

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT MAITAMA

BEFORE HIS LORDSHIP : HON. JUSTICE Y. HALILU
COURT CLERKS : JANET O. ODAH & ORS
COURT NUMBER : HIGH COURT NO. 14
CASE NUMBER : SUIT NO: CV/104/2023
DATE: : FRIDAY 23RD FEBRUARY,
2024

BETWEEN:

ABUBAKAR IBRAHIM JALO APPLICANT

AND

1. ATLANTIC AUTOS NIGERIA LIMITED } RESPONDENTS
2. CHIEF CHARLES AHIZE }

JUDGMENT

The Applicant approached this Honourable Court vide an Originating Summons dated and filed on 6th November, 2023, praying the Court for the following:-

- a. A Declaration, that the 1st Respondent through the 2nd Respondent having voluntarily divested itself of all interest/title in the Three (3) Storey Building ("the Plaza") situate, lying and being at Plaza 1084, Cadastral Zone A08, Wuse II, Abuja FCT, covered by Certificate of Occupancy No. 3F3UW- 14C23-5E27R-C3AOU-10, registered as No. 3304 at Page 3304 in Volume 17 of the Certificate of Occupancy Register in the Land Registry Office at Abuja dated 2nd day of July, 2005, issued by the Ministry of Federal Capital Territory Administration in favour of Mrs. Alicia Smith Temlong via the sale agreement validly executed on 13th March, 2020 in favour of the Applicant, the Respondents cannot again by whatever means again transfer any valid interest/title in the said property to any other person(s).
- b. An Order of Perpetual Injunction restraining the 1st Respondent through any of its Directors and particularly the

2nd Respondent from interfering with the Applicant's quiet possession and enjoyment or transferring any type of interest/title in respect of the Three (3) Storey Building ("the Plaza") situate, lying and being at Plaza 1084, Cadastral Zone A08, Wuse II, Abuja FCT, covered by Certificate of Occupancy No. 3F3UW-14C23-5E27R- C3AOU-10, registered as No. 3304 at Page 3304 in Volume 17 of the Certificate of Occupancy Register in the Land Registry Office at Abuja dated 2nd day of July, 2005, issued by the Ministry of Federal Capital Territory Administration in favour of Mrs. Alicia Smith Temlong to any other person(s) howsoever described having via the sale agreement dated 13th March, 2020 voluntarily transferred its interest/title in the said property to the Applicant.

The grounds upon which this application is sought are as follows:-

- i. The 1st Respondent through the 2nd Respondent voluntarily transferred its interest/title in the three (3) Storey Building ("the Plaza) situate, lying and being at Plaza 1084, Cadastral Zone A08, Wuse II, Abuja, FCT, covered by Certificate of Occupancy No. 3F3UW-14C23-5E27R-C3AOU-10, registered as No. 3304 at Page 3304 in Volume 17 of the Certificate of

Occupancy Register in the Land Registry Office at Abuja dated 2nd day of July, 2005, issue by the Ministry of Federal Capital Territory Administration in favour of Mrs. Alicia Smith Temlong to the Applicant via a validly executed sale agreement dated 13th March, 2020.

- ii. The Applicant furnished valuable consideration for the transfer of the said property to him.
- iii. By the terms of the sale agreement the Applicant took possession of the said property upon the execution of same.
- iv. That recently, despite the extant sale agreement validly executed between the Applicant and the 1st Respondent through the 2nd Respondent vesting possession, interest/title in respect of the said property in favour of the Applicant, the Respondents, particularly the 2nd Respondent brought other persons around to value the said property with a view of selling same to them.
- v. The Applicant being the beneficiary of the extant, valid and subsisting sale agreement executed between him and the 1st Respondent weary of the antics of the 2nd Respondent fears that his interest/title in respect of the said property evidence by the sale agreement dated 13th March, 2020 will be

threatened and destroyed, hence the intervention of this Honourable Court in terms of the substantive reliefs hereof have been sought.

The application is supported by a 17 paragraph affidavit deposed to Abubakar Ibrahim Jalo, the Applicant in this suit.

It is the deposition of the Applicant, that; he is a business majoring in luxury auto sales and supplies throughout Nigeria and its environment.

That the 2nd Respondent who is the Managing Director/CEO and alter ego of the 1st Respondent is also into auto sales that most often depends on him to meet the demands of his customers.

