

IN THE HIGH COURT OF JUSTICE OF THE F.C.T.

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT KUBWA, ABUJA

ON FRIDAY THE 5TH DAY OF NOVEMBER, 2021

BEFORE HIS LORDSHIP: HON. JUSTICE K. N. OGBONNAYA
JUDGE

SUIT NO.: FCT/HC/CV/171/16

BETWEEN:

MRS. MARIA MAGAYAKI MAREM

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PLAINTIFF

AND

MRS. GRACE ISTIFANUS

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DEFENDANT

JUDGMENT

This Court had has a few minutes ago delivered its Ruling on a Preliminary Objection filed by Mrs. Grace Istifanus dismissing the said Preliminary Objection for lacking in merit.

The Court adopt as if set here seriatim the said Ruling. As stated in the beginning of the Ruling, the Plaintiff Mrs. Maria Magayaki Marem has, through her Counsel Isaac Okpanachi, raised three (3) questions for the determination of this Court. The said questions are in a nutshell thus:

1. Whether by virtue of the Judgment of Oriji J. (now sitting in FCT Court No. 2) of 25th April, 2013 page 19 paragraph 2, that the sale of the Bungalow which is the Res in issue in that case should be declared null and void and whether the Plaintiff is not entitled to be in custody of the original letter of Allocation and the Receipt of Payment dated 24th October, 2005 and 23rd February, 2006.

2. Whether by paragraph 2 page 22 of the same Judgment, the Plaintiff is not entitled to be in custody or in possession of the original document of title to the said Res – No. 17A Barako Street and commensurate damages paid to her for the detention of the same.

3. Whether by virtue of the said Judgment it is legal for the Defendant to hold and retain the original letter of Allocation dated 26th September, 2005 and the original Receipts of 1st & 2nd Instalments dated 24/10/05 and 23/2/06 for the said Res.

The Plaintiff sought for the following 3 consequential Orders/Reliefs:

- (1) A Declaration that pursuant to the said Judgment, the Plaintiff is entitled to be in custody and hold the original allocation letter dated 26th September, 2005 and the said original Receipts of the Ad Hoc Committee of 1st & 2nd Instalments payment dated 24th October, 2005 and 23rd February, 2006 respectively.**

- (2) An Order directing the Defendant to surrender and hand over the original title documents and the said Receipt.**
- (3) Ten Million Naira (₦10, 000,000.00) as damages for detinue of the said documents the possession of which the Defendant has retained since 1st August, 2007.**

The Plaintiff supported it with an Affidavit of 4 paragraphs. He also attached 4 documents marked as EXH MM1 – MM4. The documents are letters by Emmanuel Toro & Co. dated 1/8/07, the Judgment of Oriji J. delivered on 25th April, 2013 – FCT/HC/CV/103/07. Motion M/1777/16 filed on 6th January, 2016 between the Plaintiff and Mr. Andrew Magayaki and the present Defendant – Grace Istifanus and Reply on Points of Law filed by the 2nd Defendant’s Counsel dated 25th March, 2016 in response to the said Motion M/1777/16.

In the Written Address in support the Plaintiff Counsel raised a lone Issue for determination which is:

“Whether the Defendant who has not acquired any superior interest in the Bungalow known as No. 17A Barako Street Wuse Zone 1, should not hand over the title document in her possession to the Plaintiff who has superior title and pay her damages for keeping the document from her since the 1st of August, 2007?”

He submitted that a person cannot retain goods or chooses in action belonging to another without consequences. He placed credence in the case of:

**M.F Kent (W.A) Limited V. Martchem Ind. Limited
(2000) 8 NWLR (PT. 669) 459 @ 474**

That the Plaintiff has shown in **paragraph 3 (m) & (n)** of Affidavit in support and on pages 19 & 22 of **EXH MM4** that this Court in the said Judgment of 25th April, 2013 in Case No. CV/103/07 came to the conclusion that Mr. Andrew Magayaki, the Plaintiff's husband could not transfer any title in the Res and that the Defendant did not acquire any interest legal or equitable in the said property. That there is no justice in the Defendant holding unto the property that is not her own. That the Court ought to Order her to surrender the said title documents and Receipt to the Plaintiff.

