

IN THE DISTRICT COURT OF THE FEDERAL CAPITAL TERRITORY,
HOLDEN AT WUSE ZONE 6, F.C.T ABUJA
BEFORE HIS WORSHIP CHIOMA AMANWACHI
COURT 11

SUIT NO:SCC/03/2023

DATED: 25TH JANUARY, 2024.

ABUBAKAR IDRISCLAIMANT

AND

UMAR USMAN BAZZA..... DEFENDANT

JUDGEMENT

SANI SAJO ESQ For the claimant

M.D AGADA, ESQ For the defendant

Parties are absent

By virtue of forms SCA2 and SCA3 of the district courts Act practice directions on Small Claim of the federal capital territory Abuja filed on the 14/11/23The claimant claims the following;

1. An order of this honourable court mandating the defendant to pay forthwith to the claimant the sum of N1, 800,000.00 only as the outstanding unpaid balance.
2. An order of this Honourable court mandating the defendant to pay the sum of N500, 000, 00 only as the cost of litigation that the claimant incurred.

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Upon receipt of all originating processes in this suit, which includes FORMS SCA1 - court's demand letter, form SCA2 Complaint form and form SCA3 Summons, defendant filed a statement of defence and a counter claim dated 1/12/23 In response claimant/ defendant on counter claim filed a 22 paragraphs of witness on oath in defence .
Hearing commenced with the evidence of the claimant himself Abubakar Idris as cw1, he said that he is a car dealer, at Automatic car wash Garki 11, Abuja. Whereas the defendant is a business man who deals on Real estate property within the jurisdiction of this court, cw1 said that the defendant approached him for a purchase of a plot of land somewhere in wuye district Abuja FCT in which the price agreed upon by parties was 18,000,000.00 (eighteen million naira) only that based on the aforesaid, CW1 handed over his two valuable cars namely, Toyota highlander 2016 and ford edge 2012 both were valued by parties at 18,000,000,00 , for the purchase of the said plot of land. CW1 also said that after a period of eight month the defendant called him informing him that the plot of land building approval has been refused by the respective authorities, that the defendant in turn offered him an Alternative plot of land somewhere else, that sequel to the inspection of the alternative land CW1 discovered that the land was not the kind of land he paid for initially and demanded a refund of the sum of 18,000,000,00 early paid to the defendant that consequently the defendant pleaded with him for more time to enable him sale off the second plot of land and the monies realised from the sales would be given to the claimant, that the defendant sold the land for 20,000,000. and after a prolong demand and request by the claimant, the defendant then made the first refund of 15,000,000,00 subsequently 3,000,000,00'and 200,000.00

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respectively to the claimant, totalled 18,200,000,00 naira leaving the sum of 1,800,000.00 as assured by the defendant.

The following documents were admitted as exhibits

1. Demand letter exhibit C1 dated 25/10/2023
2. Re- demand letter exhibit C2 dated 27/10/2023
3. Transaction receipt GTCO of the sum of N200, 000. dated 20/3/2023 Exhibit C4
4. Transfer receipt Taj bank of the sum of N 3,000,000,00 dated 21/9/2013 Exhibit C5
5. Transfer receipt Taj bank of the sum of N15,000,000,00 dated 22/6/2023 Exhibit C6
6. Certificate of compliance dated 14/11/2023 Exhibit C7

Under cross examination of cw1, CW1 admitted that price of the purchased land was N18,000,000.00 as stated in paragraphs 6, 7 and 8 of his witness statement on oath and in turn urged the court to use his verbal submission to be the purchase sum of the initial plot of land as 20,000,000. At the ends of cross examination cw1 was as well re – Examined,

On the 14th December, 2023 the defendant open his defence with the evidence of the DW1 Emmanuel Ebute the head of transportation and logistics unit in the Group of companies where the defendant is then chairman, DW1 further said that sometimes in 2022 Abubaka Adamu brought the claimant to acquire a plot of land in which the defendant offered the land at an agreed sum of 18,000,000,00 naira that the land transaction was contingent on the building plan approval from the authority though pending at that time , that the claimant had no money to pay for the land , but provided two vehicles one Toyota highlander projected for 13million and ford edge for 5million naira to be sold by the defendant

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who also deals in car business eventually the were sold for 7million and 3.4million respectively totalled 10.400million with an outstanding of 7.600.000.00 of the agreed sum, that since there was a delay in getting a building approval the defendant made further effort to provide another plot of land for the claimant in which he rejected and demanded for a refund of the initial sum , that the defendant never promised the claimant the sum of 20million on the alternative plot of land, that despite the losses that emanated in transaction the defendant still refund the sum of 18,200,000.00 to the claimant. DW1 was duly crossed examined and admitted that he had never being a witness to the transaction but had a meeting with his boss the defendant on this case

DW2 who is a subpoena witness Abubaka Adamu by the defendant on oath he said that the claimant is like a brother and the defendant a boss, that he informed the claimant about the plot of land in question that upon inspection of land the claimant and defendant agreed for the sum of 18million but subject to the exchange of claimant's 2 car , the Toyota highlander and ford edge valued for 18,000. After three months allocation of the said land was not forthcoming the defendant offered the claimant another plot of land since he cannot continue waiting for the allocation in which the claimant refused and asked for a refund, after that the defendant informed him, stated that he have refunded the claimant a total sum of 18,000,000.00 to the claimant, he advised the defendant to complete the money since both agreed for 20million. The following documents were tendered and marked accordingly

Transaction Alert credit of 1.900,000,00 exhibit DW1

Transaction Alert credit of 1, 500, 000, 00 exhibit DW2

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Under cross examination of the witness, witness confirmed that the defendant would not pay the sum of 2million because he has incurred losses in the transaction and was the case of the defendant there was the no re-examination.

It would be instructive to noted that counter claims and defence were taken together because both contained same claims and averment,

From the record above it is glaring that the claimant has failed to prove it case he ought have taken in account his pleadings when adducing evidence at trial, under cross examination of the CW1, CW1 admitted that the price of purchased land was N18,000,000,00 as stated in paragraphs 6,7 and 8 of his witness statement on oath and latter urged this honourable court to take his oral testimony as the correct agreed sum to be the sum of N20,000,000,00, the aforesaid is contradictory in nature.

Hence it is elementary in law that oral evidence must be consistent with the pleading, whether it is the statement of claim or statement of defence. This is because the case of the parties is erected by their pleadings and parties do not have the freedom to move out of the pleadings in search of a better case see the of OKOLO V. DAKOLO 2006 LPELR 2461 (SC) also ATANDA V. AJANI (1989) 3 NWLR (pt 111-115)

Further it is trite that who so ever desires any court to give judgement as to any legal right or liability dependent on the existence of fact he asserts must prove that these facts exit. See section 131 of the evidence act, see also the case of ENYI V BENUE STATE JUDICIAL SERVICE COMMISSION &

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ORS it was held thus "the position of the law remains settled that the burden is on the party that asserts the existence of a particular thing or situation to prove the same"

The court has the duty to interference from the adduced evidence of parties, meanwhile civil cases are determined on preponderance of evidence and where the findings of a court is cogent and also upon the adduced evidence before it. In OKONKWO V. VANGUARD MEDIA LTD it was held thus

" civil cases are decided on balance of probability with the adduced evidence placed on an imaginary scale which in favour of the party with most credible evidence per nwaka Jca, see also ANEKWE V. NWEKE 2014 LPELR 22697 SC. To end and base on totality of the evidence before me, it is my findings the claimant has failed to prove his and same is dismissed. Counter claim by the defendant is also missed parties bear their cost, judgement is enter.

JUSTICE HIGH COURT
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