

IN THE HIGH COURT OF JUSTICE OF THE F.C.T.

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT KUBWA, ABUJA

ON THURSDAY THE 17TH DAY OF JUNE, 2021

BEFORE HIS LORDSHIP: HON. JUSTICE K. N.OGBONNAYA

JUDGE

SUIT NO.: FCT/HC/CV/2702/20

BETWEEN:

PASTOR IGBADI DAVID OGUH

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PLAINTIFF

AND

CHIEF CLETUS IBETO

MR. IKECHUKWU E. IBETO

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DEFENDANTS

RULING

In this Writ marked Undefended the Plaintiff Pastor Igbadi David Oguh instituted this Suit against Chief Cletus Ibeto and Ikechukwu E. Ibeto claiming the following:

- (1) An Order of this Court directing the Defendants to pay him the sum of One Hundred and Sixty One Million Naira (₦161, 000,000.00) only being Agency Fee the Defendants agreed to pay him for bringing the buyer of the 1st Defendant's 4 Plots of land located at Ancestors Court Maitama, Abuja.

- (2) An Order for the Defendants to pay Court's rate of interest on the Judgment sum.

Because the claim is on liquidated money demand/debt, the Court marked same Un defended. To the Plaintiff, the Defendants have no prima facie Defence to the Suit of the Plaintiff and as such the Plaintiff urged the Court to enter Judgment summarily in his interest and favour. He supported the Writ with an Affidavit of 5 paragraphs.

He attached 3 documents which he marked as EXH A, B & C. These documents are Letter of Notification written by Faith Plus Diamond, a law firm instructed by the Plaintiff to write the said letter. The letter was addressed to the 1st & 2nd Defendants and was dated 10/7/18. The Plaintiff also attached another letter dated 1/3/19 addressed to the Chairman Economic and Financial Crime Commission (EFCC) and titled "Complaint of Criminal Conspiracy, Breach of Trust, Cheating Conversion and Threat to Life" against the 1st Defendant. The Plaintiff also annexed another letter of complaint dated 18/12/18 written. He also attached 2 letters of threat occasioning harm written by Concerned Group dated 1/1/19. The handwritten letter of threat was not dated. He also filed a Written Address.

Upon receipt of the Writ, the Defendants filed a Notice of Intention to Defend. They also filed an Affidavit of 30 paragraphs deposed to by the 2nd Defendant – Ikechukwu E. Ibeto in support of the Notice to Defend.

They claimed that they have a Defence on the merit and therefore they urged the Court to transfer the case to the General Cause List so that parties can be heard before

the Court can deliver its Judgment. That by doing so justice will be done and done better. They did not attach any document in support of the Notice of Intention to Defend.

The Defendant had in paragraph 5 of the Affidavit denied that the Plaintiff was never an Agent to the 1st & 2nd Defendants in the transaction. That the land was the property of the 1st Defendant and not the 2nd Defendant. That the 1st Defendant sold the land to one Alhaji A.H. Abubakar in 2014. That the 1st Defendant never had any interface with the Claimant or held any discussion regarding the Plots of land or on any Agency Fee. That the 1st Defendant wanted to sell the land situated at Ancestors Count Maitama, Abuja. That at the time the land was advertised for sale, the Claimant was among the people who inquired about the sale of the property because the 2nd Defendant's phone number was on the advert. That Claimant called him to inform him that he had some interested buyer who would like to inspect the land. That he subsequently made an offer to the 1st Defendant. That he promised to take the Plaintiff and the interested buyer for inspection of the land anytime they were ready for that. That Claimant called him sometime after and the 2nd Defendant took him and Alhaji A.H. Abubakar to the land for inspection. There, the 2nd Defendant told them the net price of 4 Plots of land which is Two Billion Naira (~~₦~~2, 000,000,000.00) only. He also informed them that his elder brother (1st Defendant) is the owner of the land and that he may not likely take a lesser offer. That Alhaji A.H. Abubakar requested to call the 1st Defendant who resides at Port Harcourt. That

meeting was facilitated by the 2nd Defendant. That the 1st Defendant and Alhaji A.H. Abubakar agreed to the sum of ₦1.6 Billion on the condition that no Agency Fee shall be paid to anyone on the Defendant side. That the Alhaji A.H. Abubakar accepted that condition and said that he will take care of the fees of his agent who is the Claimant on record.