That the 2nd Respondent approached him sometime in 2020 and implored him to purchase his property bought in the name of the 1st Respondent situate in Wuse II, Abuja, to wit; a Three (3) Storey Building ("the Plaza") situate, lying and being at Plaza 1084, Cadastral Zone A08, Wuse II, Abuja FCT, covered by Certificate of Occupancy No. 3F3UW-14C23-5E27R-C3AOU- 10, registered as No. 3304 at Page 3304 in Volume 17 of the Certificate of Occupancy Register in the Land Registry Office at Abuja dated 2nd day of July, 2005, issued by the Ministry of

Federal Capital Territory Administration in favour of Mrs. Alicia Smith Temlong.

That because of the 2nd Respondent's continuously mounted pressure on him to purchase the property from him obviously because he needed cars and cash from me to further his own business, he unqualifiedly agreed to purchase the said property from him.

That also because the 2nd Respondent was somebody already known to him, he obliged his request and agreed to purchase the property from him.

That consequent upon his agreement to purchase the said property of the 1st Respondent on the request of the 2nd Respondent which was in the 1st Respondent's name of whom the 2nd Respondent is the Managing Director/CEO and alter ego of, a sale agreement was validly and voluntarily executed between the 1st Respondent and Applicant in respect of the said property, to wit; Three (3) Storey Building ("The Plaza") situate, lying and being at Plaza 1084, Cadastral Zone A08, Wuse II, Abuja FCT, covered by Certificate of Occupancy No. 3F3UW-14C23-5E27R-C3AOU- 10, registered as No. 3304 at Page 3304 in Volume 17 of the Certificate of Occupancy Register in the Land Registry Office

at Abuja dated 2nd day of July, 2005, issued by the Ministry of Federal Capital Territory Administration in favour of Mrs. Alicia Smith Temlong. The sale agreement is attached as Exhibit "A".

That by the validly and voluntarily executed sale agreement by the 1st Respondent through the 2nd Respondent in his favour, and upon the passing of valuable consideration by him to the 2nd Respondent on behalf of the 1st Respondent in respect of the said property, he immediately took possession of the said property by virtue of the terms of the sale agreement and have since been in quiet possession of the said property.

That he recently notice that the 2nd Respondent despite their subsisting sale agreement validly and voluntarily executed was bringing strange persons into the said property to value same with the view of selling the same Three (3) Storey Building ("The Plaza") situate, lying and being at Plaza 1084, Cadastral Zone A08, Wuse II, Abuja FCT, covered by Certificate of Occupancy No. 3F3UW-14C23-5E27R-C3AOU-10, registered as No. 3304 at Page 3304 in Volume 17 of the Certificate of Occupancy Register in the Land Registry Office at Abuja dated 2nd day of July, 2005, issued by the Ministry of Federal Capital Territory Administration in

favour of Mrs. Alicia Smith Temlong already sold to him evidenced by their sale agreement dated 13th March, 2020.

That he knows as a fact that the 1st Respondent through the 2nd Respondent having divested its interest/title in respect of the said property in my favour cannot through the 2nd Respondent purport to sell the same property to anybody howsoever described again.

That his interest in the said property evidenced by the legal instrument of the sale agreement is being threatened and will be certainly destroyed by the obviously illegal activity of the 2nd Respondent on behalf of the 1st Respondent he hasten to approach this Honourable Court to protect his interest guaranteed in the provisions of the sale agreement validly and voluntarily executed between him and the 1st Respondent through the 2nd Respondent.

That his action before this Honourable Court is also to safeguard the interest of innocent third parties that might fall to the unlawful antics of the 2nd Respondent by parting with huge sum of money to him in respect of a property that the Respondents have divested their interest in it in his favour by the validly executed sale agreement.

That the Respondents, particularly the 2nd Respondent's activities in respect of the said property has becomes very questionable hence the intervention of this Honourable Court is required, his interest/title in the said property been threatened by these activities.

That the 1st Respondent acting through the 2nd Respondent no longer have any type of interest/title in respect of the said property for them to purport to act in anyway whatsoever in respect of same.

That it will serve the interest of justice if this application is granted.

In line with law and procedure, final written address was filed wherein sole issue was formulated for determination to-wit;

"Whether in view of the extant validly executed sale agreement in respect of three (3) Storey Building ("The Plaza) situate, lying and being at Plaza 1084, Cadastral Zone A08, Wuse II, Abuja – FCT, covered by Certificate of Occupancy N. 3F3UW-14C23-5E27R-C3AOU-10, registered as No. 3304 at page 3304 in Volume 17 of the Certificate of Occupancy Register in the Land Registry Office at Abuja dated 2nd day of

July, 2005, issued by the Ministry of Federal Capital Territory Administration in favour of Mrs. Alicia Smith Temlong between the Applicant and the 1st Respondent with the knowledge, approval and consent of the 2nd Respondent being the Managing Director/CEO and alter ego of the 1st Respondent transferring interest/title in the said property to the Applicant, the Respondents interest/title having been legally extinguished, the Respondents can in whatever way described, again disturb the peaceful possession of the Claimant or transfer the same interest/title in the said property by way of sale or any means of transfer howsoever called to any other person(s)?”

