

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/1414/18
DATE: : TUESDAY 8TH DECEMBER, 2020

BETWEEN

MC BUDDY PROPERTIES LIMITED CLAIMANT

AND

1 OTUNBA OLAWALE OMOWUNMI } DEFENDANTS
2. DOSUNMU KEHINDE MUJIDA }

JUDGMENT

The Claimant commenced this suit against the Defendants by a Writ of Summons dated and filed on 6th April, 2018 alongside with a Statement of Claim and other processes.

By the said Statement of Claim, the Claimant claims against the Defendants jointly and severally as follows:

“N10,000.000.00 as damages for false imprisonment, assault, trespass and defamation.”

The Defendants filed their Statement of Defence/Counter Claim on 10th August, 2018, denying all the Claimant's/Defendant's Claim and by the said Statement of Defence/Counter Claim the

Defendants also Counterclaimed against the Claimant the following reliefs:

i. An Order of the court directing the Claimant/Defendant to immediately refund to the 1st Defendant/Counter-Claimant the total sum collected from her for the following:-

a. Full plot of land known and described as Hampton Park 1. Purportedly situated at Giri FCT Abuja at the sum of N455,000.00 (Four Hundred and Fifty-Five Thousand Naira) for outright payment for which she was issued a cash **Receipt No: 0000253** on the suit rely on the cash receipt issued to her by the Plaintiff.

b. Full plot of land known and described as Hampton Park 2 Garku Nasarawa State at the

sum of N250,000.00 (Two Hundred and Fifty Thousand Naira) for outright payment for which she was issued a cash **Receipt No: 0000641** on the 15th day of January, 2015. The Counter-Claimants shall at the hearing of this suit rely on the cash receipt issued to her by the Plaintiff.

- c. Full plot of land known and described as Hampton Park 2 GarkuNasarawa State at the sum of N250,000.00 (Two Hundred and Fifty Thousand Naira) for outright payment for which she was issued a cash **Receipt No: 0001537** on the 4th day of March, 2016 bought by the 1st Defendant in the name of the kid sister and the husband (Mr. and Mrs. AdesolaDapo&Gbemisola). The Counter-Claimants shall at the hearing of this suit

rely on the cash receipt issued to her by the Plaintiff.

- d. Full plot of land known and described as De-Willow's Park Estate Phase 2 Shape Village, Mpape-Extension, Nasarawa State at the sum of N250,000.00 (Two Hundred and Fifty Thousand Naira) for outright payment bought by the 1st Defendant in the name of another of her kid sister and the husband (Mr. and Mrs. Ahmed and BukolaKassim).
- g. The sum of N50,000.00 (Fifty Thousand Naira) being part payment for purported survey, sitting and legal for which she was issued a cash **Receipt No: 0000328** on 11th day of April, 2015. The Counter-Claimants

shall at the hearing of this suit, rely on the said cash receipt.

- h. The sum of N5,000.00 (Five Thousand Naira) being payment for the plot she bought in the name of her kid sister and the husband described above for which she was issued a cash **Receipt No: 0001535**.

- ii. An Order of the Court directing the Claimant to immediately refund to the 2nd Defendant/Counter-Claimants the sum of N525,000.00 (Five Hundred and Twenty Five Thousand Naira) being the total sum collected from her for the full plot of land known and described as Hampton Park 1. purportedly situated at Giri FCT Abuja at the sum of N525,000.00 (Five Hundred and Twenty Five

Thousand Naira) for paying by installment for which she was issued various cash **Receipt No: 0000276, 0000533, 0000279, 000034, 0000671, 0001192, 00000671, 0001151, and 0000504** at various dates in 2014.

- iii. The sum of N500,000,000.00 (Five Hundred Million Naira) as damages for breach of contract against the Plaintiff/Defendant to Counter-Claim in favour of the Defendants/Counter-Claimants.
- iv. The sum of N 5,000,000.00 (Five Million Naira) being the cost of prosecuting this suit.

