IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT COURT 10, AREA 11, GARKI, ABUJA

BEFORE HIS LORDSHIP: HON. JUSTICE S. B. BELGORE

SUIT NO. FCT/HC/CV/205/2021

DATE: 25/09/2024

B E T W E E N

REGISTERED TRUSTEES OF FAIRLY USED VEHICLES SELLERS AND BUYERS FABRACATIONS AND SCRAPS ASSOCIATION OF NIGERIA	**CLAIMANT**

AND

1. SHAMSUDEEN ZALAHATU **2. THE ESTATE OF LATE ALH. HAMZA ZALAHATU**	**DEFENDANTS**

JUDGMENT

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

The Plaintiff in this suit is Registered Trustees of Fairly Used of Vehicles Sellers and Buyers Fabrications and Scraps Association of Nigeria. Before they became corporate entity on the 15th May,

2019, they had been in occupation and possession of the land which is the Estate of Late Alhaji Hamza Zalahatu who is the 2nd Defendant in this case. And the 1st Defendant is one of the sons of the Late Alhaji Hamza Zalahatu who is Shamsudeen Zalahatu.

By a 23 paragraphs statement of claim, the Claimant prayed this Court for the following reliefs:-

1. A declaration that the Association is entitled to the offer of first refusal as agreed with the late Alhaji Hamza Zalahatu, father to the 1st Defendant (Shamsudeen Zalahatu).
2. A declaration that the purported sale of the land been lease to the ***TRUSTEES OF FAIRLY USED OF VEHICLES SELLERS AND BUYERS FABRICATIONS AND CRAPS ASSOCIATION OF NIGERIA*** for the past 21 years and measuring 90/55qm situate, lying and described as ***PANTAKER, OPPOSITE GOVERNMENT JUNIOR SECONDARY SCHOOL, DEI-DEI, BEHINDS TRAILER PARK, ABUJA***, FCT, without the

offer of first refusal is null, void and of no effect whatsoever.

3. A declaration that the Defendant's continuous disturbance, harassment, threat of eviction/demolition and constant embarrassment is an infringement on the Claimant's right to quiet and peaceful possession and contrary to the long standing agreement reached between Late Alhaji Hamza Zalahatu and Yahayah Mallam Audu and Alhaji Ado Aminu.
4. An Order of perpetual injunction restraining the Defendants, their privies, agent, assigns and cronies from further trespassing, disturbing, evicting, demolishing, harassing and for intimidating members of the Claimant on the property situate and located at Dei-Dei Pantaker Opposite Government Junior Secondary School, Dei-Dei, FCT, Abuja.

5. The sum of N2,000,000.00 (Two Million Naira) against the Defendants jointly and severally as cost of instituting this action.
6. The sum of N150,000,000.00 (One Hundred and Fifty Million Naira) only general damages against the Defendants jointly and severally for the breach of the standing agreement.
7. And for such order or further orders as this Honourable Court may deem fit to make in this circumstances.
8. Interest at the rate of 21% per annum on the Judgment sum from the date of Judgment until the Judgment sum is liquidated.

The defendants denied total liability. They filed a 17 Joint Statement of defense.

On the 31st January, 2022, Plaintiff's Counsel informed the Court that settlement out of Court is still ongoing but the parties were unable to reach a settlement and the case proceeded to trial. That was on the 13th March, 2023. The Plaintiff called 3 (three) witnesses.

As PW1, Mr. Kabir Isa who is the Secretary to the Claimant said he is a Muslim and gave evidence in Hausa Language under affirmation with the help of an interpreter by the name Bashir Sheu. He referred to his earlier written statement on oath and adopted same as his evidence in this case. Exhibits A, B, C1 and C2 were admitted in evidence through this witness during his examination-in-chief.

The Exhibits are as follows:-

Exhibit A is a Letter headed ‘Demand Notice to Quit’ dated 15th February, 2021.

Exhibit B is a letter addressed to the Attorney General of Federation and dated 4th May, 2021.

Exhibit C1 and C2 are letters addressed to the Commissioner of Police, FCT dated 10th March, 2021 and 25th April, 2022 respectively.

Under cross examination, he said the alleged lease agreement is unwritten and has no duration to end. The late Alhaji Hamza Zalahatu just allowed them to use the place that whenever he wants to sell he would offer it to us.

