

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT GUDU - ABUJA
DELIVERED ON THURSDAY THE 30TH DAY OF SEPTEMBER 2021.
BEFORE HIS LORDSHIP; HON. JUSTICE MODUPE R. OSHO-ADEBIYI
MOTION NO. CV/350/2018

BETWEEN:

**ALHAJI ISA UMAR-----CLAIMANT/1ST DEFENDANT TO
COUNTERCLAIM**

AND

ALHAJI MOHAMMED BELLO-----DEFENDANT/COUNTER CLAIMANT

**YOUTH WAMY LIMITED-----2ND DEFENDANT TO COUNTER CLAIM
(Joined by order of the Court on 03/07/2019)**

JUDGMENT

By a Writ of Summons filed on the 27th day of November 2018, the Claimant brought this suit against the Defendant praying the Court for the following reliefs:

1. The Sum of N270,000,000(two hundred and seventy million naira)being the cost of the Plaintiffs house at Nasfat village Kaduna or in the alternative return the original title documents of the said house at Nasfat village Kaduna back to the Plaintiff.
2. The Sum of N100,000,000(One Hundred Million Naira) being the value of the 8 Bedroom Bungalow with boys quarters at Apo Resettlement Abuja or in the alternative return the original title documents of the said House back to the Plaintiff
3. The Sum of N29, 800,000.00(Twenty Nine Million Eight Hundred Thousand Naira) being the balance of the property at Kubwa Estate behind NYSC camp Abuja.

4. The Sum of N40, 000,000.00 (Forty Million Naira) being the balance of the double built flats of Gwarinpa Estate Abuja.
5. The Sum of N60, 000,000.00 (Sixty Million Naira) as general damages for breach of contract by the Defendant.
6. 10% post judgment interest on the judgment sum from the date of judgment until the judgment sum is fully liquidated by the Defendant.
7. N1,000,000.00 being cost of constituting this action

The facts that prompted the Plaintiff to institute this action is that sometime in the 2012, the Plaintiff and the Defendant based on trust had basic land transaction over sales of properties in Abuja and Kaduna respectively. That the Plaintiff sold his house at Nasfat village Kaduna State to the Defendant for the Sum of N270,000,000.00 (Two Hundred and Seventy Million Naira) with an understanding that the Defendant would pay the Plaintiff by exchange of some properties as follows; an office building in Gwarimpa Estate Abuja valued at N120,000,000.00 (One Hundred and Twenty Million Naira) which the Defendant thereafter later sold to one Salisu Maina; a block of flats at Kado Estate Abuja valued at N55,000,000.00 (Fifty Five Million Naira) which title documents and its ownership of the Defendant turned out to be fake and forged documents; a Plot of land of Jabi Abuja valued at N60, 000,000.00 (Sixty Million Naira) which Defendant instructed the Plaintiff to collect from one Sada, which also turned out to be encumbered.

That the Plaintiff further sold (8) Eight Bedroom Bungalow with boys quarters at Apo Resettlement Abuja valued at N100,000,000.00 (One Hundred Million Naira) to the Defendant within the same period and the Defendant in the usual trade of exchange transaction purposed to pay as follows: a plot at Gwarinpa Abuja valued at N60,000,000.00 (Sixty Million

Naira) which turned out to be fake as the Defendant does not have genuine title documents to it; Mercedes Benz E-class 2019 model, one door valued at N10, 000,000.00 (Ten Million Naira) which said car was returned by the Plaintiff to the Defendant on the Defendant's request as the actual owner of the said car came for it; An uncleared cheque of N8, 000,000.00 (Eight Million Naira) as the Defendant had no money in the account to fund it; A promise of Lexus Jeep LX570 valued at 20,000,000.00 (Twenty Million Naira) to the Plaintiff which was never delivered to the Plaintiff till date; a promise to pay the Plaintiff cash of N1, 000,000.00 (One Million Naira) which was never honored; the sum of N1,000,000.00 (One Million Naira) to be collected from one Ambassador which money was never paid to the Plaintiff.

It is also the Plaintiff's case that he sold a property at Kubwa Estate behind NYSC Camp Abuja to the Defendant for the agreed sum of N35,000,000.00 (Thirty-Five Million Naira) and the Defendant agreed to pay the consideration as follows: a plot of land at Katampe valued at N23, 000,000.00 (Twenty Three Million Naira), which also turned out to be fake and forged documents; a house at FHA lugbe valued at N5, 000,000.00 (Five Million Naira) which turned out to be a fraud; a car valued at N3, 000,000.00 (Three Million Naira) and also made payment of N2, 200,000.00 (Two Million Two Hundred Thousand Naira). That the total money left unpaid from the Kubwa transaction is the sum of N17,500,000.00 .

