

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

**CLERK: CHARITY ONUZULIKE
COURT NO. 9**

**SUIT NO: FCT/HC/CV/615/2017
DATE: 30/9/2024**

BETWEEN:

GABRIEL UMUKORO.....APPLICANT

AND

IFEANYI UZOIGWE.....DEFENDANT

JUDGMENT

(DELIVERED BY HON. JUSTICE S. B. BELGORE)

This is a civil action brought before this Honourable Court by Engineer Gabriel Umukoro, the Claimant herein against Architect Ifeanyi Uzoigwe, the Defendant herein.

In this suit, the Claimant is claiming against the Defendant the following:

- (a) An Order of declaration by the Honourable Court that the act of the Defendant in misrepresenting to the Claimant that he is an Assistant Director with FCDA when he knew he was already dismissed from FCDA and collecting the sum of **N10,800,000.00** from the Plaintiff is fraudulent.
- (b) An Order of declaration by the Honourable Court that the act of the Defendant in collecting the sum of **N10,800,000.00** from the Plaintiff and refusing, failing or neglecting to fulfil his promise to secure the allocation of the two plots of land in choice areas in Abuja for the

Plaintiff on or before 30th April, 2013 for which the Plaintiff gave the said sum of money amounts to breach of contract.

- (c) An Order of the Honourable Court either directing or mandating the Defendant to refund to the Plaintiff the sum of **N10,800,000.00** which the Plaintiff paid to the Defendant for the Defendant to secure the allocation of two plots of land for the Plaintiff which two plots, the Defendant refused, failed or neglected to secure for the Plaintiff on or before 30th April, 2013.
- (d) General damages in the sum of **N5,000,000.00** for breach of contract by the defendant to secure the two plots of land for the Plaintiff as agreed by both parties.
- (e) Ten (10) percent interest on total judgment sum from the date of judgment until the total sum is liquidated.
- (f) The sum of **N200,000.00** being cost of this action.

SUMMARY OF FACTS OF THE CASE

The Claimant, Gabriel Umukoro, is a businessman based in Port Harcourt, Rivers State. Sometime in 2013 the Claimant while on a business trip in Abuja discussed with one Joseph Odey to the effect that he needed to purchase two plots of land in choice areas in Abuja for residential and office purposes. The said Joseph Odey consequently introduced the Defendant, Architect Ifeany Uzoigwe to the Claimant.

The Defendant upon meeting the Claimant told him he had two plots on ground for sale, one for residence and the other for office, that he only needed to apply to the Minister of FCT for the allocation letters of the plots to be ready on or before 30th April, 2013. The Defendant assured the claimant that he could secure the

two plots within the time frame given the fact the he is an Assistant Director with Federal Development Authority (FCDA) and also being very close to the then Minister of FCT.

The Claimant, not based in Abuja, was not aware of the procedure and time duration for letters of allocation to be ready in FCT but relied on the representations made by the Defendant.

On negotiation, the Claimant agreed to pay to the Defendant a total sum of **N10,800,000** only for the two plots as follows:

- i. Purchase price, **N10,000,000.00** only, that is, **N5,000,000.00** per plot;
- ii. **N600,000.00** only for procurement of design and schematic diagram, that is, **N300,000.00** only per plot; and
- iii. **N200,000.00** only for land application fee processing, that is, **N100,000.00** only per plot.

The Defendant took the Claimant to his residence and introduced him to his wife. From there he took the Claimant to Jahi District to show him one of the plots and proceeded to Kaura District and showed him the second plot.

The Claimant convinced by the above actions or conduct of the Defendant and in line with the agreement paid the above sum in three tranches viz 1st tranche N600,000.00, 2nd tranche N200,000.00, and the 3rd tranche N10,000,000.00.

After the payment, the Defendant reassured the Claimant that the allocation letters would be out on or before 30th April, 2013. But contrary to the promise by the Defendant to secure the allocation letters on or before 30th April, 2013 proved abortive.