PW2 is one Alhaji Dairu. He testified on oath with Holy Qur'an. He also referred to his earlier written statement on oath and adopted it as his evidence in this case.

Exhibit D and E were put in evidence through this witness during his examination-in-chief.

Exhibit D is a letter of complaint addressed to Assistant Commissioner of Police Kubwa Area Command and dated 25th April, 2022.

Exhibit E is a paper captioned Quit Demolition Notice dated 16th July, 2021.

Under Cross-examination, he said the lease (permission) to use the place has no duration of years. And that they stopped paying

rents since the matter has been brought before the Court and they have no written agreement with the Late Father of the 1st Defendant.

PW3 too testified under Oath with the Holy Qur'an to speak the truth. His name is Yahaya Abdullahi. He lives in Dei-Dei and he is a member of the Claimant. Like his other members who testified before him, he too referred to his earlier filed written statement on oath dated 12th July, 2021 and adopted same as his evidence in this case. No exhibit was tendered through him.

Under cross examination, he said the land was leased to them by the 1st Defendant's Father. He said he did not know the commencement date of the lease which is in writing. He also said the father of the 1st Defendant promised to sell the land to them.

With the testimony of the PW3, the case for the Claimant ended. And that is on the 16th January, 2024. The matter then was adjourned to 15th February, 2024.

On that day, the Defendants, in defence, called two witnesses.

The DW1 was the Pioneer Chairman of the Association. His name is Ado Aminu. He lives in Dei-Dei. He gave evidence under affirmation. He referred to his earlier filed written statement on oath and adopted same as his oral evidence before this Court.

Under cross examination, he said he leased the property from the 2nd Defendant and that they were informed when the property was to be sold. They told them in the morning and the property was sold in the afternoon. And that he did not inform the Association because of the short notice.

As DW2, the 1st Defendant, Shamsudeen Zalahatu who gave evidence under the Oath with the Holy Qur'an said he lives at Evergreen Estate Durumi. Like others before him, this witness referred to his earlier filed written statement on Oath dated 21st September, 2021 and adopted same as his evidence in this case.

Under cross-examination, he said he met the Claimant severally and told them of their right of 1st refusal but what they were offering for the land is very small because the property has added value. And that he later sold to one Chief Maduka who paid the right value for the land.

With the testimony of the 1st Defendant as DW2, the defence closed their case.

I think I should at this stage narrate the stories of both parties as can be gleaned from the evidence presented.

According to the Claimant, sometimes in 1999, the Late Alhaji Hamza Zalahatu gave them a plot of land at Dei-Dei which is known today as Pantaker, opposite Junior Secondary School, behind Trailer Park FCT Abuja for the members for Pantaker business. This transaction was between the pioneer members of the Association represented by Alhaji Ado Aminu and Alhaji Yahaha Mallam Audu on one hand and Late Alhaji Hamza Zalahatu (Father of the 1st Defendant) on the other hand, who is deceased now but is being represented by the 1st Defendant, who has taken over the administration of the father's estate including the subject matter of this case.

The Claimant alleges that there was an oral lease entered into by the parties for this purpose and a major term of the lease is that the Claimant shall occupy the land and carry on business thereon, pending when the 1st Defendant's father intends selling same.

And in the event of any sale, the Claimant shall be given a right of first refusal. The Claimant further alleges that they have been in possession for over twenty (20) years and have been paying rent to the Defendants, but that the 1st Defendant had sold the land to a third party without given them the right of first refusal as agreed and as such is in breach of the lease agreement.

According to the Defendants on the other hand, in their joint amended statement of defence alleged that the Claimant is their tenant who has been paying meager rent on the property and nothing more. They had an oral tenancy agreement with the 1st Defendant's father Late Alhaji Hamza Zalahatu, which the 2nd Defendant has acknowledged.

The Defendants deny ever entering into any lease agreement with the Claimant, but admitted the promise of giving them the right of first refusal which opportunity was actually given to them but they could not offer a fair price for the property. The 1st Defendant thereafter sold the property to a third party who happened to be CHIEF MADUKA. The Defendants want the Court to dismiss the Claimant's claim in this case with heavy cost.

