

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY ABUJA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT COURT NO. 22 WUSE ZONE 2 ABUJA.
BEFORE HIS LORDSHIP: HON JUSTICE A. S. ADEPOJU
ON THE 23RD DAY OF MARCH, 2020

SUIT NO: CV/0551/18

BETWEEN:

MRS. ANNA OKEZIE AJAH -----PLAINTIFF

AND

1. THE REGISTERED TRUSTEES OF DOMINION
MULTIPURPOSE COOPORATIVE SOCIETY LTD

2. MR. SUNDAY AYORINDE -----DEFENDANTS

OGECHUKWU OKEKE for the plaintiff/applicant

ABDUL-LATEEF AGORO for the defendant/respondent/counter-claimant.

JUDGEMENT

The plaintiff/applicant in a motion on dated 10th of October, 2019 and filed on the 11th October, 2019 sought for the following:

1. An Order of this court dismissing the counter-claim for lack of reasonable cause of action.
2. An Order of the court dismissing the suit for being incompetent and for want of Jurisdiction.

3. And for such other or further Order as the court may deem fit to make in the circumstance.

The grounds upon which the application is brought are:

- a. The court can only enforce a valid contract.
- b. To assume jurisdiction in a matter of contract the party must establish the existence of a valid contract.
- c. Memorandum of understanding (MOU) is not a contract and unenforceable.

In support of the application is a five (5) paragraph affidavit of one Ogechukwu Okeke, a legal practitioner in the law firm of Val Igboamalu & Associates. The applicant further filed a written address which was adopted as oral submission by learned counsel to the plaintiff/applicant.

In opposition is a counter-affidavit of the 2nd defendant/counter-claimant, Mr. Sunday Ayorinde. The counter-affidavit is of fourteen (14) paragraphs. The learned counsel to the counter-claimant equally filed a written address on the 11th October, 2019 which was adopted by Abdul-Lateef Agoro.

The gravamen of the plaintiff/applicant application is that the court cannot rely on the Memorandum of Understanding between parties as it does not constitute and enforceable contract. At paragraph 3.8 of the plaintiff/applicant's written address, she raised a poser whether the cause of complaint by the counter-claimant which was founded on the executed MOU can give rise to a cause of action. The learned counsel cited many authorities and in particular relied on the definition of a Memorandum of Understanding as espoused by the erudite jurist

Kekere Ekun JSC in the case of **BP SC & CO V FCDA 207 AFWLR PT 878 PG 405 @ 434-435 PAR E-H. A-B** and submitted that the issue of breach of contract does not arise in the instant case. The counsel further submitted that failure to establish a valid contract has rendered this suit incompetent and robs this court of its jurisdiction.

On the other hand, the defendant/counter-claimant's counsel submitted that a Memorandum of Understanding by its primary nature and usage is binding in cases where the MOU contains the elements of a valid contract. That a Memorandum of Understanding will fall within the exceptional circumstances wherein a court would find that commitments have been made between the parties, notwithstanding its general nature and it will be held to be binding and enforceable. Counsel relied on the case of **U.B.A V FEJUWOLA & SONS LTD (1988) NWLR PT. 79 662.**

I have read through the affidavit in support of the application filed by the applicant, the counter-affidavit of the counter-claimant and the written address of counsel to both parties. And of utmost importance is the Memorandum of Understanding signed by the parties. There is no doubt that the Memorandum of Understanding contains commitments on the part of parties and therefore enforceable by the court. It is not an offer or an intention to create a contract by parties. As rightly pointed out by the counter-claimant's counsel the Memorandum of Understanding contain all the essentials of a valid contract and therefore binding on the parties. The contents of the document are clear and unambiguous that the parties entered and in that created a binding contract vide

the Memorandum of Understanding signed. The plaintiff/applicant therefore cannot be allowed to evade from an agreement which she has freely entered into. The application asking for a dismissal of the counter-claim is therefore frivolous, lacking in merit and is hereby dismissed.

It does appear to me that the plaintiff/applicant is not desirous of filing any defence to the counter-claim. On the 26th of February, 2019, the plaintiff urged this court to allow her file her defence to the counter-claim and was granted ten (10) days to file their defence. The plaintiff has failed to do so. The defendant/counter-claimant opened their defence/counter-claim on the 18th March 2019; the plaintiff was not in court and was not represented by counsel. The matter was adjourned to 9th May, 2019 for cross-examination of the defendant/counter-claimant's witness with an award of cost of **₦20,000 (Twenty Thousand Naira)**.

The learned counsel to the plaintiff informed the court this morning that there is a notice of change of counsel which was confirmed by the defendant's counsel. Rather than the plaintiff cross-examining the witness to the counter-claimant, brought the application that has just been dismissed. In paragraph 2a-d of the affidavit in support of the applicant's application it is not in doubt that the new counsel is well seized of the facts of this case but chose the path of asking the court to dismiss the defendant's counter-claim. The failure of the plaintiff to file a reply to the counter-claim is tantamount to an admission of the defendant's counter-claim.

The proper thing the plaintiff ought to have done was to file the reply to the counter-claim in addition to the motion on notice challenging the competence of the counter-claim or jurisdiction of the court to entertain same. The procedure adopted by the plaintiff is demurrer in nature and it is inconsistent with Order 23 Rule 1 and 2 which stated that;

“No demurrer shall be allowed”

“(2)(i) Any party may by his pleading raise any point of law and the court may dispose of the point of law so raised before or after trial”

The application is frivolous and a time wasting exercise. The court at this juncture can safely consider the counter-claim, the oral and documentary evidence of the counter-claimant’s witness of the defendant which I have done and remain for me to conclude that it is undefended, unchallenged and uncontroverted by the plaintiff. Consequently, I hereby hold that the defendant/counter-claimant have proved its case in preponderance of evidence and is therefore entitled to judgment. Leg a and b of the counter-claim succeeds, the plaintiff is to pay 25% per annum on the judgment sum with effect from 1st March 2012 up to date, 10% per annum with effect from today until the entire sum is liquidated.

The court will not award general damages of **₦50,000 (Fifty Thousand Naira)**, it will amount to double jeopardy on the part of the plaintiff bearing the court damages award.

Lastly the sum of **₦200,000 (Two Hundred Thousand Naira)** is awarded as cost. The sum of **₦20,000 (Twenty Thousand Naira)** was initially awarded as cost

against the plaintiff which has not been paid bringing the total cost awarded to **₦220,000 (Two Hundred and Twenty Thousand Naira).**

SIGNED

HON. JUDGE

23/3/2020