That the Defendant had detained the said land document for 9 nine years and has prevented the Plaintiff from processing the Certificate of Occupancy from the AGIS as a result of that. That the Plaintiff is therefore entitled to their return to her together with damages. That the continued retention of the documents by the Defendant is unfair. He relied on the following cases:

**Odumosu V. ACB Limited
(1976) 10 NSCC 635 @ 643**

**Labode V. Otubu
(2001) 7 NWLR (PT. 712) 256 @ 287**

That the Defendant in holding and retaining the said documents is liable to pay damages to Plaintiff for doing so. He relied on the case of:

**Ordia V. Piedmont (Nigeria) Limited
(1995) 2 NWLR (PT. 379) 516 @ 534**

That the Plaintiff could have obtained Certificate of Occupancy over the Res and be able to dispose off the Res at a good profit. That Plaintiff is therefore entitled to the document in her custody and damages for the retention payable by the Defendant.

That by the Judgment, the Defendant has not acquired the type of interest in the Res to warrant holding the documents of title to same at the expense of the Plaintiff. That Plaintiff has made demands for the documents to be released but that the Defendant has refused to surrender same. They urged Court to Order the Defendant to surrender the said documents and pay damages to Plaintiff for detaining the said documents for nine (9) years.

Upon receipt of the Plaintiff's Originating Summons the Defendant filed a Counter-Claim of 4 paragraphs on 16th June, 2021. They attached some documents marked as EXH A – K.

In the Written Address the Defendant Counsel raised an Issue for determination which is:

“Whether in view of the Claims Claimant is entitled to the Reliefs sought in its Affidavit in support of its Originating Summons.” (sic)

The Defendant Counsel submitted that contrary to the submission of the Plaintiff that the Court in the Judgment did not raise any declaration Relief stating that the Plaintiff has superior interest over the Res. He referred to **Page 10 EXH MM2** as well as **Page 11 of the same EXH MM2**. That there was no Relief against the

Defendant in the Suit. That Court is not allowed to grant any Relief not sought. He relied on the case of:

**Izedonwen V. UBA PLC
(2012) NWLR (PT. 1295) 1**

That this case and Reliefs sought is a design by the Plaintiff and her husband to defraud the Defendant of her hard earned money. That is why Plaintiff is seeking interpretation of the Judgment of Oriji J. in Suit CV/103/07. That Court should not allow itself to be used as an engine of fraud.

On the Principle of Privity of Contract, the Defendant Counsel submitted that it was the Plaintiff's husband that handed over the documents of title to the Defendant on a contract in which the Plaintiff was not a party. That Plaintiff who was not part of that contract cannot therefore take any benefit or suffer any detriment under the contract.

That a strong factor against this application is that the Judgment sought to be interpreted came up after a careful analysis of the case of the parties before this Court.

That under Privity of Contract the party who was not part of a contract cannot take any benefit or suffer any detriment under the contract as already stated. He relied on the case of:

**Osoh V. Unity Bank
(2013) 9 NWLR (PT. 1358) 1**

That Claimant said that her husband sold the Res to the Defendant in this case. That if this Court interprets this

Judgment on the precise of this application, that it would render nugatory the appeal instituted by the Defendant in respect of the Judgment which the Plaintiff seeks for interpretation before this Court. That granting the Relief sought in this case means that this Court sat over the Judgment as an Appellate Court.

That the case cited by the Plaintiff Counsel on Detinue is inapplicable as detinue is a common law action to recover personal property wrongfully taken by another person. That case of Detinue lies at the Suit of a person in actual possession of them and upon demand fails or refuses to deliver them without lawful excuses. He referred to the cases of:

**Air Liquid (Nigeria) PLC V. Nnam
(2011) 9 NWLR (PT. 1251) 61**

**SCOA Nigeria Limited V. J.A. Kehinde & Sons
(2004) 8 NWLR (PT. 874) 87**

That cause of action in Detinue accrues at the date of the wrongful refusal to deliver up the goods or property and continues until delivery up of the goods or Judgment in the action for detinue. He relied on the case of:

**Amusan V. Obideyi
(2001) 6 NWLR (PT. 710) 647**

He submitted that if the Court interprets the said Judgment in favour of the Claimant that the Claimant has failed to fulfil the condition precedent in filing this Suit by serving a demand letter on the Defendant (Sic).

He urged Court to so hold. That action in detinue cannot be commenced by way of Originating Summons in view of

the contentious nature of the case. That this application is unknown to law and that it constitutes an abuse of Court Process and ought to be dismissed. He relied on the following cases:

**Commission for Education Imo State V. Amadi
(2013) 13 NWLR (PT. 1370) 133**

**Ogboru V. Uduaghan
(2013) 13 NWLR (PT. 1370) 33**

He urged the Court to dismiss the Suit with substantial cost.

Upon receipt of the Counter the Claimant file a 4 paragraphs Further and Better Affidavit and Reply on Points of Law in support of the Originating Summons.