The matter proceeded to trial and the Claimant called three witnesses, namely; **Onu Joseph** as PW1, **OjelabiOluwatosinas** PW2 and **IyaboJimoh** who is a subpoenaed Police Officer as PW3.

The brief fact of this case is that the Claimant has approached this Honourable Court alleging that the Defendants besides other people subscribed to partitions in their **Plot No. 123 Cadastral Zone, File No. FCT/GAC/RIA/MISC 58232** in GiriGwagwalada FCT – Abuja.

That after the Defendants subscribed to the partitions in the land the entire land was later revoked. The Claimant alleged to have notified the Defendants with an option of relocation or refund of money upon an application by the Defendants.

That the Defendants stormed into their office on 12th March, 2018 and demanded for refund of their money which they told the Defendants to apply in writing but the Defendants refused and turned violent and overturned all the office furniture and

began hitting them against the wall and threw down the office computers and accessories.

The Claimant further alleged that the Defendants inter-alia locked themselves and other occupants in the office and stated that until they were being paid their money. The Claimant further stated that while the Defendants were in the office, they were shouting that the Claimant was a fraudster who defrauded them.

PW1 was then cross examined by the learned counsel for the Defendant.

Under cross examination PW1 stated that he cannot tell the time he entered the Claimant's office on the 12th March, 2018 and also the time he left the office. That there was not any police officer in the Claimant's office before he left.

That he didn't know the staff of the Claimant's by name and that the Defendant held him hostage, and that he did not know the particulars of laptop and furniture that were smashed.

PW1 was discharged after cross examination. PW2 adopted his witness statement on oath and was cross examined.

Under cross examination, PW2 stated that 1st Defendant also bought plots from the Claimant in the name of other people. That he left his office by 5:00pm on the 12th March, 2018. And that he did not know who locked up office that day. That the Defendant were physically allotted their plots of land.

That the two Defendants broke into their office and damaged his system and furniture around 1 – 2pm.

And that the Defendant locked up their office until the arrival of the police at 12:20pm. That the items were damaged before the arrival of police.

PW2 was discharged. PW3 (IyaboJimoh) a subpoenaed police officer testified that on the 12th March, 2018 she was at the counter duty as the station. The Claimant came to the police station (Utako) and complained that there was a situation in their office, and that the Divisional Crime Officer (DCO) detailed her to go and she met two women at the scene. She then asked them to open the burglary, but that they refused. PW3 said she pleaded with them to no avail and had to call Divisional Crime Officer 2 (DCO) who sent two officers as reinforcement.

The padlock was later opened on the arrival of the two officers.

Claimant closed its case after cross examination to give way for defence.

Defendants in their statement of Defence/Counter-Claim denied all the Claimant's allegation and maintained that the Claimant in February, 2014 actually deceived them into subscribing to a non-existing land purportedly situate at Giri FCT Abuja for N500,000.00 and a host of other land.. DW1 also stated that after the subscription, the Claimant allotted plots to the Defendants and executed a Deed of Assignment to that effect after which the Defendants kept persuading the Claimant to take them to the land to enable them start development but all to no avail till date.

Defendants further stated that apart from the purported land at Giri, they also subscribed to various plots of land purported to be located at GarkuNasarawa State and Mpape Village Nasarawa State from the Claimant which hitherto the Claimant has failed to deliver the land to them despite repeated demands.

DW1 tendered the following documents in evidence.

1. Various Receipts (cash) issued by the Claimant.
2. Two Subscription Form
3. Provisional Allocation Letter
4. Deed of Assignment as Exhibits 'A', 'B', 'C' and 'D' respectively.

Under cross – examination, DW1 stated that the land he bought does not exist and that he has search report but not in court. He was discharged.

DW2 mounted the witness box and tendered the following documents in evidence:-

1. 8 Numbers of Cash Receipt
2. Subscription Form
3. One Provisional Allocation Letter
4. Deed of Assignment
5. Letter of Withdrawer as Exhibits ‘E’, ‘F’, ‘G’, ‘H’ and ‘I’ respectively.

