

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

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT JABI –ABUJA

HIS LORDSHIP: HON.JUSTICE M.S. IDRIS

COURT NUMBER: 28

Date:-3RDOCTOBER, 2023

FCT/HC/CV/123/2022

BETWEEN

MRS. MARY G. MENEGBE-----

CLAIMANT

AND

MR. EHI AKO-----

DEFENDANT

JUDGMENT

This is a writ filed by the Claimant against the Defendant dated 26th October, 2022 whereof the Claimant claims as follows from the Defendant thus:-

1. An order directing the Defendant to put the claimant into possession of the Plot No. 346 Kutunku IV, Extension Layout, within Gwagwalada Area Council, Abuja or in the alternative

An order directing the Defendant to refund the sum of ₦1,300,000.00 being the sum collected from the Claimant for purchase of the Plot NO. 346 KutunkuIV, Extension Layout, within Gwagwalada Area Council, Abuja and ₦130,000.00 paid to the Defendant agent.

2. The sum of ₦200,000,000.00 for the Defendant refusal to put the Claimant into possession of Plot No. 346 KutunkuIV, Extension Layout, within Gwagwalada Area Council, Abuja

3. The cost of this suit at ₦1,000,000.00

Accompanying the writ is a statement of claim which contained detail of the whole transaction that took place between the Claimant and the Defendant.

I would like to place on record that before the commencement of the action the Defendant was adequately served with the processes filed by the Claimant and the subsequent hearing Notice served on the Defendant despite all these the Defendant failed to put up appearance neither did the same filed any processes in opposition or defence to the claim filed against him by the Claimant. After all the processes served on the Defendant by substituted means as prayed by the Claimants Counsel and the subsequent hearing notices served. Hearing fully commenced on 18th May, 2023 PW1 the Claimant having adopted her witness statement on oath and relied on same by the Claimant. While adducing evidence in the cause of the trial the following document were admitted in evidence and marked as follows viz:-

1. Certificate of occupancy (Customary) bearing the name of Onyu Victoria dated 19th October, 1995 Exhibit 1.
2. Conveyance of Approval dated 18th October, 1995 exhibit 2.
3. Confirmation bearing the name of Onyu Victoria exhibit 3.
4. Demand letter written on behalf of the Claimant is received in evidence and marked as exhibit 4.

I must state in this judgment that apart from the oral testimony adduced by PW1 (Claimant) I also took into consideration the adopted witness statement on oath made by the Claimant. It is of equal important to state also that right of cross examination, right of defence and right to file a final written address were all given to the Defendant but same refused to

do the needful. The Defendant was always informed by serving him with hearing notice or all the steps taken in this matter. In the Claimant's final written address, he raised a sole issue for determination to wit:-

"Whether the Claimant is entitled to her claim before this Court" In his argument, Counsel relied on section 169 of the Evidence Act. See also ***TUKUR VS UBA (2013)4NWLR (pt 1343) 90-136.***

Counsel further maintained that the Defendant is bound by his action and cannot deny his contract with the claimant for the sale of land and that he has received consideration. A contract can be entered orally and binds the parties. See ***OLOJA VS GOV. OF BENUE STATE (2016)3 NWLR (pt.1499)217 at 242- 243.***

Having accepted the consideration by the Defendant as contained in the statement of claim and having refused to put into possession. ***ASUQUO VS EYO (2014) 5 NWLR (PT. 1400) 247 at 266. MTN (NIG) COMM. LTD VS C.C. INV. LTD (2015) 7 NWLR (Pt. 1459)437 at 463 DASPAN V MANGULOCAL GOVT. COUNCIL (2013)2 NWLR (pt.1338)203 at 232 -233 GRIEF (V.L)CONTAINED PLC V O.P& IND. LTD (2015)&NWLR (pt.1461)260 at 277 ABE VS SKYE BANK PLC (2015)4 NWLR (pt. 1450) 512-539.***

Where a man by word or conduct wilfully made a representation of a state of facts to another then induces that other to believe that the state of things were as represented by that person and that other took him by his words and acted upon the representation, either by himself or his representative in interest can not now turn round to say or behave as if the state of things were not as he represented to them. He is

estopped from asserting the contrary. All that is required in such a case is that the facts to be relied upon as estopped be duly pleaded or brought to the notice of the adjudicating tribunal. See **A. G RIVER STATE VS A. GAKWA IBOM STATE (2011) 8 NWLR (pt 1248) 31, AJUYI VS TOTAL (2013) 13 NWLR (PT. 378) 423-442.**

Finally Counsel urge the Court to enter judgment in favour of the Claimant and to also award ₦2,000,000.00 against the Defendant for breach of contract as same is act actionable per se.

