

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

BEFORE HIS LORDSHIP: HON. JUSTICE M. S. IDRIS

COURT: 28

Date:- 1STJUNE, 2022

FCT/HC/CV/2567/2021

BETWEEN:

ABUJA MARKETS MANAGEMENT LIMITED----- CLAIMANT

AND

**1. INCORPORATED TRUSTEES OF GARKI MODEL MARKET
ASSOCIATION** } **DEFENDANTS**
2. MR. FRIDAY OZOCHI }

JUDGMENT

The Claimant by an originating summons dated and filed on the 5th October, 2021 seeks the determination of the Court on the following:-

1. Whether by the construction of the service charge agreement dated 15th December, 2019, the Defendants or the members of the 1st Defendant can resile from the payment of the sum of N5,000 per month as service charge?
2. In so far as may be necessary, that the Honourable Court, make the following orders for the Claimant as per its claims.
3. A declaration that the Claimant is entitled to receive the sum of N5,000.00 from the Defendants and operators of every shop in Garki Market on the basis of the service charge agreement dated 15th December, 2019.

4. An order directing the Defendants and their members to comply with the terms of the service charge agreement freely entered into by the parties.

The application is supported by a 15 paragraph affidavit and a written address all dated the 5th October, 2021.

The affidavit was deposed to by Felix Edache and contains among others the following facts:-

1. That as the Facility Manager of the market, the Claimant provides cleaners, security and other services for the benefit of the shop owners, traders and visitors to the market for a fee.
2. That the Claimant has engaged the services of other companies for a fee and also employed some workers on a monthly salary to provide these services in the market for the benefit of the shop owners and traders.
3. That by purchasing the shops the purchasers accepted that they shall pay and discharged all rates, assessments and impositions whatsoever which shall at any time be charged, assessed or imposed on the market as a whole or any part thereof or upon the occupier or occupiers thereof. A copy of the terms and conditions are attached as exhibit A.
4. That sometimes in 2007, after the claimant had taken over the ownership and management of the market from Aso Timdoz Investment Company Limited, the Claimant held a meeting with the representatives of shop owners in the market where the parties explored the best method for the collection and administration of the service charge fees paid by the shop owners or traders.
5. That the traders and shop agreed with the decision taken at the meeting and continued to pay the service charge of N2,500.00 a month per shop.

6. That sometimes in December, 2019, the Claimant and the defendants reviewed the current services charge paid by the traders in the light of the prevailing cost of services in the market and agreed that the monthly service charge be increased from N2,500.00 to N5,000.00 or N60,000.00 per annum in advance. The parties entered into an agreement called the service charge agreement with the intention of reflecting and documenting the decision of the parties. A copy of the agreement is attached as exhibit C.
7. That the agreement has been in force since January, 2020, but recently without any just cause, the Defendants have tendered to resile from the agreement as many of its members who are daily enjoying the Claimant's services in the market, have failed and refused to pay their service charge bills even after proper demand notices have been served on them.
8. That the Defendants cannot resile from the service charge agreement after giving effect to it and the claimant has fulfilled its own obligations.
9. That the service charge agreement is still valid and subsisting.

In the written address, Claimant raised a sole issue for determination, which is whether by the construction or interpretation of the service charge agreement, the Defendants can resile from the agreement?

Claimant quotes a clause (s) from the service charge agreement dated the 15th December, 2019 as follows:-

- a. The service charge payable per lock –up shop is reviewed from N2,500 to N5,000.00 monthly which is equal to N60,000 annually, commencing from January, 2020 and payable in advance.
- b. Whenever there is a need to review the service charge therein agreed to from time to time, the Garki Model market

service charge committee comprising of the Gamma Ex Co and AMML designated staff shall meet and agree on the applicable service charges review.

Claimant submits that the agreement was freely entered into by the parties and as such, are bound by the terms of the agreement. He relied on the case of ***ABDULAZIZ V GARBA (2021) 3 NWLR (pt 1764) 379*** at page, paragraph E-F where it was held that parties are bound by the terms of their agreement.

Furthermore, claimant avers that the Defendants are stopped from resiling from the agreement and cites section 169 of the Evidence Act 2011 which provides that when one person by virtue of an agreement caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative in interest shall be allowed in any proceedings between himself and such person or such persons representative in interest to deny the truth of that thing. See also the case of ***MABAMIJE V OTTO (2016) 13 NWLR (PT 1529)171.***

Finally, claimant cited the case of ***MUONAN VS NWAEMELU (2021) 3 NWLR (PT 1763) 216 at page 240 paragraphs B-C*** where the Court held that Courts have a duty to give effect to the agreement between parties. An agreement voluntarily entered into must be honoured in good faith.

A party cannot resile from a contract even upon finding out that the conditions of the contract is unfavourable. This is seen in the case of ***AG RIVERS STATE VS AG AKWA IBOM STATE & ANOR (2011) LPELR 633 (SC)*** where it was held thus:-

“ It is elementary law that where parties have entered into a contract or an agreement,

they are bound by the provision of the contract or agreement. This is because a party cannot ordinarily resile from a contract or agreement just because he later found that the conditions of the contract or agreement are not favorable to him. This is the whole essence of the doctrine of sanctity of contract or agreement”

See also the case of ***ASUOTU VS TRIARCH (NIG) LTD (2019) CA AND PROFESSIONAL CLEANING SERVICE LTD V BENUE STATE COVT & ORS (2020)***

LPELR – 52278 (CA).

See NORTHERN ASSURANCE CO. LTD VS WURAOLA (1969) 1 NMLR 1 and NURTW & ORS VS FIRST CONTNENTAL INSURANCE CO. LTD (2019) LPELR – 48005 (CA).

From the judicial authorities cited above I am strongly of the view that the essence of contractual relationship that exists between the parties generally, is binding on them. The duty of the Court in all circumstances is to interpret the contract of the agreement only. The object in this respect is to allow parties to examine their rights and freedom in such circumstances like in this case. Having consented by executing the term of the agreement same becomes binding to all the parties involved. I have consequently looked at the relief sought in this application filed. I am strongly of the view that such reliefs should be granted by this Court consequently it is hereby declared that :-

- (a) That the Claimant is entitled to receive the sum of N5,000.00 from the Defendants and operators of every shop in Garki Market on the basis of the service charge agreement dated 15th December, 2019.

- (b) It is hereby ordered that the Defendants and their members to directly comply with the term of the service charge agreement dated 15th December, 2019 freely entered into by the parties to the agreement I so hold.

HON. JUSTICE M.S IDRIS
(Presiding Judge)

APPEARANCE

A. O. Ojeh:- For the Claimant.