

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

SUIT NO: FCT/HC/CV/150/2020

BEFORE HIS LORDSHIP: HON. JUSTICE BABANGIDA HASSAN

BETWEEN:

**DR. MOJISOLA MOBOLAJI-BELLO.....CLAIMANT
AND
JAZEERA PROJECTS LTD.....DEFENDANT**

Appearances

Emmanuel C. Obeta Esq appeared for the claimant.

Aminu Alhassan Esq holding the brief of W.T. Orga Esq for the defendant.

JUDGMENT

This writ of summons with No. CV/1501/2020 was filed by the claimant on the 20th day of March, 2020, whereof he claims for the following under the undefended list procedure:

- 1) An order of this Honourable Court directing the defendant to pay the claimant sum of ₦7,500,000.00 (Seven Million, Five Hundred Thousand Naira) only being the total sum paid by the claimant to the defendant pursuant to an offer letter for sale and/or purchase of shop No. C4, measuring Twenty Two (22) square metres of Naowa Corner shops, adjacent Naowa Centre Mambilla Barracks, Asokoro, Abuja, and which the defendant has failed and/or refused to put the claimant into possession notwithstanding payment of full purchase price.
- 2) An order of this Honourable Court directing the defendant to pay the claimant post judgment interest at the rate of 10% per annum until final liquidation of the judgment sum.

The writ is supported by fourteen paragraphed affidavit deposed to by the claimant himself, and same relies upon all the averments contained therein.

Attached to the affidavit in support are the following documents:

- a) Acknowledgment of payment dated the 20th day of January, 2016 written by the defendant to the claimant;
- b) Printed statement of account evidencing payment of the sum of ₦7,500,000.00 to the defendant dated the 13th January,

2016, and this is accompanied by a certificate of compliance with the provisions of section 84 of the Evidence Act;

- c) A letter of demand for the refund of the sum of ₦7,500,000.00 paid written by the solicitor of the claimant to the defendant dated the 15th day of July, 2019;
- d) Reply to the letter of demand dated the 2nd day of August 2019 written by the defendant to the solicitor of the claimant.

The defendant also filed a notice of its intention to defend the action which is also accompanied by an affidavit dated the 20th day of October, 2020, and attached to the affidavit are the following:

- a) a letter from Naowa to the defendant dated the 6th day of May, 2014;
- b) a letter from the defendant to the Chief of Army Staff dated the 31st day of July, 2018;
- c) a letter from the defendant to the Chief of Army Staff dated the 20th day of August, 2019, and
- d) a letter from the defendant to the Chief of Army Staff dated the 9th day of September, 2020.

On the day the matter came up for hearing, the counsel to the claimant was in court, while the defendant's counsel was not in court in spite of the fact that a notice of intention to defend the action was duly filed hence this court proceeded to the hearing. See the case of **Onadeko V. U.B.N Plc. (2006) All FWLR (pt 301) p. 1879 at 1896 paras. E-F** where the Court of Appeal Ibadan Division held that on the date fixed for hearing in an undefended list procedure, the only business of the day is the determination of the claim. The absence of the defendant or counsel on his behalf will not cause a delay in the hearing.

Notwithstanding that it is an established principle of law, that address of counsel is not necessary, the court allowed the counsel to the claimant to make submission.

In his oral submission, the counsel to the claimant submitted that the notice and the affidavit filed by the defendant are incompetent on the ground that the affidavit was deposed to by the counsel representing the defendant, and to him, the counsel cannot play a dual role of being a counsel to the applicant as well as a witness to depose to the affidavit, and he referred to the cases of **Boniface**

Anika & Co. Ltd V. Uzor (supra), Bala V. Dikko (supra). He submitted further that where the court is mindful to consider the affidavit, to him, same is full of inconsistencies particularly paragraphs 8, 11, 12, and 15 of the affidavit in support of the notice of intention to defend. To him, the court cannot go to the extent of picking and choosing where affidavits are conflicting, and he cited the case of **Zakirai V. Muhammad (supra).**

The counsel further submitted that the offer, acceptance and consideration were in all between the two parties, and it is absurd that the defendant is now bringing a third party, and he cited the case of **Idufuko V. Pfizer Products Ltd (supra),** and therefore urged the court to hold that there is no privity of contract between the parties.

The counsel referred this court to the case of **Amede V. UBA (supra)** and urge the court to place reliance upon EXH. 'AA3' that is the letter dated 2nd August, 2019 written to the counsel to the claimant whereas undertaking was made for the refund of the money before the end of August, 2019, and to the counsel, this is an admission on the part of the defendant, and finally urged the court to enter judgment in favour of the claimant.