The Plaintiff further states that he sold a double built flats at Gwarinpa valued at N140,000,000.00 to the Defendant which the Defendant agreed to pay as follows; a flat at Idoma Road Kaduna valued at N100, 000,000 with a promise to pay the balance of N40, 000,000 which till date has been a ruse.

That the effect of the above separate transactions between parties which were all predicted on trust, confidence and strong business that had existed between them has ultimately led to the Plaintiff being deceived into parting with his properties under the belief and concrete understanding as to receiving the consideration in terms of how they were all agreed but to no avail. That several demands were made to the Defendant to return Plaintiff's properties back to Plaintiff or refund Plaintiff his consideration, but the Defendant continued promising him and subsequently started avoiding the Plaintiff hence this claim.

The Defendant by an amendment granted by the Order of this Court, filed his statement of defence and a counter claim praying the Court for the following reliefs against the Defendants to the Counter claim:

1. The sum of (fifty five million Naira only) against the defendants to the counter claim, being consideration paid by the counter claimant to the defendants to the counter claim for plot No.1459, Jahi layout measuring approximately 1,600M², and valued at (Twenty five million Naira only) and plot 1557, Jahi district measuring approximately 3, 290M², then valued at N30,000,000.00 (Thirty million Naira only) which transactions failed due to the lack of proper title and documents from defendants to the counter claim which was sought to be transferred to the counter-claimant without success, despite the furnishing of considerations by the counter claimant.
2. An order directing the 1st defendant to the counter claim to pay to the counter claimant the total sum of N155, 000,000.00 (One hundred and fifty five million Naira only) as consideration given to the 1st defendant to the counter claim for the purchase of the porch(sic) car and the Gwarimpa Shop by the counter claimant

which the 1st defendant to counter claim has failed and neglected pay or return despite demands.

3. The sum of N25, 000,000.00 (Twenty five million Naira only) against the 1st defendant to the counter claim, being the value of Infinity Q56, Infinity Q5, Mercedes Benz E-Class 2007 model, a Prado Jeep motor vehicle collected by the 1st defendant to the counter claim from the counter claimant for which the defendant to the counter claim has failed, refused and or neglected to pay for and or furnish consideration for, despite being in possession of the cars and repeated demands by the counter claimant.
4. The sum of N25, 000,000.00 (Twenty five million Naira only) as general damages against the defendants to the counter claim for breach of contracts afore stated.
5. 10% post Judgment interest from the date of Judgment until Judgment sum is fully liquidated.
6. Cost of this suit as may be assessed by the court.

It is Defendant's case that he and Claimant have been business associates, and prior to the transactions leading to this suit, the Claimant usually act as the Defendant's agent in the sales of cars, landed properties and other items which the Defendant deals in, and equally, the claimant acts as agent representing other people and collects agency and or facilitation fees where the transaction succeeds.

That the Claimant sold the Nasfat village house at No.9 Yakubu Pam road, Kurmi Mashi, Kaduna state to the Defendant at the sum of 270,000,000.00 (Two Hundred and Seventy Million Naira only) which sale and payment was evidenced in a Deed of Assignment dated the 25/07/12 and a hand

written Sale Agreement prepared by the Claimant and signed by both the claimant and the defendant on 20/07/12 respectively.

That it was the Claimant that sold a shop to the Defendant at Gwarinpa for the sum of N120,000,000.00 (One Hundred and Twenty Million Naira only) and the transaction was evidenced in a handwritten House Sale Agreement, written by the Claimant. That parties transacted with respect to Eight (8) Bedroom Bungalow with boys quarters at Apo which the Defendant bought at the sum of N100,000,000.00 (One hundred million Naira only) and in payment for the property, the Defendant gave the Claimant cash and cars far above the value of transaction as follows; Lexus EX 570 valued at N20,000,000.00 (Twenty million Naira only) given to the Claimant by the Defendant which was not returned as claimed by the Claimant; N9,000,000.00 (Nine Million Naira) in the form of a cheque, the sum of of N8,000,000.00 in cheque and cash of N1,000,000.00 which Defendant instructed one Ambassador to pay to the claimant which was done, and has never been disputed by the Claimant; a B.M.W Car valued at N12,000,000.00 (Twelve Million Naira Only) which the Claimant instructed the Defendant to release to one Mr. Ali of Corporate Affairs Commission Abuja, and the Defendant obliged the Claimant's request by giving Ali the Car. That Defendant gave N75,000,000.00 (Seventy five million Naira only) cash to the Claimant as agency fee for Danmarina House, which the Claimant purportedly sold to the Defendant, which transaction failed as a result of the Claimant's refusal to furnish the original title documents and part of which the claimant was to refund to the Defendant after deducting the amount due for the Apo transaction, and the claimant has refused to refund. That an additional sum of 10,000,000.00 (Ten million Naira only) was given to the claimant by the Defendant. That the balance due the Defendant from the entire Apo transaction is N26,000,000.00 (Twenty Six