In the Further and Better Affidavit the Plaintiff averred that the Defendant was given a notice to produce the original documents of title by the Plaintiff in the case in which the said Judgment was delivered. But that the Defendant refused to do so. He referred to EXH MM1 particularly paragraph 16 of Plaintiff's Reply to Defendant's Statement of Defence and Defence to the 2nd Defendant's Counter-Claim. That if the Defendant had produced the original title documents and Receipts, the Claimant would have applied for them and obtained them at conclusion of the case before the Court. That the Defendant had adamantly held on to the original documents of the said property to which she has not acquired any interest, legal or equitable despite the valid Notice to Produce. That there is no pending Appeal filed by the Defendant. That what the Defendant has in the Court of Appeal is only Motion for Extension of Time to

Appeal and not a valid Appeal. That the Defendant continued to hold on the said documents of a property in which she has no interest.

In the Reply on Points of law to the Defendant's Written Address the Plaintiff raised an Issue for determination which is: what the Defendant raised in their Written Address:

“Whether in view of the facts the Claimant is entitled to the Reliefs sought in her Affidavit in support of the Originating Summons.”

The Plaintiff submitted that they did not seek any Relief in the Affidavit in support of Originating Summons. That all the facts related in the Defendant's Counter Affidavit which do not address the content of the said Judgment are irrelevant. That paragraph 3 (a) – (s) are all unnecessary since they say nothing concerning the said Judgment. They urged Court to discontinuance same. That the Judgment was in favour of the Claimant and Court forbade Andrew Magayaki Marem from selling the property without Claimant's consent. That in paragraph 2 of page 22 of the said Judgment the Court held that the Defendant did not acquire a legal or equitable interest in the property in dispute. Therefore she cannot hold unto the documents of Title.

On the submission that the Claimant cannot make a claim against the Defendant, she not being a party to the contract between the Defendant and Andrew Magayaki Marem, her husband.

That by that, it is the Defendant that is going into the facts of a case already decided by the Court in the said

Judgment. That issue of privity is not up for determination in this Suit but the interpretation of what the Judgment said concerning who acquired what interest in the property in dispute.

That Defendant has no pending Appeal anywhere. That in this case this Court is only called upon to grant the Claimant what it mistakenly did not ask for at the dispute before Origi J. That Plaintiff has not lost the right to seek for the remedies sought in this Suit – Ibi Jus Ibi Remedium. That in the Judgment the Court had determined that Defendant acquired no interest in the disputed property.

On the question of the authorities cited by the Plaintiff not being applicable, they submitted that they leave the issue for the Court to determine. That Defendant did not depose to in their Counter Affidavit that Plaintiff did not make any demand for the title documents and that it goes to no issue.

That the Plaintiff had made extensive submission to show that the Suit is not an abuse of Court Process. That in conclusion the Counter by Defendant did not join issues on the facts with the Claimant's Affidavit.

That the Judgment clearly stated that the Defendant did not acquire any legal or equitable interest in the Res. That the Judgment never determined issue of collusion and that question of privity of contract never arose at all. That there is no pending Appeal by the Defendant. That the present claims were never pronounced in the said Judgment and therefore the Principle of Res Judicata does not apply.

COURT:

In any matter predicated on Originating Summons the Court is called upon to interpret the questions raised and to make, as the case may warrant, the consequential Order. The Court is not called upon to raise issue which has already been determined in any Judgment already delivered. The Court can only, as the situation may warrant, affirm what a Court of co-ordinate jurisdiction had pronounced.

In this jurisdictional cline, Originating Summons is one of the ways to commence an action in our Court. See **Order 2 Rule 3 – 6 FCT High Court Rules 2018.**

Once an action concerns the construction of content of a document – deed, contract, will or other written documents and for the determination of any question of construction and declaration of the right of the persons interested, the Court has the jurisdiction to entertain such action. See the provision of **Order 2 Rule 3 (1) FCT High Court Rules 2018.**

In this case, the Court is called upon to determine the two (2) questions raised by the Plaintiff and to grant the consequential Order. Going by the two (2) questions, the Court is not called upon to interpret the Judgment of my Senior Brother Oriji J. but is called upon to determine or interpret the construed questions raised by the Plaintiff which is NOT an interpretation of the said Judgment as the Defendant has erroneously conceived. It is imperative to state that since the question sought to be constructed emanated from the said Judgment of Oriji J. delivered on

25th April, 2013 there is no how this Court cannot from time to time refer to it.

The question in a nut shell is whether going by the said Judgment the purported sale of the Res – Bungalow in issue in that case to the present Defendant – Grace Istifanus, should not be declared null and void.

