

IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT HIGH COURT MAITAMA – ABUJA

BEFORE: HIS LORDSHIP HON. JUSTICE S. U. BATURE

COURT CLERKS: JAMILA OMEKE & ORS
COURT NUMBER: HIGH COURT NO. 23
CASE NUMBER: SUIT NO. FCT/HC/CV/6656/2023
MOTION NO. FCT/HC/M/11335/2023
DATE: 11/3/2024

BETWEEN:

FEYISANMI ADESHINA.....CLAIMANT

AND

BRAINS & HAMMERS LIMITED.....DEFENDANT

RULING

APPEARANCES:

Marvin Omorogbe Esq with Boma Rueben Esq and Favour Oramaduke Esq for the Claimant.
Defendant unrepresented.

By a motion on notice with motion number: M/11335/2023 filed on 7th day of July 2023 and dated on the 27th day of June 2023, brought pursuant to Order 11 FCT High Court (Civil Procedure) Rules 2018 and under the Inherent Jurisdiction of this Honourable Court. The Applicant herein prayed the Court for the following reliefs:

***“(1). An Order entering Summary Judgment for the Claimant/ Applicant in suit No: FCT/HC/CV/6656/2023; FEYISANMI ADESHINA Vs BRAINS & HAMMAERS LIMITED, and granting the reliefs contained on the face of the Claimant’s Writ of summons.*”**

- (2). Such other orders as this Honourable Court may deem fit to make in the circumstances.”**

This Application was predicated upon the following grounds: -

- “(1). On December 23, 2016, the Claimant subscribed to a 2 bedroom flat (Flat F2255) at the Defendant’s Brains & Hammers City Estate, Life Camp, Abuja, at a purchase fee of ₦9, 870, 000.00 (Nine Million, Eight hundred and seventy thousand naira), payable on instalments and was issued a provisional allocation letter by the Defendant, for the assigned flat to be delivered upon the completion of the purchase fee.**
- (2). Following the part payment of the full purchase fee of ₦9, 870, 000.00 (Nine Million, Eight hundred and seventy thousand naira) by the Claimant on October 17, 2018, the Defendant issued the Claimant with a purchase receipt dated October 23, 2018.**
- (3). Despite the payment of the full purchase fee and after several correspondences between the Claimant and the Defendant, the Defendant has failed and or refused to issue the Claimant with a final allocation letter and physical possession of (Flat F2255) at the Defendant’s Brains & Hammers City Estate, Life Camp, Abuja.**
- (4). On July 29th, 2022 the Defendant wrote a letter to the Claimant where it admitted its default and promised to deliver the property to the Claimant within 18 months and also requested to issue the Claimant with a new allocation letter.**
- (5). The Defendant is in default of the due date for the delivery of the property to the claimant for five years and counting.**
- (6). On June 27, 2023, the Claimant filed a suit against the Defendant at the High Court of the Federal Capital Territory, seeking, amongst others, an order of specific performance for the delivery of the 2 bedrooms flat**

Claimant subscribed to at the Defendant's Brains & Hammers City, Life Camp, Abuja.

- (7). The Claimant believes that the Defendant has no defence to this suit."***

The said motion is supported by a 14 Paragraph Supporting Affidavit deposed to by one Feyisanmi Adeshina, the Claimant in this suit. Also, filed along is a written address dated the 27th day of June, 2023.

In compliance with the rules of this Honourable Court the Applicant also equally filed along a Writ of Summons and statement of Claim, as well as a Witness Statement on Oath deposed to by one Feyisanmi Adeshina, the Claimant in this suit date on the 27th day of June 2023. The relief sought by the Claimant in her writ of summons and Statement of Claims are as follows:-

- "(1). A declaration that the provisional allocation letter issued to the Claimant by the Defendant on December 23, 2016 for the delivery of a two bedroom flat (F2255) at Brains & Hammers City, Life Camp, Abuja, us valid and subsisting.***
- (2). A declaration that the Defendant's failure and or refusal to issue the Claimant with a final allocation letter and other title documents over Flat f2255, Brains & Hammers Coty, Life Camp, Abuja, amounts to a breach of contract.***
- (3). A declaration that the Defendant's failure and or refusal to hand over physical possession of flat F2255, Brains & Hammers City, Life Campo, Abuja, to the Claimant, amounts to a breach of contract.***
- (4). An order of specific performance directing the Defendant to immediately hand over to the Claimant, a final allocation letter, and other title documents over flat F2255, Brains & Hammers City, Life Camp, Abuja.***
- (5). An order of specific performance directing the Defendant to immediately hand over physical possession of flat***

F2255, Brains & Hammers City, Life Camp, Abuja to the Claimant.