That he later held a meeting with the Alhaji and Claimant where the Alhaji reiterated to Claimant that he (Alhaji A.H. Abubakar) had agreed with the 1st Defendant that he will pay the Claimant's Agency Fee and not the 1st Defendant. That Claimant never raised any objection to that before the Alhaji who is the Claimant's principal.

That on the day of the payment of the purchase price, the 1st Defendant came to Abuja and met Alhaji at Transcorp Hilton Hotel where the transaction was done and documents signed and exchanged. That Alhaji gave the Claimant One Hundred and Fifty Thousand US Dollars (\$150, 000.00) as his Agency Fees. That 1st Defendant neither promised nor had any agreement with the Claimant regarding any Agency Fee or 10% of the purchase price as Agency Fee. That the Res does not belong to him and he could not and did not make any agreement with the Claimant over the transaction. Besides, the 1st Defendant does not know the Claimant and had no agreement with him regarding the said Plots of land. Again, that all the Exhibits attached by the Claimant in support of his claim were not served on the 1st or 2nd Defendants. That the Defendants have Intention to Defend this Suit on merit as they have good Defence to the Suit if the Court grants them audience by

transferring this matter to the General Cause List. He urged Court to so hold.

COURT:

Once a matter is based on liquidated money demand or a debt in a liquidated form, the Court will mark the Writ undefended upon the application of the Plaintiff. Such writ is usually supported by an Affidavit and the Plaintiff usually avers that the Defendant has no prima facie defence to the case of Plaintiff and usually ends it by urging Court to enter Judgment in Plaintiff's favour.

Upon receipt of the writ within five (5) or a little time after, based on an Order for Extension of Time, the Defendant, where he feels he has a defence on merit, will file an Affidavit of facts to support the defence. So where the Court after going through the Affidavit of the Plaintiff and the Affidavit in support of Notice of Intention to Defend on merit filed by the Defendant, may where there is merit on it, transfer the case to General Cause List. If not the Court will enter Judgment summarily in favour of the Plaintiff and there the matter ends. See Order 35 High Court Rules 2018. See also the following cases:

It is the story of Plaintiff that sometime in 2014 he learnt about the sale of property at the Ancestral Gardens Court. He made efforts to meet the owner but eventually met his agent, the 2nd Defendant to verify the authenticity of the Plot. That 2nd Defendant told him that the land belonged to his elder brother, the 1st Defendant. That he had discussion on what his Agency

will be if he gets a buyer for the land. 2nd Defendant told him to pay him (Plaintiff) 10% as Agency Fee. That he took several persons there – over 100 people.

That the day his client came for inspection the Plaintiff invited 2nd Defendant who came to meet them with the original title document for sighting. That after the inspection and negotiation of price between the client and 2nd Defendant, they agreed at ₦1.6 Billion as purchase price for 4 Plots of land in the said Ancestral Garden. That he then fixed a meeting at Transcorp Hilton Hotel between his client and the Defendants.

That sometime in April 2015 his client and Defendants met and after introductions, his client transferred the amount to the 1st Defendant's Account and all necessary documents were executed between the clients and the Defendants. That he then requested for his Agency Fees. The Defendants promised to pay him soon, but never fulfilled that promise.

That when all entreaties for Defendants to pay and calls failed, he engaged service of Faith Plus Diamond to demand for the payment of the said Agency Fee. He attached the letter of the Solicitor to the 1st Defendant as EXH A. but 1st Defendant failed to pay the said fee. That he also instructed the same Counsel to petition the 1st Defendant before Economic and Financial Crime Commission (EFCC) for investigation into the matter. But all were to no avail. He attached the copies of the letters and petition dated 24/8/18, 18/12/18, 1/3/19 and 5/3/20 all marked as EXH B. That it is very obvious that the Defendants do not want or intend to

pay the said 10% which is One Hundred and Sixty One Thousand Naira (₦161, 000,000.00).

That the five (5) of agents involved in the sale of the said four (4) Plots have been threatening his life and that of his family. They have placed several calls and written threat letters which is marked as EXH C. He decided to come to Court to seek redress. That Defendants will not be prejudiced if Court grant their request. That Defendants refusal to pay the Agency Fee has negatively affected the Plaintiff's relationship with other Agents as well as his work. That it will be in the interest of justice to grant their Reliefs.

