

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

**BEFORE HIS LORDSHIP: HON. JUSTICE .H. MU’AZU
SUIT NO: FCT/HC/CV/3223/2022
DELIVERED: ON THE 15/02/2024**

BETWEEN:

1. ASSOCIATED TECHNICAL INDUSTRIAL
COMPANY LIMITED }CLAIMANTS
2. BARR. (MRS) DABA THOM-MANUEL KPAKOL }

AND

MR. ANDRENS EHIZOJIE PHILIPS.....DEFENDANT

JUDGMENT

The Claimants by a Writ of Summons dated 27/9/2022, filed against the defendant seeking for return of 14 items which they alleged were still in the possession of the defendant at House No. 13 Limpopo Street, Suncity Estate, Galadimawa District, Abuja. That the claimant and the defendant enter into a contact of sale of property known as three bedrooms Bungalow situated at House No. 13 Limpopo Street, Suncity Estate Galadimawa District Abuja, which the claimant stated that as at the time of sale about 14 items listed in the writ was still in the property and

after handing over possession of the property to the defendant the items were not sold with the property. In view of the above, the claimant brought this suit and claims the following against the defendant;

- a. A declaration that the 2nd defendant was in lawful, quiet and peaceful possession of the property known as and referred to the House No. 13 Limpopo Street, Suncity Estate, Galadimawa District, Abuja, prior to the 1st Claimant's handing same over to the defendant via an Irrevocable Power of Attorney sometime in January, 2022.*
- b. A declaration that the 2nd claimant who is a distinct legal entity from the 1st Claimant, a limited liability company, which handed over the property known as and referred to as House No. 13 Limpopo Street, Suncity Estate, Galadimawa District, Abuja, had the right to own personal chattels for the use and comfort of her and her family while in occupation of the said property.*
- c. A declaration that the 2nd Claimant who is a distinct legal entity from the 1st Claimant, a limited liability company, which handed over the property known as*

House No. 13 Limpopo Street, Suncity Estate, Galadimawa District, Abuja, cannot be denied access to her personal chattels as a result of the said transaction.

- d. A declaration that the defendant's action of refusing the 2nd claimant access to the property known as and referred to as House No. 13 Limpopo Street, Suncity Estate, Galadimawa District, Abuja, for the sole purpose of retrieving her personal chattels still contained within the said property is illegal, malicious and in bad faith.*
- e. An order of this honourable court, directing the defendant to grant access forthwith, to the 2nd claimant, to the property known as and referred to as House No. 13 Limpopo Street, Suncity Estate, Galadimawa District, Abuja, for the sole purpose of referring her personal chattels still contained within the said property.*
- f. An order of this honourable court awarding Exemplary/Punitive Damages in the sum of N10,000,000.00 (Ten Million Naira) only, against the defendant, in favour of the 2nd claimant, for the pain and discomfort he caused the 2nd claimant and her family, when he denied them the use of their personal chattels.*

g. 10% interest on the judgment sum from the date of the delivery of judgment till the final liquidation of the entire judgment sum.

h. Cost of this action, assessed at N2,000,000.00 (Two Million Naira) only.

The claimant equally listed the items belonging to the 2nd claimant which are not part of the property sold as follows:-

S/ N	ITEM/DESCRIPT ION	CONDITION	ESTIMAT ED VALUE (N)	REMA RK
1.	30KVA Mikano Power Generator	Fully serviced and in perfect working condition.	3,000,000.00	
2.	2 nos. of window unit air condition	Fully serviced and in perfect condition	300,000.00	
3.	4 nos. of split-unit air condition	Fully serviced and in perfect working condition	1,000,000.00	
4.	1 children's swing and play pen	In perfect condition	300,000.00	
5.	1 ultraviolet photographic	Perfect working condition (stored	1,750,000.00	

	coating machine	in locked up storage in B.Q)		
6.	1 Industrial cutting machine	Perfect working condition (stored in locked up storage in B.Q)	2,200,000.00	
7.	Industrial sewing machine	Perfect working condition (stored in locked up storage in B.Q)	1,050,000.00	
8.	3 units of wood panel doors	Perfect working condition (stored in locked up storage in B.Q)	100,000.00	
9.	1 Water closet system	Perfect working condition (stored in locked up storage in B.Q)	30,000.00	
10.	Personal effects, including curtains, beddings, clothes, shoes, children's love		Approximately 4,000,000.00	
11.	1 complete set of 7 seater settee	Perfect condition Newly re upholstered	500,000.00	
12.	2 nos. of water dispenser system	Perfect working condition	70,000.00	
13.	1 Industrial gas burner	Perfect working condition	100,000.00	
14.	10KG gas cylinder	Perfect condition	30,000.00	

Upon service the defendant filed its statement of defence and denied the allegation of the claimant and the suit proceeded into hearing. The claimant opened its case on the 22/2/2023 with Pw1 Mr Olaniyi Olusola adopting his witness statement on oath.