Having gone through the said Judgment this Court holds that the said purported sale of the Bungalow is null and void going by the said Judgment.

In the said Judgment, Oriji J. had elaborately analysed the difference between the equitable and legal right and how and when it can be transferred and acquired. In the said Judgment, the Court specifically stated that the Plaintiff had established that a resulting trust was created in her favour by virtue of the payment of ₦3.9 Million. That the Plaintiff and the 1st Defendant had joint ownership in the property. **See page 18 of the Judgment.** And that the property is a family property.

The Court had further held that the 1st Defendant in that case who is the husband of the Plaintiff cannot sell the said family property without the consent of the Plaintiff. That being the case, any sale or purported sale, previous or current, cannot stand. Such sale or purported sale by the virtue of the pronouncement of the Court in **page 11 of the Judgment**, is null and void for as long as such sale was done without the consent of the Plaintiff – Maria Magayaki Marem. So this Court holds.

Flowing from that, the alleged or purported sale of the said property by the husband of the Plaintiff – Andrew Magayaki Marem to the present Defendant – Grace

Istifanus is therefore Null and Void and of no effect because Andrew Magayaki Marem did not first sought and obtain the consent of the Plaintiff – Maria magayaki.

Based on the nullity of the said sale of the property to the Defendant, the said Defendant has no right to hold and or keep in her custody the documents of the said property – the original Letter of Allocation of the said property – Plot 17A (Old 605)A Barako Street, Wuse Zone 1, Abuja FCT dated 26th September, 2005. She, the Defendant, has no right to be in custody or hold the receipts of payment dated 24th day of October, 2005 and 23rd day of February, 2006 pertaining to the said property since the purported sale is null and void. For further emphasis the Court stated thus:

“.. the 1st Defendant (Andrew Magayaki Marem) cannot sell the trust property without the consent of the Plaintiff.”

It was not in doubt that the said Andrew sold the property in question to the Defendant and handed over the said original documents to the Defendant. There is no evidence to show that the Defendant had returned the said documents to the said Andrew Magayaki Marem before or even after the Judgment of 25th April, 2013 was delivered. By virtue of the said pronouncement by the Court – Oriji J. the said Andrew has no right to sell and relinquish the original documents of the property and Receipts of payment to the Defendant or any person without the consent of the Plaintiff. Again, there is no evidence that the Plaintiff’s consent was obtained.

The present Defendant in this Suit knows that she also knows that the Court had by its pronouncement impliedly declared the purported sale of the property to her by the said Andrew a nullity and of no effect. She has no right to continue to hold on to the said document. So this Court holds.

By virtue of the said Judgment, the Defendant who is also the 2nd Defendant in the said Judgment of 25th April, 2013 did not according to the Judgment.

“The 2nd Defendant (Grace Istifanus – the Defendant in this case) did not acquire any legal interest in the property.”

The above need no further elucidation. It means that the Defendant did not acquire any equitable interest from the purported sale of property which she claimed was sold to her by the said Andrew Magayaki Marem. So the Court had decided in the said Judgment.

The Court further declared that in the same **page 22 of the Judgment of 25th April, 2013** thus:

“The equitable right or interest of the Plaintiff (Maria Magayaki Marem, the same Plaintiff in the present Suit) in the said property will have priority over interest of the 2nd Defendant (Grace Istifanus who is the Defendant in the present case).

All emphasis mine.

Going by the clear Statement of the Court by Oriji J. in the said Judgment of 25th April, 2013 the Plaintiff Maria Magayaki’s equitable right and interest is superior and

has priority over any equitable right and interest the Defendant may have or purported to have over the property which was purportedly sold to her by the husband of the Plaintiff, Andrew Magayaki Marem. So whatever equitable interest and right she claims to have acquired from Andrew Magayaki by virtue of any transaction she had concerning or pertaining to the said Res is of less priority and inferior to that acquired by the Plaintiff since the said purported sale of the property to her is nullity. It was done without the consent of the Plaintiff. So whatever equitable interest and right she purportedly acquired from the said sale is/has less priority to that of the Plaintiff who has superior trust in the family property.

Since the Plaintiff has such priority over the equitable right and interest purportedly given to the Defendant, the Defendant has no right to be in possession or custody of the said original title documents of the property – Plot 17A (Old 605A) Bamako Street Wuse Zone 1, Abuja.

