IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT COURT 10, AREA 11, GARKI, ABUJA

BEFORE HIS LORDSHIP: HON. JUSTICE S. B. BELGORE

SUIT NO. FCT/HC/CV/293/2023

MOTION NO. FCT/HC/M/977/2023

DATE: 28th June, 2024.

B E T W E E N

STEPHEN EJIKE IKE } **CLAIMANT/APPLICANT**

AND

NET CONSTRUCT NIGERIA LIMITED } **DEFENDANT/RESPONDENT**

J U D G M E N T

(DELIVERED BY HON. JUSTICE S. B. BELGORE)

By a Motion on Notice No. M/977/2023 the summary Judgment pursuant to Order 11 Rule 1 of the High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules, 2018. The Claimant/Applicant prayed for the following relief;-

1. An Order entering Judgment for the Claimant/Applicant, as per the reliefs contained in his Writ of Summons and the Statement of Claim in this suit, under the summary Judgment Procedure.

2. And for such further order(s) as this Honourable Court may deem fit to make in the circumstances.

The Motion is supported by an affidavit of twenty (20) paragraphs, deposed to by the Applicant, with Twenty-Three (23) Exhibits, marked as Exhibit SE 1 – SE18B, attached thereto. He placed reliance on all the paragraphs of the affidavit, the Exhibits attached thereto, and the originating processes in this suit.

Also, in compliance with Order 43 Rule 1 of the High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules, 2018, the Motion is accompanied by his written address.

The Defendant/Respondent filed no counter affidavit. The one they filed was out of time and it was not regularized.

The summary of the facts of this matter is that:

Sometime in February 2021, the Applicant was introduced to the Respondent's Vale-City View Estate, Lokogoma District, Abuja, project, and following several extensive discussions, clarifications and assurances, the Applicant indicated interest in a unit of the three (3) Bedroom Detached Duplex, with adjoining Boys Quarters (pre-finished) in the Estate, to be acquired by the Applicant at ₦40,000,000.00 (Forty Million Naira) "the Allocated Property".

Convinced by the Respondent's assurances, the Applicant accepted the offer via Exhibit SE2 and made the initial deposit of ₦12,000,000.00 (Twelve Million Naira) via Exhibit SE 1A – 1D, receipt of which was acknowledged by the Respondent via Exhibit SE3, while the 5 other equal instalments of ₦5,600,000.00 (Five Million, Six Hundred Thousand Naira) were to be made over a period of one (1) year, subject to identification of, and commencement of construction on the Applicant's plot.

Several months thereafter, the Respondent failed to show the Applicant the Allocated Property, or commence the building construction, despite several phone call reminders and visits to the Respondent's office in Abuja. As a result, the Claimant sent emails to the Respondent, and via the email of January, 25th 2022 (Exhibit SE5), the Respondent stated that the delay was occasioned by the inability of the Respondent's Management to obtain the requisite approvals from relevant government authorities, as well as enter into conclusive agreement with its partners. The Respondent also assured the Applicant that there will be progress by February 2022, further informing the Applicant of some swap deals at the Respondent's Sunnyvale Kabusa Gardens Estate.

The parties exchanged several email correspondences regarding the swap options but the Applicant's preferred swap options were either unavailable or too expensive for the Claimant, leading to further telephone calls and reminders from the Claimant, following the Respondent's failure to commence construction on the project in February 2022 as promised.

The Applicant attended several meeting at the Respondent's office in Abuja, for the purpose of getting a better swap option or confirming from the Respondent, the timelines for the Allocated Property, in the course of which the Applicant was offered the option of purchasing only a bare land, labeled Block B-16, at the rate of ₦45,200,00.00 (Forty-Five Two Hundred Thousand Naira) via Exhibit SE9. The Applicant made a counter-offer, in the sum of ₦22,000,000.00 (Twenty-Two Million Naira), via Exhibit SE10B, which was also rejected by the Respondent.

Via Exhibit SE11 and SE12, the Respondent informed the Applicant of the breakdown of negotiations and of its decision to refund the Claimant's full initial deposit within 90 (ninety) working days, post receipt of the Applicant's banking details, contrary to the period of 24 hours, earlier communicated to the Claimant by the Respondent's legal department, prior to making the initial payment.

In response, the Applicant requested for immediate refund and further instructed his Solicitors to send several demand and reminder letters to the Respondent (Exhibits SE13, SE14 and SE16), but the Respondent maintained its ground via Exhibit SE15, despite having held the Applicant's initial deposit, in the sum of ₦12,000,000.00 (Twelve Million Naira), for a period of almost three (3) years.