It is the submission of learned counsel, that the elements of a valid sale of land agreement as played out between the Applicant and the 1st Respondent was aptly expressed in the case of ***YOUNG SHALL GROW MOTORS LTD. ONALADA (2021) ALL FWLR (Pt. 1098) at Pp. 374 – 375, Paragraphs F – A.***

Learned counsel submits, that Clause 2 the Agreement expressly stated that “possession” – “The purchaser shall be given absolute

possession of the plaza the subject matter of this Agreement and from this date will take possession thereof forthwith; and the purchaser hereby acknowledges having been given possession of the Plaza by the Vendor”

It is further the submission of learned counsel, that by this clear and unambiguous provision in the sale agreement executed between the Applicant and the 1st Respondent to the knowledge, approval and consent of the 2nd Respondent who is the Managing Director/CEO and alter ego of the 1st Respondent, the Respondents completely divested themselves of any interest/title in respect of the said property in favour of the Applicant.

Learned counsel contends, that consequent upon the sale agreement, to wit; Exhibit “A” the Respondents are bound by the express term in the agreement that they have handed over/given possession of the said property to the Applicant hence cannot now take other persons to the same property with any intention to sell same to them. The case of ***ABDULAZIZ V GARBA (2021) 3 NWLR (1764) at P. 392 para. E-F*** was cited.

Learned counsel further contends, that from Exhibit “A” before this Honourable Court, the Respondents gave the Applicant possession of the said property consequently upon this

application by the Applicant, with respect, this Court is duty bound to give effect to the clear agreement between the Applicant and the 1st Respondent that the Applicant has been firmly placed on the property by the Respondents hence the 2nd Respondent cannot be validly acting for the 1st Respondent by taking other person to the said property with the intention of selling the same said property.

Learned counsel submits that the Applicant justifiably approached this Honourable Court to protect his valid interest/title, now that his interest in the said property is been threatened by the same Respondents for this Court to interpret the provision vesting possession thus interest/title in respect of the said property on him by virtue of clause 2 of the Sale Agreement, in addition to the declaration by the 1st Respondent in the Sale Agreement to him in clause 3. Counsel cited ***MUONANU V NWAEMELU (2021) 3 NWLR (1763) at paras. B-C.***

Learned counsel implore and urge this Honourable Court to resolve the sole issue formulated by the Applicant in his favour, and accordingly proceed to grant the reliefs sought in the face of this Originating Summons.

In conclusion, learned counsel submits, that there is merit in the Applicant case before the Court, consequent upon which counsel humbly pray that this Honourable Court grant to the Applicant all the reliefs sought in this Application.

COURT:-

I have read carefully the reliefs sought by the Plaintiff against the Defendants, on the one hand, and the legal argument canvassed on the other hand.

It is instructive to note at this juncture, that Defendants who were duly served the process of this Court, failed and or ignored to join issues with the Plaintiff.

As stated earlier, I have read the reliefs sought by the Plaintiff, the principal of which is Declaratory in nature. I therefore shall briefly speak on the law regarding Declaratory Reliefs.

Before that, permit me to note the fact that Originating Summons being one of the processes of instituting actions in Court, is meant to be used only in circumstances where there is no dispute on questions of facts and should never be a substitute for initiating contentious issues of facts.

It is usually meant for the interpretation of written laws or agreements.

See ***OLOMODA VS. MUSTAPHA & ORS (2019) LPELR – 46438 (SC);***

OSSAI VS. WAK WAH (2006)2 SC (Pt. 1) 28.

With above settled law on when Originating Summons shall be used in commencing an action, I shall now proceed to look at the reliefs sought which are principally declaratory and what Plaintiff shall do to be entitled to Judgment.

Regardless of the fact that Defendants failed to join issues with Plaintiff, Plaintiff's principal relief being Declaratory in nature shall be established by way of substantial and credible evidence, if it must succeed.

This is so because, declaratory reliefs are not granted as a matter of course, absence of Defence and or admission by the adverse Party.

See the case of ***MODIBBO VS. YARO & ORS (2019) LPELR – 47790 (CA);***

MATANMI & ORS VS. DADA & ANOR (2013) LPELR 19929 (SC).

It is worthy of note that the agreement between the Plaintiff and Defendants which Plaintiff by the construction of the relief sought seek for interpretation, is the focal point.

I shall therefore reproduce some relevant portion of the said agreement to be able to make sense out of the whole misunderstanding.