The case of the claimant as distilled from the statement of claim and as earlier introduced in the preceding part of this judgment is that, the 2nd claimant, a daughter of one of the directors of the 1st claimant had been residing in the property known as House No. 13 Limpopo Street, Suncity Estate, Galadimawa District, Abuja, which is subject matter of an irrevocable power of attorney from the 1st claimant to the defendant. That while the 2nd claimant resided in the property with her family, she acquired all sorts of personal chattels as stated earlier in the preceding part of this judgment. And that the defendant was informed that the chattels belongs to the 2nd claimant and does not form part of the transaction but after the transaction the defendant refused to grant access to the 2nd claimant to removed her personal belongings.

The following documents were tendered and admitted in evidence;

- 1) Certificate of Incorporation.**
- 2) Irrevocable Power of Attorney**
- 3) Computer Printouts of email message.**
- 4) Solicitor's letter.**

All were admitted in evidence and marked as Exhibits P1a, P1b, P2a, P2b, respectively.

Pw1 was cross examined and was discharged. Similarly, Pw2 Daba Thom Manuel Kpakol, Pw3 Mrs Tyne Thom-Manuel and Pw4 Peter Mamkut adopted their witness statement on oath as their testimonies before the court and were accordingly cross examined and discharged.

The defendant opened its defence on the 16/10/2023 with Dw1 (the Defendant) adopting his witness statement on oath. The case of the defendant as distilled from the witness statement on oath of Dw1 is that the property sold to him i.e. House No. 13 Limpopo Street, Suncity Estate, Galadimawa District, Abuja, included a 3 bedroom bungalow with boys quarters and other appurtenances which he was told clearly that it included the Generator and all other things.

That the agent explained that the original copy of deed of sublease in respect of the property had been misplaced and that

was why they were finding it difficult to sell the property. And that there were two vehicles parked outside the gate house which was made very clear to him that it was not included in the sale and the claimant has taken them away already.

That to the best of his knowledge, he bought the property as it is because he was given every assurance that the property was inclusive of all the items listed by the 2nd claimant.

Dw1 was cross examined and accordingly discharged.

The Defendant subpoenaed a witness, Professor Magnus Kpakol who testified that the subject matter of litigation was actually sold, but stated that he was not part of the transaction.

Parties closed their respective cases to pave way for filing and adoption of final written addresses.

Learned counsel for the defendant formulated two issues for determination in his final address to wit;

1) Whether the claimant has proved his case to be entitled to the reliefs sought.

2) Whether the Act of Agent is binding on his master.

Learned counsel submitted that the claimants have failed woefully to proof their case before this Hon. Court to be entitled

to judgment and that the act of the agent is binding on the claimant and therefore court was urged to dismiss this suit.

On their part, learned counsel for the Claimant equally formulated two issues for determination to wit;

- 1) Whether or not, there is a valid defence to the claimant action before this Honourable Court.**
- 2) Whether the claimants have been able to establish their case upon the preponderance of evidence so as to entitle them to the reliefs they are claiming from this Hon. Court.**

Learned counsel submitted that from the evidence before the court, the claimant have proved their case on preponderance of evidence and therefore entitled to judgment of this court.

On the part of court, in civil cases, the burden of proof is on the party who asserts a fact to prove same. Indeed, he who assert must prove and the standard of proof is on preponderance of evidence and balance of probabilities. See *ISHOLA VS ISHOLA (2015) ALL FWLR (Pt. 779) at page 1136 paragraph 314.*

By the provision of sections 131 to 133 of Evidence Act, 2011, he who assert must prove and whoever desires to have judgment in his favour must establish his case on a preponderance of evidence. Such a party therefore must lead credible and legally admissible evidence in order to succeed.

It is pertinent to state here that reliefs 1, 2, 3 and 4 claimed by the Plaintiff are declaratory in nature thereby predicating the success of other reliefs on their success. It is an established position of law that in cases where declaratory reliefs are claimed as in the present case, the Plaintiff must satisfy the court by cogent and reliable proof of evidence in support of his claim ***AGBAJE VS FASHOLA & ORS (2008) 6 NWLR (Pt. 1082).***

Indeed judicial pronouncement are ad-idem that declaratory reliefs are never granted base on admission or on default of filing defence. Where the court is called upon to make a declaration of a right, it is incumbent on the party claiming to be entitled to the said declaration to satisfy the court by evidence. See ***SAMESI VS IGBE & ORS (2011) LPELR-4412.***

To arrive at justice in this case, it is pertinent to state here that the Kernel of the Plaintiff's case is predicated on the properties listed in the preceding part of this judgment which the claimant

claimed were not part of the transaction they had with the defendant..

In prove of his case, Plaintiff called 4 witnesses and tendered some documents in evidence.

I shall therefore examine the Plaintiff's case base on both the oral and documentary evidence tendered and adduced to unravel the case of the Plaintiff.

