

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT ABUJA

BEFORE HIS LORDSHIP: HON JUSTICE ASMAU AKANBI – YUSUF

DELIVERED THE 31st DAY OF MARCH, 2021

SUIT NO.FCT/HC/CV/3340/2020

BETWEEN

IVO UTENSIRE & 1 OR..... CLAIMANT

AND

ANAROCK GLOBAL SERVICES LIMITED..... DEFENDANT

JUDGMENT

The instant suit is commenced under the Summary Judgment procedure vide Writ of Summons and it is accompanied by a statement of claim, witnesses depositions and an application brought pursuant to order 11r 1 of the rules of the Honourable court. The processes were filed on the 3rd December, 2020. The claimants' jointly and severally claim against the Defendant as follows:-

a)The sum of N2,000,000.00 (Two Million Naira) only the 1st Claimant paid the Defendant for Plot 08 located at Anarock city Estate, Sabon Lugbe East, FCT, Abuja.

b) The sum of N2,200,000.00 (Two Million Two Hundred Thousand Naira) only the 2nd Claimant paid the Defendant for plot 08 and excavation located at Anarock City Estate, Sabon Lugbe East, FCT Abuja.

c) N400, 000 (Four Hundred Thousand Naira) only being cost of this action.

By the Claimants/Applicants Motion on Notice dated the 2nd December, 2020 the claimant prays this Court for the following:-

1. An Order of the Honourable Court entering Summary Judgment for the Claimant against the Defendant in this Suit.
2. AND for such further or other orders the Honourable Court may deem fit to make in the circumstance.

In support of the application the Claimants/Applicants filed two separate affidavits; attached to the affidavits are exhibits A1,A2,B,C,D1,D2,D3,E,F,G,H,I & J and also in compliance with

the rules of this court, learned counsel to Claimants filed a written address.

The Defendant was served with the processes of the Claimants on the 14-01-2021. When the matter came up for hearing on the 16-02-21, parties were absent; the Claimant/Applicant was represented, whilst the Defendant/Respondent was unrepresented. T. O Egaji, Esq. Counsel for the Claimants/Applicants moved the application for summary judgment and matter was adjourned for Judgment.

Learned Counsel to the Claimants/Applicants in his written address formulated a sole issue for determination to wit:-

“Whether considering the evidence before the Court, the Honourable Court is empowered to grant this application.”

I find the issue formulated appropriate and same is adopted in determining this application.

It is the evidence of the claimants that on the 22nd August, 2018 the defendant issued to them two separate offer/allocation letters in respect of same plot 08 measuring approximately 600 square

meters situate at Anarock City Estate, Sabon Lugbe East FCT, Abuja; that the 1st and 2nd defendants separately paid the sum of #2,000,000.00 each for the said plot; that the 1st defendant paid the sum of #2,000,000.00 in three installments as follows: the sum of #300,000.00 on the 5-6-2019; the sum of #700,000.00; the sum of #1,000,000.00 on the 25-6-19 and a receipt was issued by the defendant. It is further in evidence that the 1st claimant paid the defendant the sum of #2,000,000.00 via FCMB Interbank Deposit Slip dated the 02/August 2019 and upon payment, the 1st claimant was issued a receipt by the defendant.

The deponents continued further that upon the completion of payments for the said plot in question, the defendant issued the Claimants/Applicants two separate offer/allocation letters covering the same plot as well as letter of authority to proceed to site. It is stated further that upon the issuance of the authority letter to proceed to site by the Defendant and in accordance with the terms and conditions of the allocation letter, the 1st Claimant further paid the Defendant the sum of #200,000.00 for excavation. The deponents averred further that they discovered that the plot 08 fraudulently sold to them does not belong to the defendant;

that on discovering the fraud, they demanded for their plots or a refund of the money paid to the Defendant; that the Defendant became evasive and when they were fed up with the excuses of the defendant, they both engaged the law firm of T. O Egaji & Co to demand for the refund of the money paid for the said plot. He stated further that upon receipt of the demand letter by the defendant, the defendant admitted the transaction but offered to relocate them to a bush it claimed to be their new site situate at Pyakasa, Lugbe, Abuja; the claimants stated that the offer was rejected; that they instead requested the defendant to refund their money by 23rd November, 2020 or legal action will be taken against them. It is further in evidence that the defendant has failed to refund the money paid to them by the claimants; that the defendant claimed it operated the investment in the site at a loss; that the defendant states that it is working towards reclaiming possession of the land or the loss; that the defendant states that it cannot refund the claimants now. The deponents aver that the claim is for debt or liquidated money demand; that the defendant has no defence to the action.

Learned Counsel to the claimants' states that the claimants believe that the defendant has no defence to this suit; He cited the case of **LEWIS V. UBA PLC (2016) ALL FWLR (PT 833) P.1860 AT 1864** .Learned Counsel further submits that by exhibit I attached to the application, the defendant did not deny the transaction or the money paid by the defendant. He therefore urged the Court to grant the application.

The aim of a summary judgment procedure is to ensure justice to a claimant and minimize delay where there is obviously no defence and also prevent the grave injustice that might occur through a protracted and immensely frivolous litigation. It is trite that a summary judgment is a procedure for disposing with dispatch, cases which are virtually uncontested. It also applies to cases where there can be no reasonable doubt that a plaintiff is entitled to judgment and where it is inexpedient to allow a defendant to defend for mere purpose of delay. It is for the plain and straight forward, not for the devious and crafty. See **UNITED BANK FOR AFRICA PLC & ANOR v. ALHAJI BABANGIDA JARGABA (2007) LPELR-3399(SC)**

The Order 11r 1 of the HCR 2018 provides;

1. 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, 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.
2. A claimant shall deliver to the registrar as many copies of the processes and documents as referred to in Rule 1 of this Order for the use of the court and service on the defendants.
3. Service of the processes and documents referred to in Rule 1 of this Order shall be effected in the manner provided under Order 7.
4. Where a party served with the processes and documents referred to in Rule 1 of this Order intends to defend the suit he shall, not later than the time prescribed for defence, file:
 - a) His statement of defence;
 - b) Depositions of his witnesses;
 - c) The exhibits to be used in his defence;
 - d) Counter affidavit; and

e) A written brief in reply to the application for summary judgment.