The Claimant made several efforts through above referred Joseph Odey and direct phone calls, whatsapp and text messages to make

the Defendant secure the two plots but to no avail as the Defendant became evasive and giving all kinds of flimsy excuses. This prompted the Claimant to terminate the transaction and started demanding for refund of his money.

The Defendant while admitting the contract has failed, made promises on several occasions to refund the money to the Claimant but failed. Of particular interest is the text message the Defendant sent to the Claimant from his handset dated 14th May, 2014 in which he stated “if by next week the allocation letters are not collected then your money will be refunded with interest”.

The Claimant along the line discovered that the Defendant was no longer in the employment of the FCDA having been dismissed for allegedly fraudulent activities even before he was introduced to him and represented himself to be an Assistant Director with FCDA. The Claimant also discovered that the Defendant’s demand for the N600,000.00 and N200,000.00 respectively for schematic and design diagram and land application fee processing were spurious cleverly designed by the Defendant to prop the claimant to part with the target money of N10,000,000.00 only. The Defendant diverted the money to other use immediately after collecting same and never spent it on the purpose for which it was given.

The Claimant, wrote a petition to the Nigeria Police for investigation and prosecution of the Defendant. Consequently, the Defendant was invited by the police, investigated and charged to Court. However, as soon as the Defendant was released on bail he started boasting about that he had sorted himself with the police and that the matter would not go anywhere, that the police will not be able to recover the money.

Based on the refusal, failure and neglect of the Defendant to refund the money to the Claimant and also the Defendant’s

attitude towards the Claimant, the Claimant instructed his lawyer Paul Asimiakpeokha Esq to file this action in Court.

The Claimant through his Counsel initially filed a writ of summons on 6th January, 2017 under the undefended list claiming against the Defendant the following:

- (a) The sum of N10,800.00 (Ten Million, Eight Hundred Thousand Naira) only representing the total sum of money being refund due from the defendant to the plaintiff for the defendant's failure to secure allocation of two plots of land in Abuja for the plaintiff.
- (b) Ten percent (10%) interest on the above stated sum of N10,800,000.00 from the date of judgment till the debt sum is liquidated.
- (c) The sum of N200,000.00 being cost of engaging legal practitioner for the recovery of the above stated amount by the plaintiff.

The Defendant, on 16th March, 2017 filed his notice of intention to defend the action. The Honourable Court on the 18th May, 2017 in its absolute wisdom transferred the suit to the general cause list and ordered the parties to file and exchange their respective pleadings.

On the 18th September, 2017 the Claimant, in compliance with above order of court to file and exchange pleadings, filed his Statement of Claim and Witness Statement on Oath claiming against the Defendant the reliefs here before mentioned at the introductory part of this address.

On 16th November, 2017 the Defendant filed his Statement of Defence and Witness Statement on Oath asking the Honourable Court for the following:

- (a) An Order of the Honourable Court dismissing the Claimant's claim in its totality for being misconceived, frivolous and lacking in merit.
- (b) A declaration that the **N10,800,000.00** (Ten Million, Eight Hundred Thousand Naira) paid by the claimant at various times were for processing in actualizing the two (2) plots of land in choice areas in the Federal Capital Territory as instructed.
- (c) The sum of **N500,000.00** (Five Hundred Thousand Naira) only as general damages.

EVIDENCE DURING TRIAL

Trial of this suit commenced on 26th March, 2018 with the Claimant, Engr. Gabriel Umukoro testifying as sole witness, PW1 in support of his claims. He started with the adoption of his Witness Statement on Oath and tendering same in evidence before the Honourable Court as his oral testimony. **There was no objection against the tendering and admissibility of the Witness Statement on Oath by the Defendant Counsel.**

The PW1 went on to tender the following:

- a. FCMB Draft - EXHIBIT A
- b. Bundle of text messages - EXHIBIT B
- c. Statement of Defendant to the Police – EXHIBIT C
- d. Charge Sheet (FIR) - EXHIBIT D
- e. Land Application Processing Fee for Gabriel Umukoro – EXHIBIT E
- f. Land Application Processing Fee for Makejiri Kome Ltd – EXHIBIT F.
- g. Receipt of Payment of fee to Counsel – EXHIBIT G.