- (6). An order directing the Defendant to pay the Claimant the sum of ₦50,000,000.00 (Fifty million Naira), as general damages for breach of contract.**
- (7). Cost of this suit at ₦1,000,000.00 (One Million Naira).**
- (8). An Order directing the Defendants to pay the Claimant post judgment interest on the sum(s) awarded at the rate of 10% per annum from the date of the delivery of judgment until the judgment is fully and finally settled.**
- (9). Such other Orders as this honourable Court may deem fit to make in the circumstances. “**

The Claimant in her Written Address to this motion formulated one issue for determination to wit: -

“Whether from a careful evaluation of the circumstances surrounding this case, the Claimant has made out a case for the grant of the application.”

In arguing this issue the Claimant Counsel began by submitting that going by the provisions of Order 11 of the Civil procedure rules of this Honourable Court the Claimant had made out a case for the grant of his application. This learned Counsel argued is because the Defendant has no defence to this action taking into account the allocation letter issued by the Defendant to the Claimant, the payment receipt issued to the Claimant and the Defendant's letter dated July 29th 2022 issued to the Claimant all of which have been annexed as exhibits.

The learned Claimant counsel argued that the relationship between the parties is one of a straight forward contractual relationship, one which was breached by the Defendant. Furthermore the Claimant holds that a careful look at the documents in question would show that there are certain undisputed facts like the fact that the Claimant subscribed to a 2 bedroom

flat at the Defendant's Brains & Hammers city estate, it is not disputed that she paid the full fee and was issued a receipt. Also the defendant admitted to its default and promised to deliver up on its responsibilities in 18months. It is from the foregoing that the Claimant believes that the Defendant in this suit has no defence to this suit and urged this Honourable Court to hold so. To this effect the learned Claimant counsel referred this Honourable Court to the case of ***UBA PLC ANOR Vs JARGABA (2007) LPELR-3399(SC) Pg. 24-25 Para G- B.***

The Claimant Counsel continued his address by submitting that there was no better case for the grant of Summary Judgment than the instant case taking into account the nature of the wrong alleged as well as the possibility that the Defendant has shown no sign of resolving same and the Claimant from all indications would be waiting without end for delivery of promise by the Defendant. The Claimant argued that she has a fundamental right to own private property and has staked her life savings in the hopes of acquiring one as such it would be unfair to allow a frivolous defence from a Defendant in such a situation as this. The Claimant counsel urged the Court to stop the attempt of the Defendant to put up a defence and put an end to the Claimants suffering. Counsel here relied on the case of ***IFEANYICHUKWU TRADING INVESTMENT VENTURS LTD & ANOR Vs ONTESOM COMMUNITY BANK LTD (2015) LPELR-24819(SC).***

The Learned Claimant counsel also submitted that instances of developers taking monies from innocent subscribers and failing to deliberate on their promises is becoming rampant and the Courts need to step in to remedy this in order to prevent more people from falling victim to such actions. The Learned Counsel further submitted that the claimant in this suit has been waiting almost five years after making her full payment without the agreed flat and it is a fact that the estate has since been completed and some parts of it are already occupied by other subscribers.

Moreso, learned Counsel was of the opinion that the Defendant owed the Claimant a duty to issue her a final allocation letter and physical possession of the agreed property and anything short of that would constitute a breach of contract and the Claimant would be entitled to damages resulting from that. On this point, the learned Claimant Counsel referred to the case of ***IJEBU-ODE Vs L.G ADEDEJI BALOGUN & CO LTD. (1991) 1 NWLR (Pt 166) 136 @ 158 Para F-G*** as well as ***SHELL B-P Vs. JAMMAL ENGINEERING LTD (1974) 4 SC 33, 1 All NLR (Pt. 1) 542***

In his closing argument on this point learned Claimant Counsel submitted that the damages sought by the Claimant is fairly assessed taking into account the suffering of the Claimant over the period of almost 5 years and referred the Court to the case of **JOSCO A.G GLOBAL RESOURCES LTD & ANOR Vs. AMCON (2018) LPELR-45637 (CA)**.

Finally, learned Counsel to the Claimant opined that the Claimant deserved to have Summary judgment given in her favour and also that parties a rebuff by their contract and no party should break such contract wilfully without consequences. On this point counsel relied on the authority of **HILLARY FARMS LTD & ORS Vs M/V MATHRA & ORS (2007) LPELR-1365(SC) Pg 28 Para C-E**.

