

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT MAITAMA – ABUJA**

**BEFORE HIS LORDSHIP: HON. JUSTICE. H. MU'AZU
SUIT NO: FCT/HC/GAR/CV/388/2023
DELIVERED ON THE 11/07/2024**

BETWEEN:

HILLTRUST GLOBAL INVESTMENT LTD.....CLAIMANT

AND

MR. MUSA TAKAT YILDIYEL.....DEFENDANT

JUDGMENT

The Claimant an investment company incorporated under the Laws of the Federal Republic of Nigeria approached this Hon. Court via an Originating Writ of Summon undated but filed on the 18th day of July, 2023 and formulated the following questions for determination to wit;

- 1. Whether as provided in the laws of the federation of Nigeria, the Power of Attorney, Deed of Assignment, Mortgage Deed and Memorandum of Understanding in respect to the property known as plot No. 18872, file No. Ns 18872, measuring 966.00 Square Meters, situate at Cadastral Zone A35, Karu L.G.A, Nasarawa, covered by certificate of Occupancy No. 11ae0-3decz-70d7r-69dcu-20 signed between the**

borrower and the lender are legal, subsisting and binding?

2. Whether as provided in the laws of the federation of Nigeria, the Defendant's failure to pay back the loan as at when due as contained in the Power of Attorney, Deed of Assignment, Mortgage Deed and Memorandum of Understanding in respect to the property know as plot No. 18872, file No. Ns 18872, measuring 966.00 Square Meters, situate at Cadastral Zone A35, Karu L.G.A, Nasarawa, covered by certificate of Occupancy No. 11ae0-3decz-70d7r-69dcu-20 is a breach and right of redemption of the Defendant over the property in respect of the said property is foreclosed.

3. Whether by the interpretation of the Power of Attorney, Deed of Assignment, Mortgage Deed and Memorandum of Understanding in respect to the property know as plot No. 18872, file No. Ns 18872, measuring 966.00 Square Meters, situate at Cadastral Zone A35, Karu L.G.A, Nasarawa, covered by certificate of Occupancy No. 11ae0-3decz-70d7r-69dcu-20 signed voluntarily by the parties, the Claimant is entitled to possession of the property known as property known as plot No. 18872, measuring 966.00 Square Meters, situate at Cadastral Zone A35, Karu L.G.A, Nasarawa, covered by certificate of Occupancy No. 11ae0-3decz-70d7r-69dcu-20

Upon the determination of the questions, the Claimant sought for the following reliefs against the Defendant to wit;

1. ***A DECLARATION*** that the Power of Attorney, Deed of Assignment, Mortgage Deed and Memorandum of Understanding on the property known as plot No. **18872**, file No. **Ns 18872**, measuring **966.00** Square Meters, situate at Cadastral Zone **A35**, Karu L.G.A, Nasarawa, covered by certificate of Occupancy No. **11ae0-3decz-70d7r-69dcu-20** are valid, subsisting and binding on the parties.

2. ***A DECLARATION*** that the Defendant's right of redemption over the Power of Attorney, Deed of Assignment, Mortgage Deed and Memorandum of Understanding in respect to the property known as plot No. **18872**, file No. **Ns 18872**, measuring **966.00** Square Meters, situate at Cadastral Zone **A35**, Karu L.G.A, Nasarawa, covered by Certificate of Occupancy No. **11ae0-3decz-70d7r-69dcu-20** voluntarily by the parties is foreclosed

3. ***AN ORDER*** of this Honourable Court granting the Claimant possession of the said property or alternatively sell the property known as the property known as **plot No. 18872**, file No. **Ns 18872**, measuring **966.00** Square Meters, situate at Cadastral Zone **A35**, Karu L.G.A, Nasarawa, covered by **Certificate of Occupancy No. 11ae0-3decz-70d7r-69dcu-20** for the purpose of realizing the loan sum and the accrued interest of Seven Million, Five Hundred and Ninety Thousand Naira

(~~₦~~7,590,000.00) only as at June, 2023, borrowed by the Defendant from the Claimant which is the indebtedness owed the Claimant by the Defendant.