I have reproduced the position of the Claimant in this case partly, I have considered the evidence adduced by the Claimant totally and the exhibit tendered in the cause of this trial and also the issues raised for determination by the Claimant in his final written address. By virtue of section 169 of the Evidence Act the Defendant is estopped from denying that he entered into a contract with the Claimant for the sale of land. Estoppel is a bar which prevents a party from asserting a claim or right that contradicts what one has said or done before or what has been legally established as true see **TUKUR VS UB (2013) 4 NWLR (PT 1343) 90 Q156.**

In this case the Defendant did not lead any evidence to contradict the Claimant's evidence that he paid the Defendant the sum of One Million Three Hundred Thousand Naira only for the purchase of the land and the Defendant gave her title documents. In this respect the Defendant is bound by his action and cannot deny his contract with the Claimant for the sale of the land that he has received consideration. A contract can be entered orally and binding on the parties see **OLOJA VS GOV. of BENUE STATE (2016) 3 NWLR (pt. 11488)**

217 – 242 – 243. I therefore from the available evidence refusal on the part of the Defendant to put the Claimant into possession amount to a breach of contract see **ASUQUO VS EYO (2014)5 NWLR (pt 1400) 247-266.** Although from the evidence adduced by the Claimant there was no formal contract document for the sale of the land with the document duly signed by the parties involved. Nonetheless the Defendant has accepted the consideration from the Claimant and gave her the title document for the plot of land this can be seen from the evidence of the Claimant which was not at all challenged by the Defendant. This alone amount to admission. See **TOTAL NIG PLC VS NEW CARGO HANDLING CO. (2015) 17 NWLR (PT1489)558-579.** I have carefully relied on the Claimant's evidence and the exhibit tendered it is unequivocally clear that a contract must not be in writing for it to be valid. However from the obvious facts there is no written agreement between them. This does not negate the existence of a valid and enforceable contact between them. See **TRADE BANK VS DELE (2005)6 NWLR (PT 921) 301.** The Court has said a contract may be demonstrated by the conduct of the parties as well as by their words and deeds or by the documents that have passed between them see **UTC VS PHILIPS (2012)6 NWLR (PT.1298)136.** I must also state in this judgment the Defendant is aware of this suit as he was properly served with all the processes but he did not adduce evidence to support any defence if any, they are deemed to have abandoned their defence. It is trite law that where evidence given by a party to a proceedings was not challenged by the opposite party who has the opportunity to do so, it is always open to the Court to seized of the proceedings to act on the unchallenged evidence before it. See **OMMAN VS ELEPE (2000) 1 NWLR (PT 641)**

AT 367. RATIO 4. From the available evidence I found it worthy of consideration since the pleadings and evidence of the claimant are not challenged by the Defendant this Court deemed it just to enter judgment in favour of the Claimant. See **ELEMA VS AKENEZUA(2000)13 NWLR (PT93-95) OBMIAMI BRICK &STONE V A.C.B LTD (1992)3NWLR (pt 229) 260-298.**

“ No Court has right to force a party to give evidence. After both parties to dispute had been duly notified of the hearing date and a party for no justifiable reason decides to so to say, opt out of the proceedings. The case presented by the other party once it is not discredited in any legal way should be the case to be considered on the merit. The intention of the party why it refused to take part is not the business of the Court.”

Also in **NEWS WATCH COMM. LTD VS ATTA (2006) 12 NWLR (PT 993) AT 144- 175 SC KADUNA TEXTILE LTD VS UMAR (1994)1 NWLR (PT319)143-159.** All shademore light on the need for the Court to proceed on the attitude of an unwilling party to a suit. This Court is fully aware that an issue of declaratory relief the Court must be satisfy that the Claimant has on the strength of his case established that this is because in a declaratory claim the onus is on the Claimant to establish his claim even if the opposing party has admitted the claim. See **ANYARUVS MANCHILES(2007) LPELR 670 SC** at pp 16-17 paragraph E-C from what transpired throughout this trial based on the evidence of the Claimant and the exhibits tendered the Claimant have proved his case on the ground that he gave some monitory consideration strictly in respect of the property, which mean there was sell transaction between the

Claimant and the Defendant in respect of the land. Consequently, judgment is hereby entered in favour of the claimant against the Defendant under the following arraignments: -

1. Relief one is hereby granted
2. Relief two is hereby refused
3. Relief 3 is also refused.

However for the breach of contract which is actionable perse and same is contained on the final written address of the Claimant for the breach of contract I hereby award the sum of N200,000.00 for breach of contract.

**HON. JUSTICE M.S
IDRIS**
(Presiding Judge)

Appearance

E.IEsene:- Appearing with IjeomaMadu for the Claimant