Million Naira only) which is yet unpaid by the Claimant. That the transaction was evidenced in a handwritten form in the defendant's diary by the Claimant and signed by both the Claimant and the Defendant on the 23rd of March 2011 and the Defendant paid for the property in the following manner: that the Claimant being previously indebted to the Defendant to the tune of N15,000,000.00 (Fifteen Million Naira only) and an additional N9,000,000.00 (Nine Million Naira, Only), the Claimant had agreed with the defendant for the various amounts to be deducted from the cost of the property. That Defendant in turn, gave the Claimant a house at Lugbe valued at (Eight million Naira only) as part of offsetting the debt and in addition, a plot of land at Kaduna valued at N1,000,000.00 (One million Naira only) was given to the Claimant by the Defendant and lastly; the Defendant gave the Claimant a ford car valued at N3, 000,000 (Three million Naira only) and an additional cash deposit of N2, 200,000 (Two million two hundred thousand Naira only).

That all these were written in the Defendant's diary and signed by the Claimant and the Defendant with various dates of 23/03/11 and 27/03/2011. That the outstanding due the Defendant is (Three Million Two hundred thousand naira only), which the claimant ought to refund in cash or goods with respect to the above part of the entire transaction.

That the reliefs and prayers as contained in the Plaintiff's present suit are subject of consideration and determination of the High Court of Kaduna state and urged the court to dismiss the Plaintiff's case as being baseless, gold digging, vexatious and an abuse of process of court.

The Defendant also counterclaimed against the Claimant/1st Defendant and the 2nd Defendant. The facts as it relates to the counter claim is as follows:

That sometime between 2011 to 2013, while the transaction leading to the present suit was on, Counter claimant was offered plot No.1459 within Jahi District, Abuja measuring approximately 1,621 M² then valued and agreed at N25, 000,000.00 (twenty-five million Naira only), by Isa Umar, as the agent of the original Allottee, HANZY BEAUTY AND FITNESS LTD, and the counter-claimant paid the defendants sometime in August 2011. That unknown to the counterclaimant, the plot had previously been sold to one Captain Sanusi Suleiman on the 22nd of June, 2011 via a Deed of Assignment witnessed by the 1st defendant to the counter-claim on the same date.

That, similarly, Plot 1557 within the same Jahi district layout measuring approximately 3,290M² then valued and agreed at N30, 000,000.00 (Thirty million Naira only) within the Abuja was equally offered to the counter claimant with a cloned Offer of statutory Right of Occupancy Letter dated 10/05/07 in the name of Youth Wami, purportedly in the name of the 2nd defendant to the counter claim, through Alhaji Isa, and the counter claimant paid for it. That counter claimant accepted the offer of the plots 1459 and 1557 within Jahi District for a total sum of N55, 000,000.00 (fifty-five million Naira only) and in consideration of the cost and value of the plots proceeded to pay the defendants to the counter claim the cash equivalent of the values of the plots as well as with properties and items equalling the value of the plots. That both transactions failed as it was later discovered that Plot 1459 was previously sold and the document for Plot 1557 was not genuine. That counter claimant instructed his solicitors, SANI & CO to demand for, along with other costs of the failed transactions with the defendants to the counter claim, in the sum of N 55,000,000.00 (fifty-five million Naira only) being consideration furnished for the plots.

That on the 29th of December 2012 the Defendants to the counter claim, on demand, took delivery of the following vehicles: infinity Q56, Infinity Q5, 2007 Mercedes Benz E-class, and a Prado jeep all valued at the sum of (Twenty-five million Naira only) and as other times, promised to pay but neglected to pay despite repeated demands.

That on the 6th of July 2013 counterclaimant bought a porsche car from the 1st defendant to the counter claim valued at the sum of 35,000,000.00 (Thirty five million Naira only) and furnished a consideration for the porsche car with the original title documents of his plot of land at Guzape, Abuja, then valued at N35, 000,000.00 (Thirty five million Naira only) to the defendant to the counter claim. That the car had serious mechanical defects and he returned the car, but the 1st Defendant who promised to return the title document failed to return same.

