

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

CLERK: CHARITY ONUZULIKE
COURT NO. 15

SUIT NO: FCT/HC/CV/1024/13
DATE: 09/02/2021

BETWEEN:

GLOBAL MULTI-BUSINESS LTD & 1 OR.....PLAINTIFFS

AND

MAXIMUM SHELTER LTD & 2 ORS.....DEFENDANTS

JUDGMENT

(DELIVERED BY HON. JUSTICE SULEIMAN B. BELGORE)

This Judgment concerns an application brought pursuant to Order 20 Rule 4 of the FCT High Court Civil Procedure Rules 2018, it is dated and filed on the 25th of August, 2020.

The Plaintiff/Applicants by a motion on Notice number **M/9332/2020** prayed the Court for the following orders:

- (1) **PART JUDGMENT** in the suit of the plaintiffs for the sum of **N47,128,590.00** (Forty-Seven Million, One Hundred and Twenty-Eight Thousand, Five Hundred and Ninety Naira) only being the sum of money already admitted by the defendants as their liability to the plaintiffs for the expenses incurred so far in

development of Hairatu Gwadabe Estate, Suleja, Niger State.

- (2) **AN ORDER** of the Court deducting the sum of **N47,128,590.00** (Forty Seven Million, One Hundred and Twenty Eight Thousand, Five Hundred and Ninety Naira) from the total amount claimed by the plaintiffs as the expenses incurred so far in development of Hairatu Gwadabe Estate, Suleja, Niger State being **N107,763,170.00** (One Hundred and Seven Million, Seven Hundred and Sixty-Three Thousand, One Hundred and Seventy Naira) only.
- (3) **SUCH FURTHER ORDER(S)** the Court may deem fit to make in the prevailing circumstances.

In support of this motion is a 10-paragraphed affidavit, 4 annexures that is exhibits A, B, C and C1 and a written address. The Motion were served with a counter-affidavit to which they have replied.

Learned Counsel A.C. Uba urged the Court to grant the application.

Responding in opposition to the grant of this Motion the defendants' learned Counsel Michael Ugwuanyi filed a counter-affidavit of 15-paragraphs. He said they relied on all the paragraphs and he adopted his written address attached to the counter affidavit as his arguments in opposition. He urged the Court to refuse the application.

In a quick response, Plaintiffs/Applicants said Order 20 Rule 4 mentioned specifically either on pleadings or otherwise. He said paragraph 4 of the supporting affidavit is exhaustive. He again urged me to grant the application.

In the applicant's written address, learned Counsel formulated one issue for determination to wit:

"Whether the Plaintiffs are entitled to the part judgment at this stage based on the admissions of the defendants?"

As for the Respondents' learned Counsel, he joined issues with the applicants' learned Counsel on the sole issue and argued that the main relief of the Plaintiffs/ Applicants in the main suit is a declaratory relief and that it is only when the conditions for the grant of the above relief is established by the Plaintiffs and is granted that other subsequent reliefs may be granted if the conditions for their grant are established. He submitted that none of the conditions for their grant is established. He relied on the case of ILLORI VS. ISHOLA (2018) 15 NWLR (PT. 1641) 77.

On the part of the Plaintiffs/ Applicants, he relied on Order 20 Rule 4 of the Rules of this Court which provides thus:

"The Court may, on application, at a pre-trial Conference or at any other stage of the proceedings where admissions of facts have been made, either on the pleadings or otherwise, make such judgment as upon such admissions a party may be entitled to, without waiting for the determination of any other question between the parties."

This admission of the sum of **N47,128,590.00** according to the supporting affidavit deposed to by the 2nd plaintiff, was elicited from paragraph 8 and 15 of the defendants' statement of defence, defendant's witness statement on Oath of one Usman Tanko and Annexure B attached to the said defendants' witness statement on Oath titled: Valuation Summary for the construction of Hairatu Gwadabe Estate, Abuja - Kaduna Road, Suleja, Niger State, all these confirmed the value stated above.

Now, let's look and examine each of the documents referred to and see whether there is an element of admission or admission **simpliciter** therein.

Let's point it out now, that the argument of Ugwuanyi as regards that declaratory relief must be granted before any other relief is not correct in law. With due respect to him, the content of paragraph 8 of the Defendants' statement of defence is an admission. It reads thus:

"The Defendants admit paragraph 10 of the statement of claim and further aver that the level of work done by the 1st Plaintiff at the 1st Defendant's Estate is as contained in the Quantity Surveyors Valuation Report of 9th day of October, 2013. The Defendants shall rely on the said Quantity Surveyor's Valuation Report at the hearing of this suit."