In conclusion, learned Claimant Counsel submitted that the Claimant is entitled to the grant of this application on the basis of the undisputed facts in this suit and the state of pleadings.

The Defendant on the other hand in opposition to this Application filed an 11 paragraph Counter Affidavit dated on the 13th day of November 2023, also in compliance with rules of Court the Defendant filed along a Written Address dated and filed on the 13th day of November, 2023.

In the said defendants Written Address Counsel to the Defendant formulated one issue for determination to wit: -

“Whether or not the application for a Summary Judgment can be granted by the Honourable Court considering the strong defence put up by the Defendant as deposed in the Counter Affidavit.”

Learned defendant Counsel began his address by alluding to the fact that this Application cannot be granted because the claimant’s claim is not one of liquidated money demand and the Claimant has joined issues with the Defendant that need to be determined on merit.

Counsel further argued that the case of the Claimant is not unassailable as a result of the depositions in the Defendants Counter Affidavit and exhibits attached and in summary judgment the Claimants case is expected to be unassailable/ irrefutable. A claimant is expected to be closed to attack by the Defendant. The defendant Counsel referred this Honourable Court to the case of **NIGERIAN POSTAL SERVICES Vs INSIGHT ENGINEERING**

COMPANY LIMITED(2006) 8 NWLR (Pt 983) @ 483 and also ALIBCO (NIG) LTD Vs NWANYANWU (2015) LPELR-25731(CA).

Learned Defendant Counsel argued that the Claim by the Claimant that the Defendant issued the Claimant with a provisional letter of allocation has created a doubt in the mind of the Court, a doubt which should warrant the Defendant be allowed leave to defend this case.

In conclusion, based on the depositions as contained in the Counter Affidavit the Defendant Counsel urged the Court to refuse this Application for Summary Judgment and allow the Defendant to defend this action.

The Claimant also filed a further Affidavit in support of her Application for Summary Judgment citing the fact that the Defendant's Counter Affidavit raised new issues that she needed to address as the reason for the further Affidavit. The said further affidavit was dated on the 8th day of January, 2024.

In the said further Affidavit the Claimant denied the Claim of the Defendant that she completed payment out of time and avers that she completed payment within the agreed time in October 2018 and that the property was agreed to be handed over to the Claimant immediately after payment which the Defendant failed to do.

The Claimant also argued that the promise by the Defendant to deliver up possession to her within 18 months forms part of a series of unfulfilled promises made by the Defendant and the reasons given for the Defendant's failure to hand up possession are falsehoods as the Claimant is aware that the Estate is currently habitable and occupied.

The Claimant further submitted that the Defendant has defaulted on all agreements and promises made either personally or in open Court and the Defendant and its Counsel have stopped responding to communication from the Claimant's counsel and that the Claimant has attached screenshots of the several unresponded WhatsApp messages sent by the Claimant's Counsel demanding the Defendant to keep its several promises and also to put down the agreement and document it as a consent judgment.

Finally, the Claimant avers that the Defendant has no defence to this action

Now, I have carefully perused the Motion filed under the Summary Judgment procedure, the Relief sought, the supporting Affidavit, the annexures attached therewith, the written Address and the oral submission of Counsel to the Claimant urging this Honourable Court to enter Judgment in favour of the Claimant. I have also equally reviewed extensively the Counter Affidavit of the Defendant, the Written Address and the exhibits attached therein. I have also studied the Further Affidavit of the Claimant filed in response to the Defendants depositions.

From the foregoing, it is my humble view that the issue for determination is as follows: -

“Whether the Claimant has proved case sufficiently to be entitled to a grant of Summary Judgment in this suit.”

The law is trite that a Summary judgement procedure is one which is initiated where it appears that the Defendant in such a civil procedure has no Defence to the action and also the facts of the matter are clear, straightforward and uncontestable. To this effect I refer to the wordings of Order 11 Rule 1 of the Civil Procedure Rules of this Court which provides thus: -

“Where a Claimant believes that there is no defence to his Claim, he shall file with his Originating process the statement of Claim, the Exhibits, the Depositions of his witnesses and an Application for Summary Judgment which Application shall be supported by an Affidavit stating the Grounds for his belief and a written brief in support of the Application.”

The Summary judgment procedure has been defined by Black’s law Dictionary to mean: -

“A judgment granted on a claim or defence about which there is no genuine issue of material fact upon which the Claimant is entitled to prevail as a matter of law.”