That the defendants to the counter claim have refused and or neglected to pay the counter claimant the outstanding sum of N3,200,000.00 (Three Million, two hundred thousand naira only), which the 1st defendant to the counter claim ought to refund in cash as a result of the Kubwa house sale.

That counterclaimant purchased a shop from the 1st defendant to the counter claim for the sum of N120,000.000.00 (One hundred and twenty million Naira only) at Gwarimpa, Abuja, FCT, which the 1st defendant to the counter claim has failed and refused to deliver possession of the title documents to the counter claimant despite being paid for the shop, which transaction was documented is a hand written House sales agreement dated 06/08/2012 and signed by both the counter claimant and the defendant to the counter claim.

That counter claimant has suffered hardship and losses as a result of the breach of the various agreements and contractual relationship between him and the defendants to the counter claim, for which the defendants to

the counter claim has refused and neglected to meet his demands despite the pendency of other suites of similar circumstances at the Kaduna High Court.

The 1st Defendant to the counter claim filed a reply to the Defendants Statement of defence and a defence to the Defendant's counter claim wherein the entirety of the counterclaimant's claim was denied.

Trial in this case commenced on the 16th day of April 2019, with the Plaintiff testifying as the sole witness in proof of his case. PW1 adopted his witness statement on oath as evidence and tendered two exhibits, which are two pieces of pages from a diary which the Court admitted as Exhibits A and B.

Under cross examination, PW1 testified that the NASFAT house he sold to Defendant is the same described as No. 9, Yakubu Palm Road, Kaduna. That all transactions were written in both the Claimant and the Defendant's diaries. That he was deceived into signing the NAFSAT transaction as he didn't know at that time that Defendant's property used in exchange was not genuine. That there was a handwritten document written to acknowledge the transaction. That he was given a Mercedes Benz "E" class in respect of the Apo resettlement transaction in 2012. That all the transaction between parties was based on exchange of cars and properties and no cash. That he was taken to all properties given in exchange and all documents handed over to him. That there is a similar case going on in Kaduna, which he and Alhaji Mohammed Matawali are parties to the suit where he is also counterclaiming and seeking for the same reliefs as in this present case.

The Defendant in defence to the claimant's case and to prove his counterclaim called three witnesses.

The DW1 adopted his witness statement on oath and under cross-examination, testified that he witnessed the Deed of assignment between parties in respect of the property situate at 9, Yakubu pam Road, Kaduna evidenced in Exhibit DW1.

The DW2 adopted his witness statement on oath and testified that he witnessed the handing over of N270m (both in Naira and Dollars) by the Defendant to the Claimant.

The Defendant testifying as DW3 adopted his witness statement on oath and under cross examination, testified that NAFSAT transaction was written in his presence. That he paid Claimant N270m cash for the NASFAT House in Abuja, which payment was also witnessed by the DW2.

That he did not give the Claimant an estate building at Gwarimpa, a block of flats at Kado estate and a plot of land at Jabi valued at N60m in respect of NASFAT house. That the Mercedes E-class he gave to Claimant was not returned to him. That the Claimant sold the property at Kubwa Estate behind NYSC camp valued at N35m to him although he cannot remember how he paid for the property. That he did not give the Claimant a plot of land at Katampe valued N23m in lieu of a payment for the Kubwa Estate house neither did he give the Claimant a house at Federal Housing Lugbe in lieu of the payment for the Kubwa estate house. That the Claimant did not sell a twin built flat at Gwarimpa estate valued at N140m to him and that the Claimant sold property to him at Jabi district.

The Defendant tendered the following documents as exhibits which was admitted by the Court as follows;

- (1) Copy of one page document frontloaded with statement of claim admitted in evidence and marked Exhibit D1.