DW2 was then cross examined and he stated that he did search on the land. That he did not report the matter because, the Claimant said the land was

revoked and that he will give them back their money. DW2 was discharged.

DW3 was then put in the witness box.

He adopted his witness statement on oath and was then cross examined.

Parties closed their respective cases and same was adjourned for filing and adoption of final written address.

Defendant filed its final written address and formulated two issues for determination to wit;

a. From the Claimant's pleading and the evidence in support, whether the case of defamation, false imprisonment, assault and trespass has been established against the Defendants to entitle the Claimant to damages.

b. Whether the Defendants have proven their counter-claim to entitle them to the reliefs being sought.

On issue one, from the Claimant's pleading and the evidence in support, whether the case of defamation, false imprisonment, assault and trespass has been established against the Defendants to entitle the Claimant to damages.

Learned counsel contended that, in establishing the claims of defamation, whether libel or slander, Claimant must plead verbatim in its statement of claim the exact words uttered or written by the Defendant in the language rendered. **ACCESS BANK PLC. VS MOHAMMED (2014)6 NWLR (Pt. 1464)613 at 626 Para B – C.**

Learned counsel argued that assuming without conceding that even where the Claimant succeed in pleading verbatim in their statement of claim, the exact words uttered by the Defendant, Claimant must prove the six-coterminous ingredients of Tort of Defamation as follows:-

- a. Publication of the offending words
- b. That the words are defamatory of the Claimant
- c. That the words complained or refer to the Claimant
- d. That the words were published to third parties
- e. Falsity or lack of accuracy of the words complained of and
- f. That there are no justifiable legal grounds for the publication of the words.

OGBODU VS S.S.A. (2013)3 NWLR (Pt. 1341) P. 261 at 281 – 282.

On false imprisonment, learned counsel submit that, the Claimant did not specifically plead false imprisonment in their statement of claim as the tort of false imprisonment consists of the act of continuing a lawful imprisonment longer than justifiable.

BARAU VS CHABA (1995)1 NWLR (Pt. 371) 357 at 361.

On trespass, counsel submit that for the Claimant to succeed in an action for trespass, he must plead and prove inter-alia the act of unlawful entry or unwarranted or unjustifiable entry or unauthorized entry by the Defendant. ***LEWIS VS OBAWOLE (2011)7 NWLR (Pt. 1247) 572.***

On issue two, *whether the Defendants have proven their counter-claim to entitle them to the reliefs being sought.*

Learned counsel further submit that, Defendant has proved to the satisfaction of the court that they are entitled to the reliefs sought in their counter claims.

On their part, learned counsel for the Claimant formulated three (3) issues for determination to wit;

- a. Whether the Claimant is entitled to the relief sought under the circumstances of this case.*
- b. Whether the Defendants have proved their Counter-Claimed to warrant the reliefs sought.*
- c. Whether the 1st Defendant/Counter-Claimant has locus standi to seek refund for other subscribers.*

On issue one, *whether the Claimant is entitled to the relief sought under the circumstances of this case.*

Learned counsel submit that the standard of proof is on the balance of probability. ***EHWRUDJE VS WARRI LOCAL GOVT. (2016)10 NWLR (Pt. 1520)337 Page 341 Para. 4.***

Counsel argued that defamation as a tort whether libel or slander, consists of the publication to a third person or persons or any false word or matter which tend to;

- a. Lower the person defamed in the estimation of right thinking members of society generally.
- b. To expose him to hatred, contempt, opprobrium or ridicule or

- c. To cut him off from society or cause other persons to shun or avoid him.
- d. To discredit him or injure his reputation in his office trade or profession.
- e. To injure his financial credit.

SHITTA-BEY VS FEDERAL PUBLIC SERVICE COMMISSION (1985)2 NWLR (Pt. 599) 618.