Once a Writ is predicated on a debt or liquidated money demand, such is usually marked Undefended upon the application of the Plaintiff. Such application is made Exparte – without Notice to the Defendant. Upon receipt of such Writ the Defendant has within five (5) to file an Intension to Defend the Suit. This is because the Plaintiff in such a case feels that the Defendant has no prima facie Defence to the Suit and as such the Court should enter Judgment summarily in Plaintiff's favour. See the following cases:

**Bona Textile Limited V. ATM PLC
(2013) 2 NWLR (PT. 1338) 357**

**Ekilo Farms Limited V. UBN
(2006) 4 SCNJ 164**

Dangeshuni LG V. Okonkwo

(2008) All FWLR (PT. 415) 1757

Where the Court after considering the Act of the Defendant finds that there is any need to hear from the parties based on the fact that there is an iota of Defence, the Court will transfer the matter to the General Cause List and hold that there is a prima facie Defence on merit. See the case of:

Bona Textile Limited V. ATM PLC

Again, the Court has a discretion and power to suo motu transfer the matter to the General Cause List or retain same under the Undefended List since it finds that the Defendant has no Defence on merit. In that case, the Court will mark the Writ with the phrase "Undefended List" and proceed to hear the Plaintiff and thereafter enter Judgment summarily in his favour without call of evidence. This is so even if the Defendant is present in Court. In that case the Defendant will not be given right of audience in Court. Once the Court enters Judgment summarily, the case ends and matter is closed. But where the Court transfers the matter to the General Cause List, the parties will file their Statements and Oaths and call evidence in determination as the Court will Order that the matter goes into full hearing.

It is important to note that privity of contract and contract agreement between parties are not in existences if and only if the parties have penned down their agreement in paper and signed dotted lines, Witnessed by other persons. The existence of a valid

contract can be deciphered from the body language of the parties, their action, oral or written communication and relationship with each other within the given period of time. Where such relationship exists and it is glaringly clear that the issue in dispute is not strange to any of the parties, the Court will hold that there was a contract agreement between those parties; more so when such agreement is commercial in nature. It is the common Latin maxim chanted by lawyer as a mantra –

Pacta Sunt Servanda – (Parties are bound by the contract they entered into).

That is so whether or not the contract favours or disfavors any of the parties; provided that such contract is not frustrated by an Act of God or such other unforeseen circumstances. It will still be binding on the parties.

In this case the Plaintiff had claimed that he had an agreement with the Defendants to pay him 10% of the sum of money paid for the purchase of the four (4) Plots of land at the Ancestors Garden Estate. He brought buyer who bought four (4) Plots instead of the initial one (1) Plot he had wanted to pay for. But that the Defendants failed to fulfill their promise/obligation since after the sale. Hence this action. He had reported that the other agents through who the buyer came thought that Defendants had paid him and he had refused to “settle” them. Hence they are threatening him and members of his family going by the letter he attached to the Writ – EXH C.

The story of the Plaintiff is not strange to the Defendants especially to the 2nd Defendant who acted for his elder brother the 1st Defendant. He had denied that 10% interest was ever agreed with the Plaintiff and that the buyer had given Plaintiff the sum of One Hundred and Fifty Thousand US Dollars (\$150,000.00). But he did not attach any evidence to buttress that claim. He confirmed that the Claimant contacted and enquired from him about the land transaction and informed him that he had a buyer who is interested to purchase the land – Alhaji A.H. Abubakar. He confirmed that he, the Claimant made an offer to the 1st Defendant. This means that there was an interface between the Claimant and 1st Defendant. He equally confirmed the inspection of the land with the then would-be buyer and Claimant. The Claimant had complained to the EFCC about the case and asked them to investigate the threat to his life and that of his property.

The question before this Court is, should this Court transfer the said case to the General Cause List as the Defendants want bearing in mind that the issue in dispute is not strange to the parties and holding that the Defendants have a prima facie Defence to this case?

Or should the Court enter Judgment summarily in the interest and favour of the Claimant and hold that Defendants has no Defence to the case of Plaintiff?

It is the humble view of this Court that there is no prima facie Defence to the case of Plaintiff because parties are bound by the agreement they have entered

into. Notwithstanding that there was no written agreement between the parties, the communication and relationship between the parties as far as this case is concerned shows that the parties are not strangers to what transpired.