The Applicant therefore, commenced the instant suit at further cost, as shown in Exhibits Se 18A & B, and further brought this application, seeking the Judgment of this Honourable Court, in his favour, via the summary Judgment procedure.

The Defendant/Respondent filed no counter affidavit as the one they filed was out of time and it was never regularized.

It should also be re-called that parties as far back as 7th February, 2023 when the case first came up in Court, mooted the idea of settlement out of Court. We then adjourned to 14th March, 2024 and 21st March, 2024 to enable the parties pursued settlement. However on 21st March, 2024, parties informed the Court settlement had failed. We then adjourned to 13th June, 2024 for hearing.

So, it happened that before that 13th June, 2024, the Claimant/Applicant brought this Motion under reference for summary Judgment.

Issue for determination

> ***"Whether given the circumstances of this case, the Claimant/Applicant is entitled to have Judgment entered in his favour against the Respondent, under the summary Judgment procedure of this Honouable Court"***

On 24th June, 2024, the Motion was argued in Court by Counsel for both parties.

I have considered the submissions of both Counsel both for and against.

In substance, the Defendant/Respondent agreed they collected ₦12,000,000.00 (Twelve Million Naira) from the Claimant. They agreed they asked them to accept refund within 90 days which the Claimant refused. The Claimant/Applicant did not find this their position funny and thereafter came to the Court claiming some reliefs.

The full arguments of Counsel are on record.

It suffices for me now that based on the affidavit evidence before me, and indeed the arguments of Counsel in Court, the basic issue for determination is:

> ***"Whether in the circumstances of this case, the Claimant/Applicant is entitled to have Judgment entered in his favour against the Respondent, under summary Judgment procedure"***

It is my humble view that in light of the uncontroverted facts of this case, the Applicant herein, is entitled to Judgment under this procedure and that the grant of the instant application will meet the justice of this case. Why do I say so?

Order 11 Rule 1 of the High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules 2018 provides as follows:

> ***"Where a Claimant believes that there is no defence to his claim, he shall file with his originating process the statement of claim, the Exhibits, the depositions of his witnesses and an application for summary Judgment which application shall be supported by an affidavit stating the grounds for his belief and a written brief in support of the application"***

In **THOR LTD. VS.F.C.M.B. LTD. (2005) 14 N.W.L.R. (PART 946) 696 at 710 – 711 paras. H – A** the Supreme Court per Edozie JSC held thus:

> ***"The summary Judgment procedure, which is similar to the undefended list procedure, is designed to enable a party obtain Judgment, especially in liquidated demand cases, without the need for a full trial where the other party cannot satisfy the Court that it should be allowed to defend the action"***

In compliance with the Rules, the Applicant in the instant suit, filed its writ of summons, accompanied by a statement of claim; the Applicant's witness deposition and all documents to be relied on, along with the instant application for summary Judgment, wherein it contends that the Respondent has no defence to this suit. As contemplated by the law, the Applicant's belief that the Respondent does not have a defence to this suit is premised on the peculiar facts of this case, as espoused in both the statement of claim and the supporting affidavit to this Motion.

By paragraphs 4 – 8 and 14 – 16 of the supporting affidavit, as well paragraphs 4 – 8 and 15 – 17 of the statement of claim, the Applicant made an initial deposit of ₦12,000,000.00 (Twelve Million Naira) on February 18th 2021, via Exhibit SE 1A – D, in furtherance of the purchase of the Allocated Property, receipt of which the Respondent acknowledged via Exhibit SE3, while further instalments were to be paid, subject to commencement of the building of the Allocated Property by the Respondent, who failed to commence same, owing to the inability of its Management to obtain the requisite approvals from relevant authorities, as well as enter into conclusive agreement with its partners (Exhibit SE5). Consequently, and owing to the further inability of the Respondent to provide a swap option, commensurate to the Allocated Property, the Respondent unilaterally decided to refund the Applicant's initial deposit (via Exhibits SE11 and SE12), with the stringent condition that the refund will be made after ninety (90) working days, despite holding on to same for a period of about three (3) years.

The law is trite that party to an agreement must have the capacity to make an offer and also be in possession and ownership of, or adequate authority, over whatever consideration being presented in furtherance of creating the legal relationship. On this score, I refer to the decision of the Supreme Court in **AJUWON VS. AKANNI (1993) 9 N.W.L.R. (PART 316) 182 at 202 para. B,** wherein the Apex Court held per Iguh, JSC (As he then was) that: ***"The principle of law that arises from the third issue is basic but fundamental. This expressed in the latin maxim, nemodat quod non habet, which literally means that no one can give what he does not own"***

In light of the above position, I hold that the Respondent was not in a position to offer the Allocated Property to the Claimant, having not first obtained the requisite permits from relevant government authorities, and executed agreements with its partners, which resulted in the Respondent's inability to commence the construction of the Allocated Property. As such, the Respondent is bound to immediately refund the Applicant's initial deposit, being the benefit it obtained for its false presentation.

