that Claimant does not reside in South Africa and does not have land in Defendant's Estate?

Ans:- Yes.

XXX:- Would you be surprised if you see a document showing Claimant residing in South Africa?

Ans:- Documents could be falsified.

XXX:- What is the name in the photocopied International Passport?

Ans:- Charles.

XXX:- Is the name on the International Passport, resident permit in South Africa same with the Claimant before the Court?

Ans:- It is not the same.

It has been established per adventure in the annals of our jurisprudence that evidence shall be led to prove facts pleaded and where no such evidence is led, such a fact shall be deemed abandoned of equal importance is the fact that any evidence given on what is not pleaded, such goes to no issue. See ***KWANDE & ORS VS MOHAMMED & ORS (2014) LPELR – 22575 (CA), AREWA TEXTILES PLC. VS FINETEX LTD (2003) 7 NWLR (Pt. 819) 322.***

The weight of the evidence adduced by Claimant is such that cannot sustain the case of the Claimant. Orphaned by evidence to sustain the case of the Claimant, same shall be refused and dismissed.

I hereby make an Order of dismissal of suit
No.CV/252/2019 for lacken in merit.

Justice Y. Halilu
Hon. Judge
8th December, 2020

APPEARANCE

ALOZIE M. – for the Claimant.

CHIDI OKAFOR holding the brief of **CHIDI
NWAKWO** – for the Defendant.