- (2) Copy of one page document frontloaded with statement of claim admitted in evidence and marked Exhibit D2.
- (3) CTC of process of the High Court of Kaduna comprising of 19 pages admitted in evidence admitted as Exhibit D3(1) – D3(19)
- (4) Deed of assignment between parties in respect of property situate at 9, Yakubu pam Road, Kaduna admitted in evidence and marked as Exhibit DWI
- (5) Original certificate of incorporation of Youth Wamy Ltd dated 27/07/2011 admitted in evidence and marked Exhibit DW2a
- (6) CTC of particulars of directors of Youth Wamy Ltd admitted in evidence and marked Exhibit DW2b (2 pages)
- (7) CTC of memo and articles of Association of Youth Wamy Ltd (5pages) Exhibit DW2c
- (8) Deed of assignment between Hanzy Beauty and Fitness Ltd and Captain Sanusi Suleiman duly executed (3 pages) attached with a copy Certificate of Incorporation of Hanzy Beauty and Fitness – Exhibit DW3a and DW3b
- (9) Offer of statutory right of occupancy to Youth Wami dated 10/05/2007 for land 3290.34 sqm admitted in evidence – Exhibit DW4a, attached with AGIS letter No 067710 for N21,000 from standard trust dated 9/05/2007.
- (10) FCT acknowledgement of application for grant/regrant of statutory right of occupancy in favour of Youth Wamy dated 9/5/2007 – exhibit DW4b
- (11) Copy of certificate of incorporation of Hanzy beauty and fitness ltd dated 14/06/2011 – Exhibit DW5a.
- (12) Copy of offer of statutory right of occupancy dated 10/05/2007 to Hanzy beauty and fitness ltd for land measuring 1621.19 sqm – Exhibit DW5b.

- (13) 3 pages letter from Sani & Co. dated 10thSeptember, 2015 addressed to Alhaji Isa Umar and signed by Mohammed Sani a firm of solicitors – Exhibit DW6
- (14) Handwritten sales agreement duly signed and dated 20/7/2012 – Exhibit DW7
- (15) Deed of assignment between Alhaji Isa Umar and Alhaji Mohammed Bello Saidu duly executed by parties on 25/07/2012 attached are (a) Kaduna state urban planning and development authority planning permission (b) Copy of survey plan – Exhibit DW8
- (16) Handwritten calculation of monetary figures with 2 signatures titled sales agreement – Exhibit DW9.
- (17) Diary of Sharia Court of Appeal FCT Abuja for year 2012 – DW10.
- (18) Copy of handwritten monetary figures titled Kubwa House totaling sum of N2.2m – Exhibit DW11.

At the close of trial, Court adjourned the case for adoption of final written address. The Defendant's Counsel filed his written address which was adopted as argument in support of the Defendant's case and Counter claim. From the written address filed, Counsel raised three issues for determination, to wit.

- I. Whether the claimant's claim set out in the Writ of Summons and Statement of claim is not an abuse of both the court and Judicial processes.
- II. Whether the claimant has proved his case on a preponderance of evidence.
- III. Whether the counter claimant has proved his counter claim on a preponderance of evidence to be entitled to judgment.

Counsel arguing issue 1 contended that from the evidence elicited from the claimant himself, he admitted under cross examination that the reliefs set out in the face of his Writ of Summons and Statement of Claim are the same with that in Exhibits D3 1-19, which suit was first in time before the present suit thereby amounting to a clear abuse of Judicial process and urged the Court to dismiss the Claimant's suit.

On the second issue to Wit; whether the claimant has proved his case on a preponderance of evidence? Counsel submitted that the evidential burden is on a preponderance of evidence and balance of probabilities and that the cause of action for the enforcement of the obligation(s) to pay the debt has not arisen and can only arise after the claimant/Ist defendant to the counterclaim has made a formal demand on the defendant/counterclaimant.

Counsel submitted that assuming but not conceding that claimant's claims are not an abuse of the court processes, the suit is premature at this stage, since no formal demand was made by the claimant for the sums claimed.

Counsel submitted further that the present suit is contractual in nature and by their pleadings, have agreed that there were offer and acceptance of various items, and this makes their transaction binding and enforceable to the extent of the proof of their various claims.

Counsel submitted that the claimant did not lead any credible evidence in support of his claims as the Exhibits tendered were wrongly admitted and a trial court can expunge a wrongly admitted document or evidence, admitted in course of trial, when he is writing his judgment.

Submitted that the claimant's claims are not supported by any documentary evidence, even Exhibits A1 and A2, does not support any of the claimant's claims, rather the claimant's evidence was contradicted in material terms during cross examination where the claimant admitted

signing a Deed of Assignment and Power of Attorney (although deceived to do so).

Counsel submitted further that he who asserts in law must prove his assertion by uncontradicted oral testimonies and or documentary evidence and it's the responsibility of the claimant to prove his case which the Claimant has woefully failed to prove.

On issue III which is whether the defendant/counterclaimant has proved his counter claim on a preponderance of evidence?

Counsel submitted that the evidence of the Defence witnesses in proof of the counter claim was contradicted under cross-examination. Submitted that the claimant/defendant to counterclaim rested his case on that of the counter claimant, not having led evidence in support of his reply and Defence to Counterclaim.