Learned counsel argued further that the evidence of the Claimant has successfully proved a case of defamation against the Defendants as the Defendants said the offending words against the Claimant.

On false imprisonment, learned counsel contended that the false imprisonment committed against the staff of the Claimant has adversely affected the working, activities and business of the Claimant.

On trespass, learned counsel also argued that trespass to land is generally rooted in exclusive possession. Therefore, all that a Claimant needs to prove is that he has exclusive possession or that he has the right to exclusive possession of the land.

Counsel maintained that from the evidence available to the court, there was trespass committed by the Defendants.

On issue two, *whether the Defendants have proved their Counter-Claim to warrant the reliefs sought.*

Learned counsel contended that a counter claim is a separate and independent action to that of a claim in a writ, neither of the two claims depend on the other for its success. ***SOLUTION LTD. VS INT'L BREWERIES PLC. (2018)16 NWLR (Pt. 1645) 377.***

Learned counsel argued further that Claimant has informed Defendants about the revocation of the land but that instead of following the normal processes as provided and advised by the Claimant, Defendants turned violent against the Claimant and its employees.

On issue three, *whether the 1st Defendant/Counter-Claimant has locus standi to seek refund for other subscribers.*

Learned counsel stated that Defendants do not have sufficient interest in a matter to claim refund as the 1st Defendant/Counter-Claimant had averred to have purchased the land for a 3rd party.

Court was urged to dismiss the counter claim and grant the Claimant's reliefs.

Court:-I have gone through the evidence (oral and documentary) ably led by Plaintiff on the one hand and the defence put forward by the Defendants cum the Counter Claim on the other hand.

The gamut of Plaintiff's action is within the realm of the tort of defamation, trespass, false imprisonment and assault.

I shall therefore, beam by judicial searchlight on the ingredients of each of the above to ascertain whether Plaintiff has established its case to be entitled to the Judgment of this Honourable Court.

Defamation has been judicially defined to embrace imputations which tend to lower a person's dignity in the estimation of the right thinking members of the society and expose him, the person so disparaged to hatred, opprobrium, odium, contempt or ridicule.

ORUWARZI VS OSLER (2013)5 NWLR (Pt. 1348)355.

There are two species of defamation; Libel and Slander. Libel is any publication in print, writing, pictures or signs that injures the reputation of somebody. Slander on the other hand, means a defamatory statement made/conveyed by spoken words, sounds looks, signs and gestures which injure the reputation of somebody. ***SOCIETY BIS S.A VS CHARZIN INDUSTRIES LTD. (2014)4 NWLR (Pt. 1398) 497.***

From the ensuing claim before the court, Plaintiff stated in paragraph 15 as follows:- ***“while slamming the office furniture against the wall and hitting the employees and a prospective client, both***

the Defendants were shouting that the Plaintiff was a fraudster who defrauded them”

Plaintiff further stated in paragraph 20 of the statement of claims that the Defendants further stated as thus;

“People gathered at the door of the Plaintiff as more noises accusing the Plaintiff of fraud were made by the Defendant”

The question that follows is, did Defendants utter the offending words?

In establishing this arm of claims, PW1 mounted the witness box, gave evidence and was cross examined.

Under cross examination, the following ensued:-

XXX:- Do you know the Defendants?

Ans:- No.

XXX:- At what time of the day did you enter the Claimant's Office on the 12th March, 2018?

Ans:- I can't tell.

XXX:- Do you know the staff of the Claimant?

Ans:- I do not know by their name.

XXX:- You claim Defendants held you hostage?

Ans:- Yes.

XXX:- Which of the Defendants held you hostage?

Ans:- It was two ladies but I do not know them.

Similarly PW3 who is a Police Officer and who testified for the Plaintiff never mentioned that Defendants called the Plaintiff fraudster.

It is instructive to state here that in establishing the claim of defamation, be it libel or slander, a Claimant

must plead verbatim in his statement of claim the exact words uttered or written by the Defendant.

ACCESS BANK PLC VS MOHAMMED (2014)6 NWLR (Pt. 1404) 613 @ 626.