*4. **AN ORDER** of injunction restraining the Defendant whether by himself, his agents, or privies from interfering with the Claimant's ownership and exercise of her accrued rights over the said property.*

5. And for such further orders this Honourable Court may deem fit to make in the circumstances.

In support of the application is an affidavit of 10 paragraphs duly deposed to by one Emmanuel Onofua the Managing Director of Hill Trust Global Investment Ltd.

It is the deposition of the Claimant that the Defendant i.e. the beneficial and legal owner of the property known as plot No. **18872**, file No. **Ns 18872**, measuring **966.00** Square Meters, situate at Cadastral Zone **A35**, Karu L.G.A, Nasarawa, covered by Certificate of Occupancy No. **11ae0-3decz-70d7r-69dcu-20**. And that on 10th June, 2020, the Defendant approached the Claimant in the ordinary course of its business as a Money Lender for the purpose of securing a personal loan to meet urgent personal need of the sum of One Million, Five Hundred Thousand Naira (~~₦~~**1,500,000.00**) only with **10%** interest rate flat/monthly for three (3) months tenor which condition were stated in an offer letter. It is case of the Claimant that the Defendant accepted the offer with terms

therein and signed Power of Attorney; Deed of Assignment, Mortgage Deed and Memorandum of Understanding in respect of the property situate at Cadastral Zone A35, Karu L.G.A, Nasarawa State and deposited the title documents of the property.

That as at June, 2021, the Defendant loans outstanding was Seven Million, Five Hundred and Ninety Thousand Naira (₦7,590,000.00) only including the principal sum and the accrued interest. The Claimant annexed the following document to the originating writ;

- (1) Certificate of Occupancy**
- (2) Power of Attorney**
- (3) Deed of Assignment**
- (4) Mortgage Deed**
- (5) Memorandum of Understanding**

In line with Law and procedure, a written address was filed wherein the questions formulated in the originating summons were argued extensively by Learned Counsel for the Claimant in urging the Court to grant the reliefs sought.

I have gone through the affidavit evidence of the Claimant in support of the originating summons cum exhibits annexed therein and the failure of the Defendant to put in defence. The gamut of the Claimant's case is centered on whether the Mortgagee under the Deed of Legal Mortgage has right of sale by disposing off the mortgaged property for failure of the Defendant to redeemed same. It must be born in mind that Claimant's reliefs 1 and 2 are declaratory in nature thereby predicated the success of other reliefs on its success.

A party who seeks judgment in his favour is required by law to produce evidence to support his pleadings. It's an established position of law that in cases where declaratory reliefs are claimed as in the present case, the Claimant must satisfy the Court by cogent and reliable proof of evidence in support of his claim. ***AGBAJE VS FASHOLA & ORS (2008) 6 NWLR (PT 1082). SAMESI VS. IGBE & ORS (2011) LPELR 4412.***

The Claimant in an attempt to proof its case annexed the documents captured in the preceding part of this judgment. Indeed, a trial Court has the onerous duty of considering all documents placed before it in the interest of Justice. It has a duty to closely examine documentary evidence place before it in the course of it evaluation and comment or act on it. Document tendered before a trial Court are meant for scrutiny or examination and evaluation. ***MOHAMMED VS. ABDULKADIR (2008) 4 NWLR (PT 1076)11 AT PAGE 156.***

Having perused through the documents annexed to the affidavit of the Claimant, in the opinion of the Court, a sole issue arise for determination to wit;

Whether this Court has the jurisdiction to adjudicate on this case the, subject matter been a landed property situate in Nasarawa State, if the answer is in an affirmative, whether the Claimant is entitled to possession of plot property known as plot No. **18872**, file No. **Ns 18872**, measuring **966.00** Square Meters, situate at Cadastral Zone **A35**, Karu L.G.A,

Nasarawa, covered by Certificate of Occupancy No. **11ae0-3decz-70d7r-69dcu-20**.

Indeed, jurisdiction is the very basis on which any tribunal tries a case, it is the life line of all trials. A trial without jurisdiction is a nullity.