Submitted that the 2nd defendant to the counter claim did not file any defense to the counter claim, despite proof of service of the processes of court on it. Submitted that from Exhibit DW6 which is the Demand Letter by Sani & Co. the counterclaimant formally made the demands of the outstanding due the defendant/counterclaimant for payment.

Submitted that none of the reliefs set out in the counter claim were claimed in Suit No. KDH/KAD/993/2016 and as such can conveniently be determined by this honorable court.

Submitted that the claimant is a director of Youth Wamy Ltd, which the claimant denied under cross-examination, however the counter claimant tendered Exhibit DW2A, DW2B and DW2C, which clearly indicates the name of the claimant as a Director of Youth Wamy Ltd.

Counsel further submitted that the documentary evidence tendered in support of the defendant/counter-claimant case, can be safely used as a hanger to the oral evidence adduced by the defendants' counter claimants'

witnesses more so as both oral and documentary evidence were not contradicted by the Claimant/Defendant to the Counter Claim.

Counsel submitted finally that the balance of probabilities is in favor of the defendant/counterclaimant and urged the Court to dismiss the claimant's case and enter judgment in favor of the defendant/counter claimant.

Counsel relied on the following authorities to buttress his argument:

1. Idaba WA. v. Magashi &Anor (2016) LPELR. 41626 (CA).
2. Hassan &Anor. v.INEC& ors (2019) LPELR-49207 (CA).
3. Ogbonna. v. Ag. Imo State 1NWLR 647. at 675
4. Adeleke. v. Iyanda (2001) 13 NWLR(pt 729) page 1 atpage 21-22 paras H-Bpages 23para C.
5. Ibiyemi. v. Fojule (2006) 31NWLR (pt 968) page 640 at 662 para B-C
6. Okonta &Anor. V. Egbuniva (2013) LPELR-21253 (ca).
7. Edosomwan. v. A.C.B LTD (1995) NWLR (pt 408)472,
8. First Continental Properties ltd. v. Divine Triop ltd (2017) LPELR-42869
9. Joe Iga. v. Chief Amakiri (1976) 11 SCpg.1
10. BlanteInternational ltd v. Nigerian Deposit Insurance Corporation (2012) 15 NWLR (pt. 1270) page 407 at page 431.
11. Atunna. v. Ladenika (1998) 7 NWLR (pl557) page 221 at 228-229,
12. Ofem &ors. v. Usang (2017) LPEKR-43606 (Ca),
13. Dabup. v. Kolo (1993) 9 NWLR(pt. 317) 254 at 270 parad; 281, para. a.
14. Diamond Bank plc. v. Pamob West-Africa ltd (2014) LPELR-24337(ca) per bolaji-yusuf, j.c.a (pp. 15 para f)
15. Kimdey & ors. v. Military Governor Gongolar State & ors (1988) LPELR-1692 (SC).
16. Monkom. v. Odili (2010) 2NWLR (pt 1179) 419 at 442paras D-F.

The 2nd Defendant to the Counter claim (Youth Wamy Limited) was served with the processes of this Court as well as hearing notices but failed to enter appearance or file a defence to the counter claim. The 2nd Defendant cannot therefore complain of lack of fair hearing having been given the opportunity to present its defence but failed to utilise such opportunity so given.

It is the law as handed down by the Supreme Court that once it can be shown that a party was given opportunity of being heard but he refuses to avail himself of the opportunity, he cannot be heard to complain that he was not given a fair hearing. In ODUNLAMI Vs NIGERIAN NAVY (2014) ALL FWLR (Pt. 720) 1206 @ 1226 Paras. F-G, the Court held that where a defendant fails to file a statement of defence, he is deemed to have admitted the Plaintiff's claim. This court will proceed to determine the counterclaim as undefended with respect to the 2nd Defendant.

The Claimant/1st Defendant's Counsel did not file a written address as argument in respect of the Claimant's case or in defence to the Defendant's counter claim. The the right of address is a constitutional right, it is inalienable, as it is personal to party beneficiary. Put simply, once a Court avails a party the right to address it, a party can decide to discard it by way of waiver, which the Claimant's counsel has done by not filing an address. This does not in any way, affect the judgment of this Court as the facts and evidence adduced by parties would be evaluated to arrive at its judgment.

I have examined the entirety of the Claimant's case as well as the Claimant's defence to the Counter claim. I have also examined the case of the Defendant and the counter claim together with the written address of the

Counterclaimant, this Court will adopt the issues raised by the Counterclaimant as follows:

- I. Whether the claimant's claim set out in the Writ of Summons and Statement of claim is not an abuse of court process.
- II. Whether the claimant has proved his case on a preponderance of evidence.
- III. Whether the counter claimant has proved his counter claim on a preponderance of evidence to be entitled to judgment.