From Exhibits SE 3, 5, 11, 12 and 15, it is without doubt that the Respondent acknowledged receipt of the initial deposit and its inability to obtain required permits and commence the building of the Allocated Property, unilaterally rescinded on the arrangement and solely offered to refund the Applicant within ninety (90) working days, after holding on to the Applicant's fund for a period of two (2) years, and nine (9) months, thereby putting the Claimant through financial losses, physical and emotional trauma and shattered hope and expectations. It is on this premise that the Applicant is clearly entitled to Judgment, as per the claims contained in the writ of summons, as the Respondent clearly has no defence to this suit and should not be allowed to delay the speedy dispensation of justice in this suit. May we commend to your Lordship the case of **JEWIS VS. UBA PLC (2006) 1 N.W.L.R. (PART 962) page 546 at 567 paras. C – D** where the Court held thus:

> ***"Where it is obvious that a Defendant does not have a defence on the merit, a Court of law and justice must not allow such a Defendant to dribble a Plaintiff whose case is unassailable, out of the seat of justice"***

Consequently, this suit presents one of the such circumstances that this Honourable Court (by virtue of Order 11 Rule 1 of the Rules) is empowered and vested with the requisite jurisdiction to enter Judgment in favour of an Applicant as per the claims as contained in the writ of summons and statement of claim, without being required to go through the rigours of full trial and the attendant delays. I refer to paragraph 22 of the supporting affidavit and the case of **LEWIS VS. UBA PLC (supra) at 565 para. C,** where the Court held:

> ***"The essence of a summary Judgment procedure is to alleviate***

> ***undue delay and the attendant loss in terms of time and resources"***

Also instructive on this point is Order 11 Rule 5(2) of the High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules 2018 which provide that:

> ***"Where it appears to the Court that the Defendant has no good defence, the Court may enter Judgment for a Claimant"***

I hold that by virtue of Order 56 Rule 1(3) of the High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules 2018, this Honourable Court is empowered to indemnify the Applicant for monies expended to institute this action, as well as compensate it for its time and effort in coming to Court. A combination of paragraphs 19 and 20 of the supporting affidavit and Exhibits SE 17 and 18A and B, show that whilst the Applicant's money has lost so much value, having stayed for years with the Respondent, the Applicant has further expended the sum of ₦1,275,000.00 (One million, Two Hundred and Seventy-Five Thousand Naira) to institute and prosecute this suit. The Applicant is therefore, entitled to a refund of same. We refer to the case of **INTERNATIONAL OFFSHORE CONSTRUCT LTD. VS. S.L.N. (2003) 16 N.W.L.R. (PART 845) 157 at 179 paras. B – D**, where the Court of Appeal, relying on the Supreme Court's decision in **REWANE VS. OKOTIEBOH (1960) S.C.N.L.R. 461**, held thus:

> ***"Under our law, expenses incurred on the services of Counsel are reasonably compensated… costs will therefore be awarded on the ordinary principle of genuine and***

> ***reasonable out of pocket expenses and normal Counsel costs.***
>
> ***Therefore, the learned trial Judge was perfectly right in the award made in respect of expenses incurred by the Respondent or services of solicitors employed"***

Finally, I grant the Applicant's claim for 10% per annum post-Judgment interest, based on the provisions of Order 39 Rule 4 of the High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules, 2018. I also award ₦2,000,000.00 (Two Million Naira) damages against the Respondent and in favour of the Applicant for breach of contract following the decision of the Supreme Court in **KABELMETAL NIG. LTD. VS. ATIVIE (2001) F.W.L.R. (PART 66) 662 at 680 (C – D),** where it was held that:

> ***"The principle of assessment of damages for breach of contract is restitution in integrum – that is, that in so far as the damages are not remote, the Plaintiff shall be restored, as far as money can do it into the position in which he would have been if the breach had not occurred"***

In the final analysis, I grant from the reliefs contained in the Writ of Summon the followings:

1. That the defendant immediately refund to the Claimant the sum of N12,000,000 (Twelve Million Naira), being the initial deposit, the Claimant made on February 18, 2021, to the defendant, for the purchase of the one (1) unit of three (3) Bedroom Detached Duplex at Vale-City View Estate, Lokogoma District, Abuja.

2. The sum of N2,000,000 (Two Million Naira) as general damages against the defendant and in favour of the Claimant.

3. Post-judgment interest, at the rate of 10% per annum.

This is the Judgment of this Court.

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S. B. Belgore
(Judge)
28/06/2024