It is in the affidavit in support of the writ that the defendant made an offer to the claimant dated the 20th January, 2016 for the purchase and/or sale of shop No. C4, Measuring 22m² of Naowa Corner shops, adjacent Naowa Centre Mambilla Barracks, Asokoro Abuja FCT for the price of the sum of ₦7,500,000.00 (Seven Million, Five Hundred Thousand Naira) only, and that the claimant has paid the total sum of ₦7,500,000.00 (Seven Million, Five Hundred Thousand Naira) only for an outright purchase of the said shop No. C4, on the 13th day of January, 2016 via her company account number 0028355448 domicile with Access Bank Plc with the name of the Mystery Shoppers Limited and the said payment was duly receipted by the defendant. That the defendant upon the payment, failed to issue the claimant the final letter of allocation, and has not put the claimant into possession of the said shop No. C4 of Naowa Corner Shops, adjacent Naowa Centre Mambilla Barracks, Asokoro.

It is stated also that the solicitor of the claimant has written a letter of demand for the refund of the said sum of money from the

defendant within seven days of the date of the receipt of the said letter of demand, and that on the 2nd day of August, 2019, the defendant acknowledged its indebtedness to the claimant and further appealed that the money would be paid before the end of August, 2019.

It is stated that inspite of the letter of demand, and the acknowledgment of the indebtedness, the defendant refused to pay the money, and to him, the defendant has no defence to the claim.

It is also in the affidavit accompanying the notice of intention to defend of the defendant that the deponent is the company secretary of the defendant, and that the defendant is not the developer of the said Naowa Corner shops, but rather Konoha Enterprises Limited, and that the defendant was only the consultant who connected the claimant to the developer and was acting on behalf of the Nigerian Army Officers Wives Association, and that the owner of the project is Naowa.

It is deposed to the fact that after the construction, the Nigerian Army took over the project due to security reasons, and since it was taken over by the Nigerian Army, it was no longer possible to issue the final letter of allocation to the claimant, and that all monies paid by the claimant were received on behalf of the Naowa and Konoha Enterprises Ltd.

It is stated that when the Nigerian Army took over the project, they only paid for 60 units belonging to the developer but refused to pay for the one belonging to Naowa, and that unfortunately the shopping belonging to the claimant was amongst those which belong to Naowa. That the parties in this suit are incomplete since Naowa is the client of the project while Konoha Enterprises Ltd is the developer, and that it will be tantamount to injustice to sanction the agent (the claimant) acting on behalf of its principal, (Naowa), and that the consultant was hoping to settle the claimant in order for peace to reign from the compensation that was to come from the Army.

Now, to narrow down what is in dispute between the two parties, it is very clear that the defendant is not denying that the sum of ₦7,500,000.00 was paid to it, and that it is also not in dispute that the

final allocation has not been issued to the claimant by the defendant. However, what is in dispute to which the defendant is making it as a defence is that the money was collected and received on behalf of Naowa and Konoha Enterprises Ltd, and therefore, to the defendant, the parties in this suit are incomplete without putting the name Naowa. In all these, the defendant admitted that the money will be paid to the claimant.

Both parties have supported their depositions with documents, and therefore, to be able to find out whether the defendant has a defence on the merit, recourse has to be had to the documents attached. See the case of **Akifi V. Oyekunle (2019) All FWLR (pt 981) p. 724 at 731 para B.** where the Supreme Court held that where Documentary evidence support the depositions in an affidavit, such depositions are the current position of what it seeks to establish. Documentary evidence lends more credence to material facts deposed to in an affidavit. In the instant case, the claimant attached some documents to show that the transaction was only between the two parties, while the defendant attached documents to show that it acted on behalf of Naowa thereby making it a privity of contract involving a third party. See the case of **Osokoya V. Onigemo (2018) All FWLR (pt 942) p.429 at p. 458 paras. D-G** where the Court of Appeal, Lagos Division held that a court of law has the plenitude of power to evaluate, examine, and critically appraise evidence, oral or documentary, it must however, do so within the ambit of the case as pleaded by the parties and for documents as amply demonstrated before it in evidence. In other words, where a document tendered for one purpose and not demonstrated for any other purpose, a trial court cannot on its own embark an enquiry into the documents in the recess of its chambers to make findings of facts on which issues were not joined by the parties in this pleadings.