With respect to issue no 1 which is **“Whether the claimant's claim as set out in the Writ of Summons and Statement of claim is not an abuse of Court process”**

The Defendant is urging on this Court to dismiss the claimant's case on the ground that it is an abuse of Court process having filed this present suit while a suit seeking the same reliefs is pending before the Kaduna State High Court.

It has been established in a slew of decided cases that an abuse of court process occurs when a party improperly uses the issue of judicial process to his opponent's annoyance and irritation, such as by filing multiple lawsuits on the same subject matter against the same opponent, all of which are related to one another and the same issues. It is not the existence or pending status of the preceding lawsuit that is the source of the difficulties. When a previous lawsuit has not been resolved, it is the bringing of a new action between similar parties and on similar grounds that constitutes abuse of the court system. See STABIHIMI VISION NIG.LTD VS. SANDERTON VENTURES LTD (2011) LPELR – 4976; OKAFOR VS. ATTORNEY GENERAL, ANAMBRA STATE (1991) 6 NWLR (PT. 200) P. 659

@ P. 681; OGOEJOFO VS. OGOEJOFO (2006) LPELR – 2308; SARAHI VS. KOTOYE (1992) 9 NWLR (PT. 264) P. 156 @ P. 188.

In considering whether or not an action or process constitutes an abuse of Court process, the Court is to critically consider the peculiar facts and circumstances of each case in which the issue of abuse of Court process is raised to determine whether in the peculiar circumstances of the case, the act of the party complained of constitutes an abuse of Court process. The Court in ASHLEY AGWASIM & ANOR V DAVID OJICHIE & ANOR (2004) LPELR - 256(SC) held,

"In the determination of abuse of the judicial process, the Court will consider the content of the first process vis a vis the second one to see whether they are aimed at achieving the same purpose"

Therefore, the duty of this Court is to examine the Writ of Summons and Statement of Claim filed in suit no. KDH/KAD/993/2016 between ALH. BELLO S. MOHAMMED Vs. ALH. ISA UMAR & ANOR, and that filed in this instant case, which is FCT/HC/CV/350/2018 between ALH. ISA UMAR VS. ALH. MOHAMMED BELLO to determine whether both suits are aimed at the same purpose and to do this the Court will determine whether the parties, the subject matter and the reliefs are the same.

I have examined the processes filed, firstly, the parties in the suit filed in the High Court in Kaduna are the same with the parties in this Instant case. On the face of Exhibit D3.1, the Plaintiff in the suit filed in Kaduna is the Defendant/Counter Claimant and the Defendant in the suit filed in Kaduna is the Plaintiff in this instant suit. In the suit before the Kaduna High Court, the Defendant is also counter claiming, which also makes Alh. Isa Umar a Plaintiff and Alh. Bello S. Mohammed a Defendant as in this instant suit.

On the face of the Writ before this Court the parties are stated thus:

ALHAJI ISA UMAR-----PLANTIFF

AND

ALHAJI MOHAMMED BELLO-----DEFENDANT

In the suit before the Kaduna High Court, as gleaned from Exhibit D3.1 parties are stated thus;

ALH. BELLO S. MOHAMMED-----PLAINTIFF

AND

1. ALH. ISA UMAR-----DEFENDANT

2.HON. MOHAMMED BELLO MATAWALLE

The Claimant in this instant suit having counterclaimed before the Kaduna High Court, makes him also the Claimant in the suit in Kaduna and Alh. Bello the defendant. More so, the PW1 under cross examination admitted that the parties in both suits are the same when prompted by the Defence counsel thus:

“Q: There is a similar case going on in Kaduna in which yourself and Alhaji Mohammed Matawali are parties to the suit, and also, counter claimants were the Defendants?”

A: Yes

Q: In that suit you equally counter claimed in that suit?

A: Yes. “

The law is trite that a counter claim is a distinct cause of action and has all the attributes of an action. Therefore, the parties in this suit and that of KDH/KAD/993/2016 are clearly the same.

Secondly, with respect to the subject matter, in the suit before the Kaduna High Court, from the state of the pleadings as seen in Exhibit D3,9,10 and 11, the grouse of the Counterclaimant (Claimant in this instant suit) was with respect to four transactions relating to sale of properties in Abuja and

Kaduna, which is the same with the facts as claimed in this instant suit. In my humble view, the subject matter is clearly the same in both suits.