Pw1 tendered the following documents in evidence;

- 1) Certificate of Incorporation.**
- 2) Irrevocable Power of Attorney**
- 3) Computer printout of email**
- 4) Solicitor's letter.**

I pause here to state the law as regards importance of documentary evidence, it has been held by a number of court decisions that documentary evidence is the yardstick or a hanger by which to assess the veracity of oral testimony or its credibility. ***OGBEIDE & ANOR VS OSIFOR (2006) LPELR 627 (CA).***

I must state here that, the court is under obligation to interpret every document accurately, not to add or subtract from the content of the document. The implication of tendering Exhibits before a court of law was capture by *MUKHTAR JCA (as he then was) in JOHN M. BUBA VS THE STATE (1992) NWLR (Pt. 215) 1 at 168 as thus;*

“Exhibits are not tendered and admitted in court for the fun of it, they are for purpose albeit to assist in determining the relevance of the Exhibits to the case. Secondly, once this form part of the record they must be examined, scrutinized and assessed for the just determination of the case, if they are not scrutinised as they apply to the facts of the case, then of what use are they admitted in evidence.”

Similarly in *FAGONWA VS ADIBI (2004) 17 NWLR (Pt. 903) 544 at 567 paragraph D – E* the Supreme Court per Tobi JSC held as follows:-

“A trial judge must consider relevant Exhibits tendered along with oral evidence, he cannot take oral evidence and throw away documentary evidence which is the primary evidence under section 94(1) of the Act.”

The gravamen of the Claimant's case is centered on **Exhibit P2** which is the *Irrevocable Power of Attorney* which transferred the property to the defendant. On whether items listed in the preceding part of this judgment was included in the transaction or not, I shall resolve same shortly.

The 1st paragraph of the *Irrevocable Power of Attorney* reads thus;

“whereas all the estate, rights, interest and title on a 3 bedroom bungalow with 2 rooms boys quarters situate, lying, known and described as House No. 13 Limpopo Street, Suncity Estate, Galadimawa District, Abuja, Federal Capital Territory (hereinafter referred to as the demised property) is vested on us, Associated Technical Industrial Company Limited of No. 6A Close, 2nd Avenue Rumueme-Portharcourt Rivers State Nigeria.”

And whereas, we wish to grant all our rights, interest and estate over the apartment to Mr. Andrew Ehizojie Philips of Block C2 Flat 3 Willbehin Union Homes Estate, Opposite Kuchigoro Village Along Airport, Abuja.

On the part of the defendant, he stated that the house was sold to him inclusive of the items listed earlier. And that the agent also informed him that the property was sold inclusive of the items.

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 the conditions of the contract or agreement unfavourable to him. This is the whole essence of the doctrine of sanctity of contract or agreement.

The court is bound to construe the terms of the contract or agreement and the terms only in the event of an action arising therefrom. ***MINAJ HOLDINGS LTD VS. ASSET MANAGEMENT CORPORATION OF NIG. 7 NWLR (PT. 820) 577.***

A contract in writing such as Exhibit P2, could be varied or rescinded by mutual agreement, written or oral, but what is claimed by the Defendant is strictly not a variation but an agreed change in the mode and manner of performance outside the document evidencing the sale agreement.

The evidence of the defendant that he was informed that the items listed by the Claimants were part of the transaction needed a mutual agreement. As same is not contained on the *Irrevocable Power Of Attorney* before the court. Similarly, the defendant has had the opportunity to call the Agent to corroborate his evidence but failed to do so.

For all intents and purposes, Claimants' case succeeds on the strength of the oral and documentary evidence. When the two respective positions of the parties are put on the scale of justice, the Claimants, certainly in the eyes of the law are entitled to judgment.

Consequently judgment is hereby entered for plaintiff as follows:-

- a. A declaration is hereby made** that the 2nd claimant was in lawful, quiet and peaceful possession of the property known as and referred to the House No. 13 Limpopo Street, Suncity Estate, Galadimawa District, Abuja, prior to the 1st Claimant's handing same over to the defendant via an Irrevocable Power of Attorney sometime in January, 2022.
- b. Is hereby declared** that the 2nd claimant who is a is distinct legal entity from the 1st Claimant, a limited liability company,

which handed over the property known as and referred to as House No. 13 Limpopo Street, Suncity Estate, Galadimawa District, Abuja, had the right to own personal chattels for the use and comfort of her and her family while in occupation of the said property.

c. A declaration that the 2nd Claimant who is a distinct legal entity from the 1st Claimant, a limited liability company, which handed over the property Galadimawa District, Abuja, cannot be denied access to her personal chattels as a result of the said transaction. **It is hereby granted.**

d. A declaration that the defendant's action of refusing the 2nd claimant access to the property known as and referred to as House No. 13 Limpopo Street, Suncity Estate, Galadimawa District, Abuja, for the sole purpose of retrieving her personal chattels still contained within the said property is illegal, malicious and in bad faith. **It is hereby granted.**

e. **I hereby made an order of this honourable court, directing the defendant to grant access forthwith, to the 2nd claimant, to the property known as and referred to as House No. 13 Limpopo Street, Suncity Estate, Galadimawa District, Abuja, for the sole purpose of referring her personal chattels still contained within the said property.**

f. Damages of ~~N~~**2M** is awarded against the Defendant.

I make no further order.

SIGNED:
HON. JUDGE
15/02/2024.

APPEARANCE:

J. N. Onyekwuluje, Esq. (Mrs) for the Claimants

Melchizedek Zaro, Esq, for the Defendant.