The above definition was also adopted by the Court in ***BONA TEXTILE Vs ASABA TEXTILE MILL PLC (2013) 2 NWLR Pt. 1338 @ 357***with respect

to the nature and characteristics of Summary Judgment. See also the Supreme Court Judgment in **AKPAN Vs A.I A.I.P INV COMPANY LTD (2013) 12 NWLR (Pt 1368) 377**. From the above it becomes clear that Summary Judgment procedure is one that is applied to cases for its unique nature with respect to the circumstances surrounding each matter with an intention to preventing time wastage and undue delay. In **NIGERIAN ELECTRICITY LIABILITY MANAGEMENT COMPANY LTD v. WHIRLPOOL LEGAL CONSULT (2021) LCN/14983(CA)** the Court of Appeal had this to say: -

“As correctly stated by the Court below, the Summary Judgment procedure is akin to and also referred to as the undefended list procedure. Judicial authorities abound on what the undefended list procedures means by the Apex Court as well as this Court. Put simply, it is a procedure which enables a plaintiff to obtain judgment in a suit for a liquidated sum within the shortest possible time on Affidavit evidence without the technicalities of pleadings, where the Defendant has no defence to the suit.”

In addition, I would also point to the fact that a in Summary judgment Application, the Defendant who seeks to succeed in his defence is expected to show cause as to why judgment should not be entered against him and in doing so he is to show that a triable issue exists in his Affidavit. This defence must not be just any defence but one that will require the matter be transferred to the general cause list and tried on its merit. The Court of Appeal in **N.P.A Vs. A.I Co. (2010) 3 NWLR (Pt 1182) 487 (Pg 499) Para F-G** was of the opinion that a Defendant in a Summary Judgment procedure must disclose a triable issue in order to succeed and prevent the grant of the Application. the Court held that: -

“A defendant who seeks to avoid Summary Judgment under a summary judgment procedure, which includes the undefended list proceedings, must disclose a triable issue in his affidavit.”

The Supreme Court in **AGBABIKA Vs. FBN PLC (2020) 6 NWLR (PT 1719) 77 (Pg. 94) Para E-F** re-echoed this position where it held that: -

“Showing Cause in a summary judgment procedure means the production of satisfactory explanation or excuse by the Defendant in connection with the action or suit of the plaintiff.”

I must once more allude to the fact that this case was instituted under the Summary Judgment procedure of this Honourable Court and the whole intent behind this procedure is to ensure that it prevents protracted justice, a situation where a Claimant who is entitled to judgment is unfairly and unnecessarily placed through a rigorous litigation process in an attempt to get justice.

The position of the law as mentioned above is that a Defendant would not be allowed to establish frivolous excuses in an attempt to deny a Claimant who has a legitimate claim for Summary Judgment where the Claimant has established what is expected of her. This is done so as to prevent sham defence as the Courts have come to refer to it. In ***SULEIMAN MOSHOODVs UCHE AKUBI (2014) LPELR 24005 (CA)***, THE Court of Appeal held that: -

“It is trite that under Summary Judgment procedure where it is obvious that a Defendant does not have a defence on the merit, a Court of law will not allow such a Defendant to dribble the plaintiff whose case is unassailable. The essence of the procedure is to alleviate undue delay and loss of time and resources.”

In line with the above it is clear that for a claimant to succeed in their Claim for Summary Judgment their case and the evidence of their reliefs claimed must be unassailable.

Before I proceed, I would also like to address the issue of the declaratory relief sought by the Claimant.

Generally speaking the law is that a Court cannot Grant Declaratory reliefs claimed through a Summary Judgment as the Court cannot make declarations which concern rights relying on the admission or default of defence without hearing evidence which supports and entitles a Claimant to the declaration which he seeks. To this effect see the case of ***NIGERIAN***

AIRWAYS Vs. AHMADU (1991) 6 NWLR (Pt 198) Pg 992 and also the case of ILOBI Vs. UZEOGWU (2005) All FWLR.

The exception to this rule exists in the current position of the law which considers that where the law makes the filing of a witness statement on Oath compulsory and same is complied with and filed, it may be taken by the Court as evidence in proof of declaratory relief in a Summary judgment Application. As such a Court may rightly grant such a relief as the Witness Statement on Oath is not synonymous with evidence adduced before a Court. This point was further re-echoed by the Supreme Court in **GE INTERNATIONAL OPERATIONS LIMITED Vs Q-OIL & GAS SERVICES (2016) 10 NWLR (Pt 1520)Pg. 304.**

Now in line with the above principle, Order 11 which this Application was brought under makes the filing of witness statements/depositions mandatory under the Summary Judgment procedure. Order 11 Rule 1 of this Honourable Courts (Civil Procedure) Rules provides as follows: -

“Where a claimant believes that there is no defence to his claim he shall file with his originating process the statement of claim, the exhibits, the deposition of his witness and an application for summary judgment which application shall be supported by an affidavit stating the grounds for his belief and a written brief in support of the application.”