The importance of Jurisdiction underscores why it can be raised at any stage of proceedings be it at trial, appeal to Court of Appeal or Supreme Court, a fortiori the Court can raise the issue of Jurisdiction *suo moto* as done by this Court, in the present suit.

Jurisdiction is the authority which a Court has to decide matters that are litigated before it or take cognizance of matters presented in a formal way for its decision. Such authority is controlled and circumscribed by the statute which created the Court or by condition precedent created by a legislation which must be fulfilled before the Court can entertain the suit.

Indeed, the claims of the Claimant as contained in the writ of summons and the Statement of Claim determines the jurisdiction of Court and not the statement of defence. The enabling statute has to be considered in the light of the reliefs sought.

Once the claims fall within Jurisdiction of the Court, as donated by the enabling statute, as determined by the facts, the Court is vested with Jurisdiction on the other hand, once the reverse is the case, the Court cannot assure Jurisdiction as it is not vested with it. **ODEYEMI VS. OPAYORI (1976) 9-**

11 SE31 ABDULRAHAMAN VS. OKADIGBO (2006) 13 NULK (1996) 127. EMEKA VS. OKADIGBO (2012) 12 NULK (1331) 55 AT 89.

I have gone through the relief sought by the Claimant in the case which has to do with the Power of Attorney, Deed of Assignment, Mortgage Deed and Memorandum of Understanding in respect of property known as plot No. **18872**, file No. **Ns 18872**, measuring **966.00** Square Meters, situate at Cadastral Zone A35, Karu L.G.A, Nasarawa, covered by Certificate of Occupancy No. **11ae0-3decz-70d7r-69dcu-20**.

I have equally seen the address of the Defendant as contain in the Certificate of Occupancy which is K.K Avenue, New Karu, karu local government Nasarawa State.

It is instructive to state at this juncture that it is not the rules of the Court that vest Jurisdiction in the Court but rather the statute creating that Court. it therefore presuppose the fact that it is the constitution of the Federal Republic of Nigeria 1999 as amended that recourse shall be made to when the Jurisdiction of the FCT High Court is call to question. Section 255(1) of the 1999 Constitution established the High Court of FCT Abuja and the Jurisdiction of the Court is set out in section 257.

Indeed, for the purposes of exercising Jurisdiction each state of the Federation is independent of the other and the Jurisdiction of its Court is limited to matter arising in its territory. It cannot be denied that the subject matter of this

case relates to the loan the Claimant granted the Defendant on the 11th June, 2020 and the subsequent execution of Deed of Assignment, Power of Attorney, Mortgage Deed and Memorandum of Understanding in respect of property situate at Nasarawa State outside the territorial Jurisdiction of this Court

As clearly stated in the preceding part of this Judgment, it is indeed, the claims of the Claimant that determines the Jurisdiction of Court. A juxtapose of the provision of section 257 (1) and (2) of the Constitution of the Federal Republic of Nigeria 1999 as amended and claim of the Claimant will show that both the Defendant and the subject matter of this case is in Nasarawa State.

I am convinced, given the opportunity and advice, the Claimant in this suit cannot maintain the same action before the High Court of Kano, Benue or Plateau State. Why then FCT High Court Abuja. Jurisdiction is blood that gives life to the survival of an action in a Court of Law, and without Jurisdiction, the action will be like an animal drained of its blood. See ***OKEKE VS. SECURITIE & EXCHANGE COMMISSION AND ORS (2013) LPELR 20358***

I am in total agreement with the claimant that the mortgagor is liable to repay the loan as stipulated otherwise, the mortgaged property is foreclose. See ***ATIBA IYALAMU SAVING AND LOANS LTD VS SUBERU AND ANOR [20118] LPELR 44069 SC.***

However, I am more than convinced that the claimant's action ought not to have begun in the FCT High Court, Abuja, but in the High Court of Nasarawa state.

Having begun the suit here, my duty only, is to refuse to hear it for want of jurisdictional competence.

Consequently, suit no **CV/388/2023** is hereby struck out.

SIGNED:
HON. JUDGE
11/07/2023.

Appearance:

Edmond C. Ben, Esq, for the Claimant