Paragraph 15 reads:

"The Defendants categorically deny paragraph 16 of the Plaintiff's statement of claim and further aver that the total

value of work done by the 1st Plaintiff, which include Consultancy service (Cost of producing working drawings), Building works carried out, clearing of entire site, removal of surplus sand, diversion of drainage, water/excavation, uprooting of trees, compensation to farmers/squatters, landscaping and hiring of container, including advertisement and marketing, perimeter fencing, water reticulation network/connection to main, staff salaries/allowance and cost of material on site is N47,128,590.....as contained in Mr. Ibrahim Mahmoud's report on the valuation and expenses incurred in the construction of Hairatu Gwadabe Estate Suleja as at 9th October, 2013. "

Paragraph 11 of Usman Tanko as a witness to the Defendants in his witness statement on Oath reads:

"That paragraph 10 of the statement of claim is true and the level of work done by the 1st Plaintiff at the 1st Defendant's Estate is as contained in the Quantity Surveyors Valuation Report of 9th day of October, 2013, titled Valuation Summary for the Construction of Hairatu Gwadabe Estate Abuja – Kaduna Road, Suleja, Niger State, which is attached hereto and marked Annexure B."

Ditto paragraph 18 reads:

“That paragraph 16 of the Plaintiffs’ statement of claim is totally false as the total value of work done by the 1st Plaintiff, which include Consultancy Service/Cost of producing working drawings, building works carried out, clearing of entire site, removal of surplus sand, diversion of drainage, water excavation, uprooting of trees, compensation to farmers/squatters, landscaping and hiring of container, including advertisement and marketing perimeter fencing, water reticulation network/connection to main, staff salaries/allowance and cost of material on site, is N47,128,590.00 (Forty Seven Million, One Hundred and Twenty Eight Thousand, Five Hundred and Ninety Naira) only as contained in the Quantity Surveyor’s (Mr. Ibrahim Mahmoud) report dated 9th October, 2013 and titled valuation summary for the construction of Hairatu Gwadabe Estate Abuja – Kaduna Road, Suleja, Niger State, which is Annexure B above.”

The combined effect of those paragraphs above could only point to one thing which is admission of liability by the defendants to the plaintiffs in the tune of **N47,128,590.00** only.

Let me flog this issue further for purposes of emphasis and clarity. The plaintiff in their pleading vide paragraph 16 stated the level of work done and total expenses incurred to be **N107,763,170.00** only in the Estate. They claim to have record details and documents to back it up. They even mentioned the

valuation and expenses incurred documentation as prepared by a Quantity Surveyor by name Mohammed Ejiko.

Paragraph 16 of the statement of claim reads:

“The plaintiff equally reserves a detailed document of all expenses incurred in the course of the development of the said Estate which is totalled N107,763,170.00.....”

Now, to this blunt assertion in the statement of claim of the Plaintiff, what is the reaction of the Defendant to it in their own pleadings i.e. statement of defence. The answer or reply or reaction can be found in paragraph 15 of their own statement of defence.

I agree with the plaintiffs’ learned Counsel when he wrote in paragraph 3.3 of his written address thus:

“The logic and rationale from the provision of the law in view is based on the rule of evidence that facts admitted need no further proof. It is trite law that calling or searching for evidence on facts admitted amounts to waste of time. Courts have stated same view in plethora of cases. We refer the Court to ODEBUNMI & ANOR VS OLADIMEJI & ORS (2012) LPELR 15419 (CA)”

I have considered all the arguments and submissions of the defendants/Respondents learned Counsel, they are not relevant to the facts and circumstances of this case and it is for the above reason that I pitch my tent with the Applicants in line with decided cases and provision of Order 20 Rule 4 that any fact admitted needs no further proof.

I had earlier granted in this judgment, the relevant paragraphs, (paragraph 15) is worth repeating: it reads

*“Defendant – deny paragraph 16 of statement of claim and further AVER THAT THE TOTAL VALUE OF WORK DONE by the 1st Plaintiff which INCLUDE CONSULTANCY SERVICE.....
.....CLEARING OF ENTIRE SITE, REMOVAL OF SURPLUS SAND, DIVERSION OF DRAINAGE, WATER/EXCAVATION, UPROOTING.....
LANDSCAPING,COST OF MATERIAL ON SITE, IS N47,128,590.00.....
as contained in MR. IBRAHIM MAHMOUD’S REPORT ON VALUATION AND EXPENSES INCURRED.....”*

Ibrahim Mahmoud’s evaluation was produced by the Defendants and attached as Annexure ‘B’. So, if even by their own evaluation, the total value of work done amount to **N47,128,590.00** which is part of the total sum of

N107,763,170.00. What is the problem of the Defendants in paying for what they have admitted was done.

It is therefore for the foregone reason that I find merit in this application. Judgment is hereby entered in favour of the Plaintiff for the sum of **N47,128,590.00** against the Defendants. I rely on Order 20 Rule 4 of the Federal Capital Territory High Court (Civil Procedure) Rules, 2018.

What remains to be proved is the balance from **N107,763,170.00** when **N47,128,590.00** is deducted from it which is **N60,634,580.00 (Sixty Million, Six Hundred and Thirty-Four Thousand, Five Hundred and Eighty Naira) only.**

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S. B. Belgore
(Judge)09/02/2021