

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

**IN THE ABUJA JUDICIAL DIVISION**

**HOLDEN AT MAITAMA ON THE 25<sup>TH</sup> SEPTEMBER, 2023**

**BEFORE HIS LORDSHIP, HON. JUSTICE U. P. KEKEMEKE**

**SUIT NO. FCT/HC/CV/1245/20**

**COURT CLERK: JOSEPH BALAMI ISHAKU.**

**BETWEEN:**

**MR. IBRAHIM JAMES PAM**

**(SUING BY HIS ATTORNEY,**

**JONATHAN YUSUFU PAM)**

.....**CLAIMANT**

**AND**

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

**JUDGMENT**

The Application M/9601/2020 by the Defendant/Applicant against the Claimant/Respondent is a Notice of Preliminary Objection dated 9<sup>th</sup> September, 2020.

It is brought pursuant to order 43 of the High Court of the FCT (Civil Procedure) Rules 2020.

It prays the Court for:

- (1) An Order striking out this suit for lack of jurisdiction or in the alternative an order directing parties to file their respective pleadings for the just determination of all issues.

The grounds for the objection as contained on the face of the Motion Paper are:

- (1) That the suit was commenced by Originating Summons instead of Writ of Summons.
- (2) That the issue raised are highly contentious and cannot be dealt with by an Affidavit Evidence.
- (3) That proceedings to hear the suit vide originating summons simpliciter would amount to an abuse of judicial process and a gross denial of the right to a fair hearing.

Learned Counsel to the Defendant/Applicant rely on the 6 paragraph Affidavit filed in support of this objection.

In the said Affidavit sworn to by Cecilia Oglagu, Litigation Secretary of Suite A22, Maitama Shopping Complex, Abuja. She deposes essentially that the suit is contentious. That the Originating Summons is not seeking for any interpretation of any document or law. That the averments in the Originating Summons are facts which could be trashed out by Oral Evidence.

That the Claimant was offered the property Block SB 7, Flat 4, NNPC Quarters Area 11, Garki, Abuja vide a letter of offer

dated 3/10/2006 for N5,806,000. That Claimant paid N580,600 to FCTA being 10% of the purchase price and a receipt dated 20/10/2006 was issued unable to afford the full purchase price, the Claimant applied for a Mortgage Facility in the sum of N5,225,400 from the Defendant being the outstanding 90% purchase price.

That vide an offer letter dated 19/01/07, the Defendant offered the facility in the sum of N5,225,400 to the Claimant subject to the terms and condition. The tenor of the facility is 15 years and the Claimant was bound to a monthly repayment of N54,564.92 throughout the tenor. A minimum balance of N56,000 was also required in the account at all times.

The Claimant further executed a loan agreement as well as a Deed of Legal Mortgage on 12/06/07, the Defendant disbursed the said sum to the Claimant's account. The Claimant defaulted in the repayment terms of the facility despite repeated demands. Including the Defendants demand letter dated 24/08/2016. That Claimant did not pay any amount towards servicing his obligation prior to the above demand letter i.e between December 2012 – August 2016 a period of 45 Months.

The Claimant also failed to maintain the N56,000 account balance required throughout the duration of the facility. The Claimant breached other terms of the agreement. That Claimant was only paid the portion that fell due in August 2016.

The Defendant has a Counterclaim against the Claimant. That as at 18/08/20, the Claimant is indebted to the Defendant in the sum of N5,424,785.25. The Claimant was not in Court when the Preliminary Objection was moved however the Claimant's Counter Affidavit in response to this Preliminary Objection is dated 5/02/2020.

Joshua Nsimina Hamman of Counsel swore to the Affidavit. He states that by the terms of the offer, Claimant was obligated to pay the sum of N654,779.04 in the first year. That the total sum of N654,779.04 was due to be paid in the first year. The monthly interest repayment due for the 1<sup>st</sup> year, 2<sup>nd</sup> year etc are captured in paragraph 3(f) – (n).

The default rate payable is also contained in paragraph 3 (n) – (x) of the Claimant's Counter Affidavit. That the total interest accrual over the period of 15 years is the sum of N2,974,865.00 only. That the maximum interest accrual over the 15 year period

is the sum of N2,375,491.00 (at the highest interest rate of 11.5% chargeable as penalty (615,290.90) .

That the total sum paid by the Claimant as at the 31<sup>st</sup> day of August 2016 was N7,262,730.08 only. That the sum demanded by the Defendant vide its letter of demand dated 24<sup>th</sup> August 2016 was in excess of the sum payable under the loan agreement between the parties as the Defendant applied a default interest of 30% as opposed to the ordinary rate of 9.5 % or a maximum default rate of 11.5% as agreed. That trial evidence is not sufficient to prove or disprove the facts.

The Defendant's Counsel moved the Notice of Objection but failed to draw the attention of the Court to his Further and Better Affidavit filed in response to the Counter Affidavit. He merely dumped the document on the Court. I shall therefore ignore it.

I have considered the Written Addresses of Counsel. There are four different methods whereby actions are commenced in the High Court of the Federal Capital Territory see Order 2 Rule 1 of the Rules of Court.

See also ***NOIBI VS. FIKOLAT (1987) 1NWLR (PT. 52) 619 SC.***

Order 2(3) 1 – 4 provides situations where Originating Summons can be used to commence an action. The situations or circumstances are listed as follows:

- (1) Any person claiming to be interested under a Deed, will, enactment or other written instrument may apply by Originating Summons for the determination of any questions of construction arising under the instrument and for a declaration of the rights of the persons interested.
- (2) Any person claiming any legal or equitable right in a case where the determination of the question, whether he is entitled to the right depends upon a question of the construction of an enactment, may apply by Originating Summons for the determination of such question of construction and for a declaration as to the right claimed.

Therefore actions or proceedings may be commenced by Originating Summons

- (1) Where:
  - (a) The sole issue is one of construction of a written law such as the construction or instrument made under a written law, or deed, will, contract.
  - (b) Where there is unlikely to be any substantial dispute of facts.

Generally, Originating Summons is used for non contentious actions. Where facts are not likely to be in dispute.

See ***INAKOJU VS. ADELEKE (2007) 4 NWLR (PT. 1025) 423.***

***OSUNBADE VS. OYEWUNMI (2007) AFWLR (PT. 368) 1004 SC.***

I have earlier reproduced the facts as contained in the Affidavit. They are contentious and riotously so. The Defendant has also indicated he is counter claiming.

In the instant case. There is a substantial dispute of facts as shown in the Affidavits of parties.

The Defendant prays the Court to strike out the suit for lack of jurisdiction. The form of commencement of an action does not make a suit incompetent neither does it oust the jurisdiction of the Court. It does not matter whether the action was begun by Writ of Summons or by Originating Summons. What is important is the justice of case.

See ***DAPIALONG VS. LALONG (2007) 5 NWLR (PT. 1026) 199***

It is my view therefore that the proper order to make is to direct parties to file pleadings and not a striking out.

The Preliminary Objection succeeds. Parties are ordered to file pleadings in accordance with the Rules of Court beginning with the Claimant.

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**HON. JUSTICE U.P. KEKEMEKE**  
**(HON. JUDGE)**  
**25/09/2023**