Indeed, for the claims of defamation to succeed, the words must be defamatory of the Claimant.

Here, the Claimant in their pleadings only succeeded in asking for damages for defamation but failed to specifically plead defamation in their statement of claim. The only fact the Claimant pleaded is that **“both Defendants were shouting that the Claimant was a fraudster”**.

Clearly, Claimant has failed to establish a case of defamation against the Defendants.

I shall take the next issue, i.e false imprisonment.

False imprisonment is a complete deprivation of liberty of a person for any time however short without lawful excuse. The imprisonment is complete when the Defendant directly and intentionally causes the confinement of the Claimant and completely deprived him of his liberty. ***JIM JALAVS VS C.O.P (2011)2 NWLR (Pt. 1231) P. 375.***

Indeed, a complete deprivation of any person's liberty for any time, however short without lawful excuse amounts to false imprisonment and violation of the right to personal liberty guaranteed by section 36(1) of the 1999 Constitution.

The tort of false imprisonment also consists of the act of continuing a lawful imprisonment longer than

is justifiable. ***BARAU VS CHABA (1995)1 NWLR (Pt. 371) 357 at 361.***

From the definition above, its obvious that the tort of false imprisonment protects the right to personal liberty and freedom of movement of every citizens. It therefore means that it can only be committed against a natural person and not against a juristic person like the Claimant in this case. I so hold.

On the issue of trespass, it is the law that a claim for trespass to land is generally rooted in exclusive possession. Therefore, all that a Claimant needs to prove is that he has exclusive possession or that he has the right to exclusive possession of the land.

The Supreme Court in ***DANTSOHO VS MOHAMMED (2003) FWLR (Pt. 150) 1717 at 1731,*** defined trespass to land as the unwarranted or

unjustifiable entry on intrusion by one person upon the land in possession of another.

It is instructive to state here that, by virtue of contract agreement between the parties as contained in Exhibits 'A', 'B', 'C', 'D', 'E', 'F', 'G', 'H' and 'I', Defendants have the right to come to the Claimant Office pertaining to the transaction.

The Claimant pleaded that they took photographs of the Defendants during the locking and made copies of their pictures but did not tender them in court.

How is the Court expected to belief this story told by the Claimant!!!

This is a Court of law and not Court of speculation. Courts are precluded from getting involved in speculation and I shall not so speculate.

See *ONWIGBE VS EMELOMBA (2008)9 NWLR (Pt. 1092) 371 @ 411 Paras E – F CA.*

Having pleaded above fact and failed to produce evidence, the said claim of false imprisonment ought to fail..it fails and accordingly dismissed.

Next is the tort of assault.

The tort of assault is committed where the Claimant is reasonably apprehended by the direct and immediate infliction of force by the Defendants.

As stated in the preceding part of this Judgment, assault, battery and false imprisonment are the three main forms of trespass to person, and same as it affects a person's right, the safety, personal liberty and freedom of movement can only be enjoyed by natural persons and not juristic person.

How is Claimant (juristic person) expected to enjoy such a right of action under assault!

Plaintiff's action is neither here nor there..

I am certain Plaintiff's claim is standing on a very porous ground.

Lacken on merit, the action of Plaintiff is liable to fail and be dismissed. Same is hereby dismissed.

I shall now turn my searchlight on the Counter Claim of the Defendants.

A Counter Claim is to all intents and purpose a separate action, although the Defendant, for convenience and speed, usually joins it with his defence where a court so grants leave. Indeed, not only can a Defendant apply for summary Judgment

on his Counter Claim but also a Plaintiff may Counter Claim on Defendant Counter-Claim.

USMAN VS GARKE (2003) LPELR (3431) SC.

It is the contention of the Defendant to the Counter Claim that the Counter Claimant were aware that they wrote a letter to the Federal Capital Development Authority (FCDA) concerning the revocation, but the Defendants instead invaded the office of the Claimant and damaged it properties. On their part, the Counter Claimant tendered the following documents in evidence to show that they were defrauded.

