

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY ABUJA**

**IN THE ABUJA JUDICIAL DIVISION**

**HOLDEN AT APO-ABUJA**

**ON THE 17<sup>TH</sup> DECEMBER 2020**

**BEFORE HIS LORDSHIP HON. JUSTICE CHIZOBA N. OJI**

**PRESIDING JUDGE**

**SUIT NO: FCT\HC\CV\1653/16**

**BETWEEN:**

**INSPIRE HOMES AND PROPERTIES LTD**

**.....PLAINTIFF**

**AND**

**ASO SAVINGS & LOANS PLC ..... DEFENDANT/COUNTERCLAIMANT**

**JUDGMENT**

Chukuwdi ..... Oli for Declaration/Count claim. Plaintiff absent and Unrepresented.

The plaintiff had filed a writ of summons and statement of claim on 6<sup>th</sup> May 2016 wherein she had sought various declaratory and monetary reliefs from the defendant. The defendant filed a statement of defence/count claim on 5<sup>th</sup> September 2016 in response to the plaintiffs claims on 28<sup>th</sup> June 2017, the plaintiff suit was dismissed by Hon. Justice F.A Ojo (nour JCA) for default of appearance. And the defendant's counterclaim adjourned to 25<sup>th</sup> October 2017 for hearing.

Subsequently the matter was resigned to this Honourable court for hearing of the counterclaim of the defendant falling the elevation of Hon. Justice Ojo to the court of Appeal.

The matter was first mentioned before this court on 11<sup>th</sup> February, 2019.

Throughout proceedings in this court, the plaintiff never put up an appearance nor was she represented by counsel.

In the Defendants counterclaimants statement of Defence and counterclaim she counterclaimed against the plaintiff as follows;

- (i) A DECLARATION that the termination of the property sales as well as the mortgage contracts, and refund of all payments made so far by the Plaintiff was valid and rightfully done by the Defendant/Counterclaimant.
- (ii) A DECLARATION that in view of the termination of the property sales as well as mortgage contracts, any rights of the Plaintiff over the property has become determined and any subsequent sale of the property made by the Defendant/Counterclaimant is lawful and valid.
- (iii) An Order of court directed to yield vacant possession of the mortgaged property to the Defendant/Counterclaimant to enable the Defendant/Counterclaimant sell same.
- (iv) An Order of Court empowered to sell the mortgaged property described as 1 unit of 4 bedroom Town House with 1 room BQ situate at House B6, Taslee Court Estate, Plot 475 Cadastral Zone AO6, Maitama, Abuja since the mortgagee's power of sale has arisen and is now exercisable.

**ALTERNATIVELY;**

- (i) **A DECLARATION** that the Plaintiff is indebted to the Defendant/Counterclaimant in the sum of N101, 135, 774.82k (One Hundred and One Million, One Hundred and Thirty-Five Thousand,

Seven Hundred and Seventy-Four Naira, Eighty-Two kob0) in the event that the court is of the opinion that the Defendant/Counterclaimant ought not to reverse the mortgage and refund all sums paid so far by the Plaintiff;

- (ii) The sum of N101,135, 774.82k (One Hundred and One Million, One Hundred and Thirty-Five Thousand, Seven Hundred and Seventy-Four Naira, Eighty-Two Kobo) being the total outstanding indebtedness of the Plaintiff to the Defendant/Counterclaimant as at the 15<sup>th</sup> day of June, 2016.
- (iii) 19.5% Percent Interest rate from 15<sup>th</sup> day of June, 2016 till judgment is given in the matter
- (iv) 10% Percent Post-Judgment Interest from the date of judgment till final liquidation of the judgment sum.
- (v) **AN ORDER OF COURT** approving the sale of the subject property by the Defendant/Counterclaimant.
- (vi) **AN ORDER OF COURT** directing the Plaintiff to reimburse the Defendant/Counterclaimant the sum of N1,000,000.00k (One Million Naira) being the sum paid by the Defendant/Counterclaimant to her solicitors, OLI & PARTNERS, as professional fees for handling this matter.
- (vii) Cost of this action

B situate at House B6, Taslee court Estate, Plot 475 Cadastral Zone A06, Maitama, Abuja sold by Aso Investment and Development Co Ltd, a subsidiary company at the material time, to the Defendant/Counterclaimant.

That the plaintiff was issued with an offer letter for the property dated 26<sup>th</sup> Day of October 2011 for the sum of N135,000,000, exclusive of 5% agency ..... of N6,750,000.

See Exhibit C1.

This offer was duly accepted by the plaintiff on 27<sup>th</sup> October 2011 and the plaintiff chose the mortgaging financing option as mode of payment for the subject property.

That by claim 2 of the property offer letter Exhibit C1, the mortgage financing option entailed a debt to equity ratio of 50%:50% (i.e the plaintiff provides 50% of the purchase price of N135,000,000 while the defendant/counterclaimant provides the balance 50% in the form of a mortgage loan). The relevant timelines for the repayment of the equity contribution by the plaintiff was similarly provided in the said clause 2.