At the close of the PW1 testimony, the case was adjourned for cross examination of the PW1. The PW1 was cross examined by the Defendant Counsel for the Defendant to open his defence.

On the 25th October, 2021 when the case came up for the Defendant to open his case, he failed to do so but rather applied for amendment of his Statement of Defence and Witness Statement on Oath.

On 8th May, 2023 filed an amended Statement of Defence and Witness Statement on Oath and the motion of amendment was moved and granted on 11/05/2023. The Defendant adopted his Witness Statement on Oath same 11/05/2023 to open his defence.

The following documents were tendered by the Defendant:

- a. Revenue collectors receipt dated 11/04/2023 and another receipt makejiri kome Ltd – EXHIBIT AA
- b. Public Investigation Activities Report – EXHIBIT BB
- c. Statement of Account with Access Bank – EXHIBIT CC
- d. Acknowledgment copy of receipt by Sunday Ogar – EXHIBIT DD

The case was adjourned for cross examination of the DW-1.

On the 20th March, 2024 the DW1 was cross examined by the Claimant Counsel.

The case was adjourned for filing and adoption of final written addresses by the parties.

A few minutes ago, Counsel adopted their respective written address.

Defendant's Counsel submitted two issues for determination: to wit:

- (1) Whether the witness statement on oath of the Claimant signed in his lawyer's office is competent before the Court.
- (2) Whether or not the Claimant is entitled to the relief sought in this Hon. Court.

On the other hand, the Claimant's Counsel submitted a sole issue for determination to wit:

“Whether from the totality of the evidence before the Hon. Court, the Claimant is not entitled to the claims sought in this Court.”

I feel free to adopt the 2 issues as framed by the Defendant's Counsel as the real issues that call for determination in this Court.

I have considered all the written arguments of Counsel as regard the two issues. Those arguments are on record and would only be referred to as expedient as necessary. There is no need to repeat them verbatim or in extension.

I Start with the 1st Issue:

“Whether the witness statement on oath of the Claimant in his lawyer's office is competent before the Court.”

The Defendant's lawyer referred me to section 112 of the Evidence Act which read thus:

“An affidavit shall not be admitted which is proved to have been sworn before a person on whose behalf the same is offered, or before his legal practitioner, or before a partner or clerk of his legal practitioner.”

He submitted that by virtue of that provision an affidavit shall not be sworn before certain person e.g legal practitioner or his clerk or partner in office. Learned Counsel referred to the answer of the Claimant/witness under cross-examination where he said he signed his statement on oath in his lawyer's chambers. He went on to cite the cases of Ogunleye Vs. Oke (1999) 5 NWLR (Pt. 604) 618; **OKERE VS. NLEM (1992) 2 NWLR (PT. 226) 701 & UDEZE VS. CHIDEBE (1990) 1 NWLR (PT. 125) 141**. Learned Counsel then submitted that the witness statement on oath having not been sign before competent person is no evidence before this Court and should be disregarded see paragraphs 5.1 – 5.9 of the Defendant's Counsel's address.

On the part of the Claimant's Counsel, he tried to impugn the record of the Court by saying the witness (PW1) said he signed the statement in both his lawyer's office and also in Court. He wrote thus at paragraphs 5.1.47 of his address as follows:

“.....What the PW1 said was that I went to my lawyer to the Court and we met the Commissioner and I signed.”

With due respect to the Counsel to the claimant, that is not correct what the witness said under cross-examination was that he signed his statement oath in his lawyers office. That is what I have in my record and that is the fact I will deal with.

Be all the above as it may, even if, as shown or appear to me that the statement was not signed before a Commissioner for Oath or a Notary Public as it should be, the fact of the defect is not fatal to the case of the Claimant. Afterall, the witness on 26/3/18, went into the witness box, took a oath with the Bible and adopted is statement oath as his evidence in this case. It is my view that that oath in Court with the Bible effectively erased his previous oath whether before his legal practitioner or any Commissioner for Oath. In effect therefore, that statement on oath is a valid

evidence before this Court and I so hold. After all, the statement is a statement on oath and not an affidavit evidence. So all those cases of **OGUNLEYE VS. OKE (Supra)**, **UDEZE VS. CHIDEBE (Supra)** are not applicable to this case. This first issue is therefore resolved in favour of the Claimant.