1. Cash receipts issued by MC Buddy Properties Limited
2. Subscription Form issued by MC Buddy Properties Limited

3. Provisional Allocation of Plots issued by MC Buddy Properties Limited

4. Deed of Assignment.

Defendant to the Counter Claim who alleged that the properties he sold to the Counter Claimants were revoked, did not tender the Letter of Revocation and or any Correspondence between them and the issuing Authority,(Federal Capital Development Authority) (FCDA).

How then are the Counter Claimants expected to know and appreciate that the land exists and belong to the Claimant!

Counter Claimants who patronized Claimant/Defendant to counter-claim ought to be given value for their monies.

Having failed to give them value for their monies, the justice of this case suggests that they be refunded their monies..this, I dare say represent the justice of the situation which is the Counter-claim before Court. Counter-claim succeeds.

Accordingly, the following Orders are hereby made:-

i. An Order of the court directing the Claimant/Defendant to immediately refund to the 1st Defendant/Counter-Claimant the sum of the total sum collected from her for the following:-

a. Full plot of land known and described as Hampton Park 1. Purportedly situated at Giri FCT Abuja at the sum of N455,000.00 (Four Hundred and Fifty-Five Thousand Naira) for

outright payment for which she was issued a cash **Receipt No: 0000253** on the suit rely on the cash receipt issued to her by the Plaintiff.

- b. Full plot of land known and described as Hampton Park 2 Garku Nasarawa State at the sum of N250,000.00 (Two Hundred and Fifty Thousand Naira) for outright payment for which she was issued a cash **Receipt No: 0000641** on the 15th day of January, 2015. The Counter-Claimants shall at the hearing of this suit rely on the cash receipt issued to her by the Plaintiff.
- c. Full plot of land known and described as Hampton Park 2 Garku Nasarawa State at the sum of N250,000.00 (Two Hundred and

Fifty Thousand Naira) for outright payment for which she was issued a cash **Receipt No: 0001537** on the 4th day of March, 2016 bought by the 1st Defendant in the name of the kind sister and the husband (Mr. and Mrs. AdesolaDapo&Gbemisola). The Counter-Claimants shall at the hearing of this suit rely on the cash receipt issued to her by the Plaintiff.

- d. Full plot of land known and described as De-Willow's Park Estate Phase 2 Shape Village, Mpape-Extension, Nasarawa State at the sum of N250,000.00 (Two Hundred and Fifty Thousand Naira) for outright payment bought by the 1st Defendant in the name of another of her kid sister and the

husband (Mr. and Mrs. Ahmed and BukolaKassim).

- g. The sum of N50,000.00 (Fifty Thousand Naira) being part payment for purported survey, sitting and legal for which she was issued a cash **Receipt No: 0000328** on 11th day of April, 2015. The Counter-Claimants shall at the hearing of this suit, rely on the said cash receipt.
 - h. The sum of N5,000.00 (Five Thousand Naira) being payment for the plot she bought in the name of her kid sister and the husband described above for which she was issued a cash **Receipt No: 0001535**.
- ii. An Order of the Court directing the Claimant to immediately refund to the

2nd Defendant/Counter-Claimants the sum of N525,000.00 (Five Hundred and Twenty Five Thousand Naira) being the total sum collected from her for the full plot of land known and described as Hampton Park 1. purportedly situated at Giri FCT Abuja at the sum of N525,000.00 (Five Hundred and Twenty Five Thousand Naira) for paying by installment for which she was issued various cash **Receipt No: 0000276, 0000533, 0000279, 000034, 0000671, 0001192, 00000671, 0001151, and 0000504** at various dates in 2014 are hereby granted.

Trying to cheat a person out of Judgment shall be resolved by court.

Signed
Hon. Judge
8th December, 2020

APPEARANCES

EMEKA O. KING I. – for the Claimant.

WAHAB OLATOYE – for the Defendant.