The Plaintiff, having a superior and priority equitable right and interest in the said property by virtue of the decision and pronouncement of the Court in the said Judgment at **page 22** where the Court stated that **“the 2nd Defendant did not acquire a legal interest in the property, the Plaintiff – Maria Magayaki Marem is entitled to be in custody and possession of the said documents of title – Original Letter of Allocation of the said property.”** The Defendant has no right in law and equity to continue to be in possession and custody of the said document of the property and the receipt of payment especially after the decision of the Court that

had estopped the said Andrew Magayaki Marem from selling the said property. That means that any sale made by the said Andrew Magayaki prior to the Judgment and/or after, is a nullity as he is estopped from selling. So the so called purported sale to the Defendant – Grace Istifanus, is a nullity. That is why this Court strongly and boldly holds that the Defendant, Grace Istifanus, **has no right** to be in possession and in custody of the document of title – Original Letter of Allocation of the property. More so where the Court had held that she has not acquired any legal interest in the property and that the equitable interest and right of the Plaintiff is superior and has priority over the Defendant's own.

The Plaintiff therefore has a right and is entitled to be in possession of the original Letter of Allocation of the Res and the said two (2) Receipts of Payment dated 24th October, 2005 and 23rd February, 2006. So this Court holds.

In the Judgment, the Court had declared that the said property cannot be sold without consent of the Plaintiff. It clearly means that the alleged purported sale by Andrew Magayaki to the Defendant is a nullity as there is no evidence to show that the consent of the Plaintiff was sought and obtained before or prior to the sale of the Res to the Defendant. To that extent, this Court holds that the said sale of the property is null and void and of no effect, same having been done without the consent of the Plaintiff.

The granting of Perpetual Injunction restraining the said Andrew Magayaki or any body from him, his agents, servants and privies from selling or attempting to sell the

said property further confirms that the Defendant has no right to hold the original Letter of Allocation of the said property and/or the two (2) Receipts of the Payment made in respect of the said property. Holding and continuous holding or being in possession and custody of the said original Letter of Allocation and the said Receipts especially after the said Judgment was delivered is wrong. The Defendant had no right to do so and the Plaintiff is entitled to be in possession and custody of the said documents of title and the Receipts since the sale of the Bungalow was done without her consent and as such the said sale is null and void. So this Court holds.

Going by the said Judgment as repeatedly stated above, it is illegal for the Defendant to hold and continue to hold and retain the said original document of title and receipts. More so, when the sale was null and void and the consent of Plaintiff having not been sought and obtained before the sale.

Again, the Court had made an Order of Perpetual Injunction restraining the said Andrew Magayaki, his agents, privies and all claiming through him, from selling. So the purported sale ab initio is a nullity and continued to be a nullity.

Since that is the case, the Defendant has no right to retain and be in possession or custody of the said document because she cannot place something on nothing and expect it to stand. Since the sale cannot stand by virtue of the Judgment of 25th April, 2013 her right to be in possession and custody of the said document of title and Receipt of the property cannot

stand and is no longer in existence. So this Court further holds.

The Plaintiff who has superior equitable right and interest has a right and should be in possession of those documents without any further delay. So this Court further holds.

This Court therefore answers the three (3) in the affirmative same as to payment of Damages for detention of the said documents of title and the Receipts. There is no doubt that the Plaintiff has an immediate right to possession of the said documents against the Defendant who is till now is in actual possession of the said documents. The Plaintiff has a right to sue in detinue as she did. By virtue of the Judgment the Defendant's claim to ownership has collapsed by the nullification of the sale of the property.

The Plaintiff has sued for the specific restitution of the documents of title. She sued in Detinue not in trover. See Blacks Law Dictionary page 481 9th Edition.

Since Defendant by virtue of the said judgment has no claim of ownership any longer having not acquired any legal right, this Court cannot award any Damage on ground of detinue. Though the Plaintiff has a right to sue in detinue. No Damages awarded.

This Court therefore finally holds that the Plaintiff is entitled to be in custody of the, and to hold the said original documents of title and the said Receipts of the property.

This Court hereby Orders the Defendant, Grace Istifanus to immediately surrender and hand over the original title documents of the property – Original Letter of Allocation dated 26th September, 2005 and the said Receipts of Payment dated 24th October, 2005 and 23rd February, 2006 respectively of the property to the Plaintiff – Maria Magayaki Marem.

No monetary Damages awarded against the Defendant for being in possession of the said documents.

But if the Defendant fails to release the said original documents of title and the Receipts of Payment within the next twenty one (21) days after this Judgment, she shall pay Five Thousand Naira (₦5, 000.00) for everyday she continued to retain the documents in her possession and custody.

This is the Judgment of this Court.

Delivered today the ____ day of _____ 2021 by me.

K.N. OGBONNAYA
HON. JUDGE