I say this with every sense of responsibility that parties who freely enter into contractual agreement with all the condition for validity established, are bound by the terms of such an agreement.

The jurisprudence is founded on Sanctity of Contract. See the following cases;-

ADABANYA VS. AIR FRANCE (2018) LPELR-49894 (CA);

NWARIBE V. OWERRI MUNICIPAL COUNCIL & ORS (2015) LPELR-24433(CA).

I now proceed to produce the preamble to the Agreement and Dispute Resolution Clause thereof;

SALE AGREEMENT

THIS SALE AGREEMENT is made this 13th day of March, 2020

BETWEEN:

ATLANTIC AUTOS NIGERIA LIMITED, a company incorporated under the Laws of Nigeria with its principal place of business at Plaza 1084 Cadastral Zone A08 Wuse II, Abuja (hereinafter referred to as the "Vendor") which expression shall where the context so admits includes its assigns, executors, administrators, legal representatives, agents and assigns of the one part.

AND

ABUBAKAR IBRAHIM JALO of No. 13, Zaria Road, Garki II District, Abuja, FCT, Nigeria ("The Purchaser") which expression shall where the context so admits includes his successors-in-title, heirs, legal representatives, agents and assigns of the other part.

WHEREAS:

1. **By a Certificate of Occupancy No. 3F3UW-14C23-5E27R-C3AOU-10 registered as No. 3304 at Page 3304 in volume 17 of the Certificate of Occupancy Register in the Land Registry Office at Abuja dated 2nd day of July, 2005,**

issued by the Ministry of Federal Capital Territory, Administration, **MRS. ALICIA SMITH TEMLONG** ("The Original Allottee") became the bonafide owner and Vendor's Predecessor-in-title.

2. The Original Allottee executed a Deed of Assignment and donated a Power of Attorney in favour of the Vendor and transferred all his title interest and other ancillary document including possession of the Plaza to the Vendor, who is now seized of the said Plaza as the beneficial owner of the Plaza otherwise free from any encumbrance(s).
3. The Vendor, through Chief Ahize, the Managing Director/CEO and alter ego of the Vendor, acting for and on behalf of the Vendor has agreed to sell the Plaza to the Purchaser and the Purchaser is desirous to acquiring same for valuable consideration.

NOW THE AGREEMENT WITNESSES AS FOLLOWS:-

1. SALE:-

The Vendor hereby sells to the Purchaser hereto present and ALL that Plaza, comprising of three (3) Storey Building "The Plaza" situate, lying and being at Plaza

1084, Cadastral Zone A08, Wuse II, Abuja, FCT, covered by Certificate of Occupancy No. 3F3UW-14C23-5E27R-C3AOU, registered as No. 3304 at Page 3304 in Volume 17 of the Certificate of Occupancy Register in the Land Registry Office at Abuja dated **2nd day of July, 2005**, issued by the Ministry of Federal Capital Territory Administration in favour of **MRS. ALICIA SMITH TEMLONG.**

DISPUTE RESOLUTION

- i. All disputes arising from or in connection with this Agreement shall be settled, if possible, by negotiations between the Parties. For that purpose, either Party may, by giving written notice, cause any matter in, or alleged to be in, dispute to be referred to a meeting of appropriate representatives of Management of the Parties. Such meeting shall be held within fifteen (15) days following the giving of said written notice. If the matter is not resolve within fifteen (15) days after the date of the notice referring the matter to appropriate management representatives or such later date as may be mutually agreed upon then the dispute must be submitted to mediation by the third person neutral.
- ii. For the mediation, either the Parties shall mutually agree to determine the date of commencement; or one Party may in

writing invite the other Party to participate in mediation in this latter case the mediation starts on the date unilaterally indicated by the Party taking the initiative to invite, but not earlier than fifteen (15) days from the date of receipt of such written invitation by the invited party. This mediation shall be kept confidential and Judgment on any settlement reached at the mediation may be entered by any Court of competent jurisdiction.

I am minded to observe that parties having agreed from the afore-reproduced Clause bothering on Dispute Resolution to only approach the Court for the Judgment to be entered as any such Settlement reached through mediation, this Court cannot therefore re-write the agreement of parties.

I am however fortified to note that parties are indeed bound by the Terms of their Contract.

Defendants cannot unilaterally shirk from their Contractual undertaking as contained in the body of the Sales Agreement.

By this Judgment, however, parties are enjoined to abide by the Dispute Resolution Clause and do the needful.

Above is my Judgment.

***Justice Y. Halilu
Hon. Judge
23rd February, 2024***

APPEARANCES

Godwin S.O. – for the Applicant.

Respondent not in Court nor represented.