That also under Exhibit C1, the defendant/counterclaimant reserved the right to revoke the offer at any time upon the plaintiff's failure to comply with the scheduled payments, in which case all sum paid thus far by the plaintiff would be refunded less N1m administrative charges.

That further to the above, the plaintiff vide a letter dated 5<sup>th</sup> November 2011 exhibit C2, supported by a Board Resolution (Exhibit C3 duly applied for a mortgage facility of N67,500,000 by 50% of the purchase price of N135,000,000.

By a letter dated 23<sup>rd</sup> November 2011 exhibit C4, the defendant/counterclaimant requested for some documents from the plaintiff to assist it in considering the mortgage request.

Upon supplying the documents as requested the defendant/counterclaimant vide a mortgage offer letter dated 2<sup>nd</sup> May 2012, exhibit C5 offered the plaintiff a mortgaged facility in the sum of N67,500,000 disbursable in 3 tranches as stated in exhibit C5, for a tenor of 10 years, interest rate of 19.5% and upon security of a legal mortgage over the subject property amongst other terms.

That the plaintiff duly accepted exhibit C5 and also by its Board Resolution dated 14<sup>th</sup> May 2012 exhibit C6.

The plaintiff further execution a Deed of legal mortgage. See exhibit C7 is well as a loan agreement see exhibit C8 containing the terms of the mortgage contract.

Consequently, the defendant/counterclaimant disbursed the sum of N67,500,000 to the plaintiff in 3 tranches as aforesaid of N27m, N27m and 13,500,000 on 13<sup>th</sup> August 2012, 8<sup>th</sup> August 2014 and 22<sup>nd</sup> August 2014 respectively.

See exhibit C9A & C9B

This the plaintiff was expected to commence the repayment of the facility as scheduled vide ..... installment of N1,334,545.59.

That rather than serving her repayment obligations as scheduled, the plaintiff started defaulting on her repayment obligation such that by 5<sup>th</sup> November

2014, the plaintiff had a due and unpaid sum of N3,910, 110.98k. see exhibit C10, letter of demand dated November 5<sup>th</sup> 2014

The plaintiff persisted in her default and two more demand letters exhibit C11A and C11B dated 12<sup>th</sup> November 2014 and 12<sup>th</sup> May 2015 respectively, followed, demanding payment of the due and unpaid sums of N3,905,928.89 and N7,029,008.64k In exhibit C11B, the plaintiff was informed she asked termination of the contract vide an unwinding (i.e reversal) of the mortgage and refund of all sums paid so far by the plaintiff, in line with their contractual terms.

The plaintiff however paid no heed to these demand and never responded to same.

Thus by a renovation letter exhibit C1d dated 19<sup>th</sup> June 2015, defendant/counterclaimant informed the plaintiff that its management had approved a termination of the plaintiff contract vide an unwinding (i.e reversal) of the mortgage and a refund of all sums paid so far by the plaintiff.

Nevertheless the plaintiff persisted in default, prompting yet another demand letter exhibit C12 dated 9<sup>th</sup> July 2015 from the defendant/counterclaimant demoing the unpaid sums which had increased N8,389,796.87k.

The plaintiff ignored exhibit C11 and further demand made.

In view of the plaintiff clear unwillingness and/or inability to abide by the terms of purchase of the subject property as well as her repayment obligations under the mortgage contract financing such purchase, the defendant/counterclaimant was on 31<sup>st</sup> August 2015 constrained in line with

the defendant/counterclaimant right under the contractual terms to terminate the contract by an unwinding (i.e reversal) of the mortgage and refund of all sums paid so far by the plaintiff D. see the plaintiff statement of account on 31<sup>st</sup> August 2015 highlighted as “D” on exhibit C9A.

That the right as exercised by the defendant/counterclaimant is copiously justified by a plethora of terms under the parties contractual documentation and some of the terms are as stated in paragraph 46 of the witness statement on oath are as follow

- (a) By virtue of the property offer letter dated 26<sup>th</sup> October 2011 at the last paragraph of page 2, the defendant/counterclaimant reserved the right to revoke the offer at any time upon plaintiffs failure to comply with the scheduled payments, in which case all sums paid this far by the plaintiff would be refunded less N1,000,000.00 (One million Naira) admin. Charges
- (b) By virtue of clause 3 of the loan Agreement the defendant/counterclaimant can recall the loan upon breach of the terms of the loan Agreement (such as the plaintiffs repayment default).
- (c) By virtue of clause 6 1 (a) of the loan Agreement – the Defendant/counterclaim can terminate the loan Agreement upon a repayment default by the plaintiff.
- (d) By virtue of clause 4 of the legal mortgage all monies secured by the Deed (i.e all outstanding debt sums) becomes payable immediately interalia upon demand by the Defendant/counterclaim as well as upon breach of any terms of the agreement
- (e) By virtue of clause 5 of the letter of Authority dated 4<sup>th</sup> May 2012 – See Exhibit C13 upon the borrowers repayment default, the lender is entitled

to sell the subject property at any time without giving notice to the borrower. It is therefore clear that a termination of the mortgage contract will untenably precede a sale of the mortgaged property by the Defendant/counterclaim as enabled by virtue of this documentation.