I now move to the next level of discourse. At the close of the case for the Defendants, the two Learned Counsel filed written addresses. And on 23rd September, 2024 both Counsel adopted their written addresses as their arguments in this case.

For the Claimant, Mr. Goodluck Joseph Agbo formulated a sole issue for determination to wit:-

> ***"Whether the Claimant have proved their case to be entitled to the reliefs sought in this suit"***

While Mr. Emmanuel I. Esene SAN for the Defendants formulated two issues for determination to wit:

a) ***Whether there is a valid lease agreement between the parties?***
b) ***Whether the Claimant is entitled to a right of first refusal from the Defendants?***

The issues formulated by them are not radically different from each other, except for semantics in phrases and sentences.

Let me start by the facts agreed upon by both parties. They are as follows;

a) ***The father of 1st Defendant contracted the land to the Claimant sometimes in 1999 whether as tenant under the landlord/tenant relationship or he leased the land to the claimant.***
b) ***The Claimant since that time uptil today occupy the land.***
c) ***There was oral agreement as to the right of first refusal in favour of the Claimant.***
d) ***The Claimant pay rent to the Defendants before the commencement of this case.***
e) ***The agreement (lease or tenancy) has no commencement date and has no end.***
f) ***The land has now been sold to a third party.***

So far, the listed facts are crystal clear to both parties.

Upon a close scrutiny, the sole issue submitted for determination by the Claimant is adopted as the only issue to be considered for determination in this case. As for the issues submitted by the Defendants' Learned SAN they will come up and pave way for me

to navigate my route to the right answer to the sole issue adopted.

The sole issue for determination is

> ***"Whether the Claimant have proved their case to be entitled to the reliefs sought in this case?"***

Now, the question that readily comes to my mind is, whether from the facts and evidence presented by the Claimant, there exist a valid lease agreement between the parties?

According to the Counsel to the Claimants in paragraph 5.0 of his unpaginated written address submitted that there was a contractual relationship which he too did not specify whether it is a lease or tenancy relationship that existed between the father of the 1st Defendant and the Claimant. He said the Claimant's witnesses testified that there was oral contractual relationship with the 1st Defendant and DW1 and DW2 corroborated same. He now argued that it is trite law that where a Defendant fails to lead evidence, it is sufficient proof that the Defendant has no defence to the suit and all the averments contained thereto are

deemed abandoned. He cited the cases of **WAEC VS. OSHIONETO (2007) ALL F.W.L.R. (PART 370) 501; AZEBANOR VS. BAYERO UNIVERSITY KANO (2009) 17 N.W.L.R. (PART 1169) 96.**

Is this postulation as made by the Learned Counsel to the claimant correct in law? I shall come back to it in the course of this Judgment.

In the case of DANJUMA VS. GARBA (2021) LPELR-57105 (CA), it was held thus:

"The law is that the burden of proving a fact rests on the party who asserts the affirmative of an issue and not on the party who denies it, the reason being that a negative is incapable of proof. Also, the burden of proof rests on the party who asserts the positive and not on one who asserts the negative, he who asserts must prove. A negative assertion cannot be proved. The Respondent agreed that the land in dispute belonged to the father of the Appellant but, asserted strongly that he bought the said land in 2001. The burden was therefore on the Respondent to prove the purchase but, the Appellant made a negative assertion that his father did not sell the land in dispute to the Respondent. The Appellant denied the sale and therefore cannot

be expected to produce proof of what he says is non-existent. Only an affirmative issue can be proved by he who asserts, whether the plaintiff or the defendant at the trial. In SHARING CROSS EDUCATION SERVICES LTD VS. UMARU ADAMU ENTERPRISES LTD & ORS (2020) LPELR - 49567 (SC) PP. 7 - 8, PARAS. F - A, his Lordship, Eko, JSC simply put the position of the law thus: "Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those empirical facts exist. Section 131(1) of the Evidence Act, 2011." See SIWONIKU VS. ODUFUWA (1969) LPELR - 25495 (SC) PP. 6 - 7, PARAS. D - B, DANGOTE CEMENT VS. ANYAFU (2021) LPELR - 52601 (CA) P. 15, PARAS. B - E, UMARU BARJE VS. ADAMU MAI HAUSAWA & ORS (2020) LPELR - 51694 (CA) P. 18, PARA.A; HELIOS TOWERS LTD VS.BELLO (2015) 3 NWLR (PT. 1551) P. 93 and JIMOH VS.THE HON. MINISTER FEDERAL CAPITAL TERRITORY & ORS (2018) LPELR - 46329 (SC) PP. 13 - 14, PARAS. D - A. He who asserts a fact must prove that the fact he asserts exists, otherwise he would not be entitled to the verdict or judgment of the Court. Further, the onus rests on the party that would fail if no evidence is gone into

upon the party asserting the affirmative." Per UWA ,J.C.A in danjuma v. garba (Pp. 19-21 paras. D)