5. 1) Where it appears to the court that a defendant has a good defence and ought to be permitted to defend the claim he may be granted leave to defend.

2) where it appears to the court that the defendant has no good defence the court may enter judgment for a claimant.

3) where it appears to the court that the defendant has a good defence to part of the claim, the court may enter judgment for that part of the claim and grant leave to defend that part to which there is a defence.

The defendant herein despite being served with the claimant's processes failed to comply with Order 11r 4 of the court's rules. The claimants/applicants in the statement of claim pleaded the following documents in paragraphs 4,6,7,8,9,10,12,13,14 & 15 in support of their affidavit evidence. The documents are;

1. Offer/Allocation of Plot at Anarock City Estate Sabon Lugbe East Abuja FCT dated 22/8/2018 to the 1st claimant

2. Offer/Allocation of Plot at Anarock City Estate Sabon Lugbe East Abuja FCT dated 22/8/2018 to the 1st claimant to the 2nd claimant
3. FCMB deposit slip 94208443; the sum of #2,000,000.00 paid into the account of Anarock Global Serv. Ltd with account number 1017425255.
4. Anarock Global Services Ltd Cash receipt with No 0027 dated the 2nd August, 2019 received from Ivo Utensire in the sum #2,000,000.00 being payment for a plot of land at Anarock city estate.
5. Anarock Global Services Ltd Cash receipt with No 0024 dated the 5th July, 2019 received from Alu Austin in the sum #300,000.00 being part payment of a duplex plot at Anarock city estate.
6. Anarock Global Services Ltd Cash receipt with No 0028 received from Alu Austin in the sum #700,000.00 being balance of payment of a 4 bedroom duplex plot at Anarock city estate.
7. Copy of online banking transaction from the 24- Jun- 2019 to 27- Jun- 2019

8. Authority to proceed to site dated 22/8/2019 written to Ivo Utensire
9. Authority to proceed to site dated 22/8/2019 written to Alu Austin
10. Anarock global services ltd cash receipt No 0058 received from Alu Austin being payment for excavation at Anarock City Estate Sabon Lugbe East Extension
11. Copy of whatsapp conversation between the 2nd Claimant and the management of the Defendant.
12. Letter of demand for refund of purchase money dated 3rd November, 2020 from T. O Egaji & Co
13. Response to the demand letter from T. O. Egaji &Co dated the 10/11/2020
14. Response from the solicitors dated the 16th November, 2020 to the defendant.

I have considered the pleadings of the claimants/Applicants as well as the depositions of the deponents in the affidavits together with the exhibits attached thereto, the evidence before the court is clear and unambiguous. The claimants have stated in clarity the defendant's indebtedness to them. Exhibits A1 &

A2 are the letters of allocation separately issued to the claimants by the defendant. The evidence of payments is as attached to the affidavits [see exhibits B, C, D1, D2, and D3]. Based on the payment made by the claimants for the said plot, the defendant via exhibit E issued two separate letters authorizing the claimants to proceed to site. The 2nd claimant further made payment to the defendant for excavation. Based on the defendant's refusal to allot separate plot to the claimants, the claimants caused a letter to be written to the defendant by their counsel via exhibit H demanding for the refund of the payments made for the plot. The defendant responded and offered to relocate the claimants to another site, which was rejected by the claimants. [See exhibits I & J]

The summary procedure is such that once the writ of summons is filed with the statement of claim, and it is supported with an affidavit stating positively the facts establishing the cause of action and the amount claimed, and in the opinion of the deponent the defendant has no defence to the action, the claimant is entitled to judgment as claimed. However, the defendant can be allowed to defend where he is able to satisfy

the court by his statement of defence or affidavit that he has a good defence on the merits of the case or he can disclose such facts as may be deemed sufficient to entitle him to defend the action generally or that the claim does not come within the purview of Order 11 Rule 4 HCR.

As stated earlier, the processes of this court were served on the defendant; he however chose not to respond to same. The purpose of service of Court processes on the parties in a case is to bring to their notice/attention the pendency of the case, the contents of the case and give them an opportunity to react to the said processes.

In the absence of any contrary evidence challenging the claimants' claims, I hold that the claimants are entitled to the reliefs claimed as the defendant has no defence to this suit. Accordingly Judgment is entered in favour of the claimant jointly and severally against the defendant as follows:

- a) The defendant is to refund the sum of N2,000,000.00 (Two Million Naira) only to the 1st Claimant being the sum paid to

the Defendant for Plot 08 located at Anarock City Estate, Sabon Lugbe East, FCT, Abuja.

b) The defendant is to refund the sum of N2,200,000.00 (Two Million Two Hundred Thousand Naira) only to the 2nd Claimant being the sum paid to the Defendant for plot 08 and excavation located at Anarock City Estate, Sabon Lugbe East, FCT Abuja.

c) The cost of action is assessed at #50,000.

ASMAU AKANBI- YUSUF

[HON. JUDGE]

APPEARANCES:

T.O Egaji Esq. for the Claimant

Defendant absent