Thus, in a letter dated 20th day of January, 2016, the defendant acknowledged the payment of the sum of ₦7,500,000.00 (Seven Million, Five Hundred Thousand Naira) only made by the claimant, as the letter reads:

**“ACKNOWLEDGEMENT OF PAYMENT/OFFER NAOWA
CORNER SHOPS ADJACENT NAOWA CENTRE MAMBILLA
BARRACKS ASOKORO – ABUJA.**

1. Sequel to your payment of Seven Million, Five Hundred Thousand Naira (₦7,500,000.00) only in the above mentioned project you are offered Shop No. C4 measuring 22m². A final letter of allocation would be issued to you by Naowa National Secretariat at the Commissioning of the complex.
2. Please accept our congratulations and assurances.

Signed
Mohammed Kabir
Director

Copy:

Naowa National Secretariat.

Now, whether the reproduced content of the acknowledgement letter made by the defendant was on behalf of Naowa National Secretariat?

In the letter, it can be seen very glaringly that it was not made on behalf of Naowa as nothing shows that it was such. The letter was only copied to the Naowa Secretariat. In a nutshell, it is not shown in the letter that the defendant acted on behalf of Naowa, rather that it is stated that “a final letter of allocation would be issued to you by Naowa National Secretariat”, and to my mind that does not qualify that to be said that the defendant acted on behalf of the Naowa. The Naowa National Secretariat was only copied. See the case of **N.P.A V. Ahmed (2017) All FWLR (pt 892) p. 1063 at 1079 para. G.** where the Court of Appeal, Makurdi Division held that where the words of document are clear and unambiguous, the courts are compelled to amend their plain and ordinary meanings. In the instant case, the content of the letter acknowledging the receipt of the sum of ₦7,500,000.00 does not show that the defendant acted on behalf of Naowa as it is not stated clearly in the letter of such, and to this, I therefore so hold.

The defendant relies on the letter written to it by Naowa, and the content of the letter reads:

“APPOINTMENT AS CONSULTANTS JAZEERA PROJECTS LIMITED”.

Reference:

A. JPL/NAOWA/2/14 dated 21st August 2014.

1. I am pleased to inform you that the Nigerian Army Officers' Wives Association (NAOWA) has approved your appointment as consultants for the proposed Naowa Public Private Partnerships nationwide. You are to carry out the following services on behalf of the association:
 - a. Engineering and architectural designs.
 - b. Quantity and land surveying.
 - c. Project Management Services, please accept my congratulations.

Signed
FE Minimah (Mrs)
National President

Having looked at the content of the letter written to the defendant by Naowa, it could be inferred that out of the three services the defendant was to carry out on behalf of Naowa, none of them categorically show that the defendant should act on behalf of Naowa in the management of the property to the extent of collecting money from the subscriber including the claimant. Even service in paragraph (c) above will only be construed to mean management of the project, and not the management of the property, and to this, I therefore so hold.

It was held by the Supreme Court in the case of **Okoli V. Morecab Finance (Nig.) Ltd (2007) All FWLR (pt 369) p. 1171 at 1190 paras. B-C** that a court must be satisfied that a defendant has deposed to facts which disclose a prima facie or reasonable defence in order to be let in to defend a suit under the undefended list. In the instant case, the defendant admitted to have collected and received the money; and I am satisfied that the defendant has no defence on the merit. See the case of **Kokoorin V. Patigi Local Government (2010) All FWLR (pt 533) p. 1981 at p.1995 paras. G-H** where the Court of Appeal, Ilorin Division held that when a defendant has not disclosed facts capable of constituting any real defence to the plaintiff's claim, he should not be allowed to indulge in delay tactics aimed at gaining time and postponing the performance of his obligation to the plaintiff. Under such circumstances, he should not be granted leave to defend and

judgment should be entered in favour of the plaintiff. In the instant case, the claimant exhibited the statement of account where the money was paid into the account of the defendant.

In the circumstances of this case, and based upon the foregoing analyses, I have come to the conclusion that the defence offered by the defendant is a sham one, and cannot warrant this court to transfer the matter to the general cause list.

Judgment is hereby entered for the claimant in the sum of ₦7,500,000.00 payable by the defendant without further delay.

I invoke Order 39 Rule 4 of the Rules of this Court to award the second segment of the reliefs of post judgment interest at the rate of 10% per annum until final liquidation of the judgment sum.

Signed
Hon. Judge
18/1/2021