In law, before there could be valid lease, certain conditions or ingredients must be present as a matter of compulsion. These ingredients have been endorsed by the Supreme Court as far back as year 1988. It was held in the case of **OKECHUKWU VS. ONUORAH (2000) 12 SC 104,** they are as follows;

1. ***There must be lessor and the lessee;***
2. ***The premises and identity or dimension of the property to be leased;***
3. ***The commencement date and duration of the term of the lease;***
4. ***The rent payable;***
5. ***The terms and conditions or covenants of the lease;***
6. ***Exclusive possession by the lessee;***
7. ***The mode of determination of the lease and***
8. ***Compliance with legal formality.***

See the case of **UBA LTD. VS. TEJUMOLA AND SONS LTD. (1988) 2 N.W.L.R. (PART 79) 662.** Also, in the case of **TEXTILE IND. (NIG.)LTD. VS. ADEREMI (1999) 8 N.W.L.R. (PART 614) 268** per **Iguh JSC** held thus;

> ***"Now, the law is well settled that in order to establish the existence of a valid agreement for a lease, there must be definite understanding in respect of not only the parties to the lease, the property involved, the rent payable, the length of the term but also the date of its commencement. These comprise of the essentials or the so called certainties that must be established before a valid agreement for a lease may be said to have been established"***

From the established principles and position of law as enunciated by the Apex Court, can we say with all seriousness and considering the facts and circumstances of this case say that the Learned Counsel to the Claimant's postulation with due respect

to him is correct? My swift answer is capital NO. This is not correct and cannot be the position of law.

Flogging it further, the alleged lease agreement is not written. How do I determine whether or not that the supposed oral agreement contained all these vital ingredients? That is why I agree with the submissions of the Learned Counsel to the Defendants when he succinctly wrote at paragraph 3.1.14 of his written address at page 4 thus:

> ***"It is our humble submission that from the facts of this case, there is no valid lease agreement between the Claimant and Defendants, Capable of being enforced by this Honourable Court"***

He wrote further at paragraph 3.1.6 of the same page 4 as follows;

> ***"Again on the validity of the lease, we submit that most of the elements of a valid lease were not established by the Claimant. They were only able to show that they had been in***

> ***possession and that rent had been paid. These facts were equally admitted by the Defendants. But mere being in possession and paying rent to the original land owner through the Defendant cannot transform the agreement to a lease"***

Still submitting, he said at paragraph 3.1.7:

> *"The Claimant in their pleadings and oral testimonies in Court failed to establish the following;*
>
> a) ***The definite terms of the lease viz: commencement and termination.***
> b) ***The alleged lease agreement was not made by deed or in writing.***
> c) ***There is no certainty of parties as required by law in any contractual relationship. The Claimant was not a juristic person as at the time of entering into the alleged lease agreement as the Claimant was only registered by Corporate Affairs Commission on the 15th May, 2019.***

From the foregone therefore, in the absence of a valid lease agreement between the parties, the best that existed between the Claimant and Defendants is a simple oral tenancy agreement evidenced by the payment of monthly rent. And I so hold.

Addressing the issue of right of first refusal will amount to waste of judicial precious time as there is no basis upon which such right could stand. See **MACFOY VS. UAC** where it was held that you cannot put something on nothing and expect to stand, it will eventually collapse. I hold that all the reliefs of the Claimant are hereby dismissed as they are not sustainable in law.

Without much ado, I dismiss the case of the Claimants in its entirety and order the Claimant to vacate the land and give possession to the third party that purchased the land for value to enjoy the fruit of his labour. I mean one **CHIEF MADUKA** should be given immediate possession of the land.

This is the Judgment of this Court.

Signed
S. B. Belgore
(Judge) 25-9-24