There was offer, there was acceptance, there was consideration but the consideration was not fulfilled, hence this Suit. The agreement as to agency fee was known – 10% of the purchase price. Again the report to EFCC which the 1st and 2nd Defendants claimed was not served on them did not come out of the blues. The “story” line is the same fact as contained in the Affidavit of the Claimant and in the Affidavit of the Defendants to some extent. The Claimant would not have out the blues started making such claims and had the effrontery to report to the EFCC. The letters EXH A & B were addressed to the EFCC. If it was not served on the Defendants, it is not fault of the Claimant. It is the EFCC that would have contacted the Defendants if they felt it was worth the while and if they so wished. Not serving the Defendants does not make the complaint invalid. The fact that the Claimant made those complaints makes his claim strong. If actually he has no claims or there was no agreement as the Defendant claimed, the Plaintiff would not have fabricated that and have the boldness and courage to report the matter to the EFCC in the first place. If he did that out of malice and falsehood the Defendants would have sued him to Court for maligning them.

To start with, there is no how the Claimant would have not seen the 1st Defendant because he was the person who introduced the buyer to the 1st Defendant. He must have ordinarily met the 1st Defendant with the buyer to show the buyer who was ready to expend such amount on the land, who the real owner of the land is. Again, Plaintiff would not have taken over one hundred (100) intended buyers to the land without having a concrete though not written agreement as to what he will benefit if he eventually brought a buyer who buys the land or part thereof. He would not have slaved to do so without a concrete promise by the Defendants to pay him some Agency Fee.

The averment by Claimant in **paragraph 4 (g)** of his Affidavit clearly shows that the Defendants made promise and agreed to pay him the 10% of the purchase price. Again, given the averment of the 2nd Defendant for and on behalf of the 1st Defendant in the Affidavit in support of the Notice of Intension to Defend, it is clear. There is no how the buyer would have gone straight to meet the 1st Defendant without the Claimant and the 2nd Defendant both of who linked the buyer to the 1st Defendant. Again, the Claimant had averred that the 2nd Defendant had reliably informed him that he had liaised with the 1st Defendant and both agreed to pay him (Claimant) 10% of the transaction sum as his Agency Fee. There is no how the Claimant would have brought or presented the buyer to the Defendants without ensuring that his interest was known, agreed, determined and secured. Whether or not the buyer agrees to pay the Claimant any fee is not the business

of the 2nd Defendant. Besides, as to the alleged One Hundred and Fifty Thousand US Dollars (\$150, 000.00) = purportedly paid by buyer to the Claimant, the 2nd Defendant did not attach any document to show that the said payment, if it exists, was for the Agency Fee or part thereof. The letters **EXH A** shows that the Claimant met the 1st Defendant at the Transcorp Hilton Hotel where the Claimant introduced the buyer to the 1st Defendant in the presence of the 2nd Defendant. See **paragraph 8 of EXH A**. Again, in **paragraph 8 EXH 13 – Letter to EFCC dated 1/3/19** where the Claimant averred that the 2nd Defendant told him that the 1st Defendant had warned him not to convene any meeting in respect of the sale of the Plot where he would be involved unless and except the buyer has agreed to the amount to be paid. Hence when the buyer was ready the Claimant arranged to meet the 1st Defendant in company of the buyer and in the presence of the 2nd Defendant at Transcorp Hilton Hotel, Abuja. The 2nd Defendant confirmed the meeting. It was at that meeting that the deal was sealed and the contract of Sale executed and the payment was made later in the bank. The 2nd Defendant also confirmed this story in his Affidavit.

From all this it is evidently clear that the claim of the Claimant is clear. There is no doubt that the Defendants are indebted to him. The Defendants have no prima facie Defence to this case. Parties are at all times bound by the agreement they have made. Whether such agreement is in writing or deciphered by the actions and inactions of the parties. The claim of

the Plaintiff is liquidated money demand. The Defendants has no prima facie Defence. The Court cannot transfer the case to the General Cause List. The matter is therefore retained in the Undefended List.

The application to defend the Suit on merit filed by the 1st and 2nd Defendants lacks merit.

This Court holds that the Defendants has no prima facie Defence in the Suit. The said application is therefore DISMISSED.

This is the Ruling of this Court.

Delivered today the ___ day of _____ 2021 by me.

K.N. OGBONNAYA
HON. JUDGE