That the Defendant/counterclaim was sufficiently enabled to terminate the mortgage contract and refund all payments made so far by the plaintiff, which the Defendant/counterclaim did after the plaintiffs default and refusal to pay up despite several demand and..... Opportunity granted the plaintiff to service her repayment obligations.

That pursuant to the offer letter in respect of LEGAL AND OTHER EXPENSES” the plaintiff is obliged to reimburse the Bank for all out of pocket expenses, costs and charges incurred by the Bank in connection with the preparation, execution, administration and enforcement of the offer letter, including but not limited to solicitors fees, stamp duties and registration fees.

That the plaintiff made withdrawal from the sum refunded to her account by the Defendant/counterclaim thereby implying her whole hearted acceptance of the said reversal without any objection whatsoever.

That the total indebtedness of the plaintiff as at 15<sup>th</sup> since 2016 is N101,135,774.82k as clearly shown at the foot of the last page of the plaintiffs statement of accounts- Exhibit C14A which is the present debt position of the plaintiff assuming the property sales as well as mortgage facility contracts were not terminated and unwound (i.e reversed) reason being that the



plaintiffs 50% equity had since been paid back to her account as evidenced in the plaintiffs statement of account.

That the court is urged to enter judgment in favour of Defendant/counterclaim as per her counterclaim.

Respite hearing notice served on the plaintiff. The plaintiff did not appear in court to cross examine CW1 who on the application of Mr Abengowe for the counterclaimant, was discharged by the courts.

The counterclaimant closed her case and again on the application of Mr Abengowe, the plaintiff was foreclosed from defending the counterclaim having filed no defence thereto.

Mr Abengowe subsequently waived his right to address the court and applied for judgment in default of pleadings.

I have considered the only evidence which that of the Defendant/counterclaim before me.

CW1 testified on 16<sup>th</sup> April 2019. The plaintiff was absent and unrepresented dispute hearing notice served in her counsel's office Assistant one Emmanuel Igbawua at No 1 Otukpo street, off Gimbiga street Garki Abuja, on 23<sup>rd</sup> March 2019 for their appearance on 16<sup>th</sup> April 2019.

On 4<sup>th</sup> November 2020 when the court discharged civi and closed the plaintiffs right to defend this action and adjourned for judgment, hearing notice was served on the plaintiff on 20<sup>th</sup> October 2020 by leaving the hearing notice with the plaintiff at its office address suit 008 Dabo Plaza 73 Ladoke Akintola Bodevard Garki 2, Abuja.

Today 17<sup>th</sup> December 2020, hearing notice was again served on the plaintiff at and yet again the plaintiff is absent without any reason.

The law is trite that whose evidence adduced by a party is unchallenged and uncontradicted, the burden of proof on the plaintiff (in this case the Defendant/counterclaim ) is discharged on minimal proof. See Mr ZANG & ANOR v EMMANUEL ITUMA & ORS (2014) IPELR – 23521 (CA) per Garba JCA per 32-33 paragraph D-A; ADEWUYI V ODUKWE (2005) 7 SC (PT11) 1 at paragraph D-A.

The evidence adduced by civil is credible and tenable. I have premised the exhibits tendered by the Defendant/counterclaim , pendiculary exhibit C1, C5, C6, C7, C8 14, I am satisfied that the plaintiff failed/refused/neglected to meet up her repayment obligation on the mortgage contract she extend into with the Defendant/counterclaim despite several demands on her to do so.

The Defendant/counterclaim was therefore justified to terminate the mortgage contract and refund payments made so far by the plaintiff.

Accordingly, I enter judgment in favour of the plaintiff as claimed for;

(a) A declaration that the termination of the property sales as well as the mortgage contracts and refund of all payments made to far by the plaintiff was valied and rightfully done by the Defendant/counterclaim

(b) A Declaration that in view of the termination of the property sales as well as mortgage contracts, any rights of the plaintiff over the property has become determined and any subsequent sale of the property made by the Defendant/counterclaim is lawful and valid.

(c) The plaintiff is hereby directed to yield vacant possession of the mortgaged property to the Defendant/counterclaim to enable the Defendant/counterclaim sell same

(d) The Defendant/counterclaim is hereby empowered to sell the mortgaged property described as 1 unit of 4 bedroom Town House with 1 room BQ Situate at House B6, Taslee court Estate, Plot 475 Cadastial Zone A06 Maitama Abuja since he mortgages power of sale has arisen and is now exercisable.

Hon. Judge