The claimant in this suit has attached various documents in hopes of establishing her Claims in this suit. the exhibits above, evidence copies of the provisional letter of allocation issued to her by the Defendant, the payment receipts, a letter dated 29th July 2022, sent by the Defendant to the Claimant, which the Defendant also admitted to in Paragraph 4 of its counter Affidavit and also attached a payment receipt as exhibit B. The Claimant also attached pictures of WhatsApp messages sent from the Claimant’ Counsel to the Defendant requesting delivery of possession and compliance with promises made by the Defendant to the Claimant. For ease of reference I shall reproduce paragraph 4 hereunder
Paragraph 4 Reads: -

“That in response to paragraphs 4 and 5 of the affidavit in support of the motion for summary judgment the Claimant paid the purchase sum of ₦9,870,000 (Nine Million Eight Hundred And

Seventy Thousand Naira) in fourteen instalments, the first payment was made on the 23rd January, 2017 and the last payment made on the 17th October 2018. Attached herewith and marked as Exhibit B is the payment receipt.”

The Defendant in this suit has argued that the Claimant made the payment out of time and the Claimant on the other hand has responded and argued that payment was made within time and was completed by October 17th, 2018. The Defendant however has not shown how the Claimant was out of time but stated that by this argument “a doubt has been created in the mind of the Court as regards the claims of the Claimant that will warrant this Honourable Court to grant the Defendants leave to defend”.

Now as earlier mentioned in ***SULEIMAN MOSHOOD Vs UCHE AKUBI (Supra)*** a responsibility rests on the shoulder of the defendant to expose to the court and establish a reasonable defence showing the doubt which the Defendant submitted had been created in the mind of the Court. Now that said doubt must be such that it would warrant this suit to be transferred to the general cause list for it to be tried on its merit. I am of the humble opinion that the Defendant has not been able to do so and where the defence of a Defendant is not a cogent one, such a defendant would not be allowed to dribble the Claimant out of his claims or reliefs, see: ***SULEIMAN MOSIHOOD VS UCHE AKUBI (supra)***.

Also Section 123 of the Evidence Act 2011 stipulates that documentary evidence cannot be controverted orally. A written address is essentially an oral address submitted before a Court which is why a party must back it by proper and relevant evidence in support of its arguments. Defendant’s attempt to controvert the evidence of the Claimant through oral averments cannot be enough to disregard the Claimants documentary evidence also it is not enough to assert a certain thing, as an assertion of such a nature must be supported by verifiable evidence and verifiable in this sense refers to evidence that is cogent and tangible evidence as the Court is not in the business of assuming and imagining but rather an institution which focuses on facts proven by demonstrable evidence. ***Section 123 of the Evidence Act 2011*** provides as follows:

“All facts, except the contents of documents may be proved by oral evidence.”

The Claimant on the other has managed to lead evidence in proof of her case, has also complied with the provisions of Order 11 as well, furthermore the Defendant has also admitted the claims of the Claimant and so it would be correct to say that the case of the Claimant is unassailable going by the plethora of cases cited by this Honourable Court above and even the parties themselves in their addresses. I so Hold.

In view of the above and having taken into account the facts and circumstances of this case, it is my humble opinion that in the absence of any verifiable/ cogent/ tangible defence on the part of the Defendants, the Claimant/Applicant has therefore proven her case as required under the Summary Judgment Procedure. I so hold.

Consequently, and without further ado, I hereby resolve the sole issue for determination in favour of the Claimant/Applicant against the Defendant /Respondent and hold very strongly that this Application for Summary Judgment has merit and is hereby granted in favour of the Claimant against the Defendant as follows: -

- (1). The Reliefs of the Claimant/ Applicant are hereby granted as prayed as contained in the Writ of Summons and Statement of Claim.
- (2). The Defendant is hereby ordered to handover possession of the completed property to the claimant within a period of 1 month from the date of this judgment.
- (3). The Sum of **₦500, 000.00 (Five Hundred thousand Naira Only)** is awarded as cost of this suit.
- (4). The Sum of **₦2, 000, 000.00 (Two Million Naira Only)** is awarded as damages for breach of contract.
- (5). The Court hereby awards 10% interest rate on judgment sum till final liquidation is attained.

Signed:

**Hon. Justice S. U. Bature
/ /2024.**