(2) Whether or not Claimant is entitled to the reliefs sought for this Honourable Court.

The germane issues or facts in this case begging for full attentions are:

- (1) The Claimant paid the sum of N10,800,000 to the Defendant at various times.
- (2) The payment was for processing of 2 plots of land for him in the FCT.
- (3) The Defendant did not deny the payment nor receiving the N10.8 million. In fact, the Defendant said he disbursed the money to the following persons:
 - a. Odey Joseph
 - b. Okezie Onyekwere
 - c. Tope Omoregbeji

These are Consultants and facilitators of the procurement of the two plots.

- (4) No plots of land has been made available to the Claimant as at the time of institution of this suit in this Court.
- (5) The Defendant's position is that he paid for the forms for the land, applied for the two plots, paid the necessary fees as evidence in the Revenues Collector's receipt and the application for the Grant/Re-grant of Statutory Right of

Occupancy etc. On 11/4/2013 and 26/4/2013. There is even a file issued with file No. DT 62584 and MISC 12348 in favour of the Claimant.

Now the basic claim of the Claimant is refund of his money which he paid to the Defendant for a consideration that has failed. This is a case in simple contract. The law is trite; parties must honour their agreement. The agreement between these two parties is clear – give me N10.8 million and I will deliver two plots of land to you. Now, the Claimant fulfilled his side of the bargain i.e. paid N10.8 million. The Defendant's side of the bargain is yet to be fulfilled. Is this contract frustrated in anyway? I do not think so. The contract is not incapable of being fulfilled. Money was paid to the relevant authority but no land has been made available. Who is to be blamed? Certainly not the claimant. See 5.1.6, 5.1.7, 5.1.8, 5.1.9, 5.2.0.

5.1.6 In view of the above, the legal question to be asked here is whether the Claimant has placed sufficient, credible or convincing evidence before this Honourable Court as to entitle him to the claims sought in this suit. Our answer to the above question is positive: yes.

5.1.7 To be able to come to a just and fair conclusion in this case I have examine very scrupulously the evidence (both oral and documentary) of the PW1 in support of his case. It is trite law that a Court determining a case before it has the powers to examine the evidence including documents placed before it. The evidence of the PW1 before this Honourable Court is unambiguous and unequivocal and clearly supports the claims of the Claimant herein.

5.1.8 For convenience, let have a community treatment of both the first and second claims of the Claimant in this written address.

5.1.9 The Claimant, to support his above two claims, informed the Honourable Court in his Statement of Claims, Witness Statement

on Oath and during cross-examination, that he is not based in Abuja but in Port Harcourt and that in one of his trips to Abuja he informed one Joseph Odey that he needed to buy two plots of land for both residence and office purposes respectively.

5.2.0 That the said Joseph Odey introduced the Defendant to him and that when the Defendant learned of the purpose for which he was introduced to the Claimant, he told the Claimant that there was no need for direct purchase, that he had two plots on ground already one at Jahi and the other at Kaura Districts respectively. That he only needed to apply to the Minister FCT to get the allocation letters on or before the end of April, 2013 provided, the Claimant was prepared to pay the sum of N10,800,000.00 only as follows: N600,000.00 for purportedly schematic and diagram design, N200,000.00 for land application process and N10,000,000.00 for the purchase price of the two plots.

Finally, I find merit in the case of the claimant. He is entitled to all the reliefs sought in this case except one. By this, I mean Declaratory relief which is the first and second claims; thirdly the claim for refund of N10.8 million; general damages which I assess at N1 million; 10% interest on total judgment sum from the date of this judgment until the same is liquidated.

The last relief of N200,000 being the cost of this suit is refused as it was not proved. Moreso, it is not part of our jurisdiction to award claim for cost of action.

Signed
S. B. Belgore
(Judge) 30/9/2024