On the third limb, are the reliefs the same in the two suits? In KDH/KAD/993/2016, the reliefs sought as seen in Exhibit D3.12 particularly reliefs i, v, vii, are reproduced hereunder,

“i. A DECLARATION that the Plaintiff having collected from the Defendant a house at NASFAT Village in Kaduna for the sum of Two Hundred and Seventy Million Naira (N270M) is entitled to pay its value.”

“v. A Declaration that the Defendant is entitled to the return of his 8 bedrooms bungalow with boys quarters at Apo, FCT Abuja known as AP Resettlement due to failed transaction.”

“vii. Balance sum of Forty Million Naira (N40M) upon the transaction for the sale of Double built Flat at Gwarimpa, FCT, Abuja.”

In this instant case the reliefs as claimed are the same with those claimed as stated above particularly reliefs a, b and d as follows:

“a. The Sum of N270,000,000(two hundred and seventy million naira)being the cost of the plaintiffs house at Nasfat village Kaduna or in the alternative return the original title documents of the said house at Nasfat village Kaduna back to the Plaintiff.”

“b. The Sum of N100,000,000(One Hundred Million Naira) being the value of the 8 Bedroom Bungalow with boys quarters at Apo Resettlement Abuja or in the alternative return the original title documents of the said House back to the Plaintiff”

“d.The Sum of N40, 000,000.00 (Forty Million Naira) being the balance of the double built flats of Gwarimpa Estate Abuja.”

The reliefs filed in the suit before the Kaduna High Court and those claimed in this instant suit as reproduced above all relate to the same transactions which the PW1 has already admitted to this Court as being the same. Consequently, it is my view that the parties, the reliefs, and the subject matter are the same in both suits. The Court in the case of NIGERIAN GENERAL INSURANCE V. BELLO (1994) 1 NWLR PT.319 PG. 207 at 221 para D-E held

“A party will not be allowed to pursue the same reliefs paripasu in two divisions of the Court. To do so would constitute an abuse of the process of the Court and the Court has the jurisdiction inherently in itself to protect itself from abuses of its processes”

Therefore, it is my view and I so hold that the Plaintiff's suit amount to an abuse of Court process and the order to be made where a suit is an abuse of Court process is to dismiss the process which constitutes the abuse. Accordingly, the Plaintiff's suit is hereby dismissed.

Having dismissed the Plaintiff's case, determining the second issue would be an academic exercise in futility as the Claimant's case is clearly an abuse of Court process.

This Court will therefore proceed to deal with the third issue which is;

“Whether the counter claimant has proved his counter claim on a preponderance of evidence to be entitled to judgment”

The law is well settled that a Counterclaim is a cross action with the Claimants becoming the Defendant to the Counterclaim. Therefore, the Defendant must plead fact and adduce credible evidence at the trial as to be entitled to judgment. See Zenith Bank Plc. & Anor V. Ekerenwen & Anor (2011) and Unokem Enterprises Ltd. V. Omuvewie & Anor (2005) 1 NWLR (Pt. 907) 293. The Counterclaim must pass the test of pleadings and the

burden of proof of assertions under Section 135 and 137 of the Evidence Act 2011.

The Defendant will here from be referred to as the counter claimant and the Claimant will be referred to as the Defendant. The Counter claimant from the first relief sought is seeking for the sum of N55,000,000.00(fifty-five million Naira only) against the defendants, being consideration paid by the counter claimant to the defendants for plot No.1459, Jahi and plot 1557, Jahi, which transactions failed due to the lack of proper title and documents from defendants.

In proof, the counterclaimant testified as gleaned from his witness statement on oath particularly from paragraphs 22 to 30 that he and the Defendant transact business and some of the transactions with the 1stDefendant were carried out in the name of the 2nd Defendant particularly as it relates to the Jahi properties. That sometime in 2011-2013, while the transaction leading to the present suit was on, the 1stdefendant to the counter claim, Alhaji Isa Umar, offered Plot 1459 within Jahi District, Abuja measuring approximately 1,621m, valued and agreed at N25,000,000.00 (twenty-five million Naira only) by Alh. Isa Umarwho also doubled up as the agent of the original Allotee being Hanzu Beauty and Fitness ltd. That based on the offer, thecounter claimant proceeded to pay Alh. Isa Umar sometimein August 2011. That same property was previously sold to one Captain Sanusi Sulieman on the 22nd of June, 2011 and evidenced in a Deed of Assignment witnessed by the Alh. Isa Umar.

That similarly, Plot 1557 in Jahi was equally offered to the counterclaimant with a cloned offer of allocation letter in the name of the 2nddefendant through Alh. Isa Umar whom he paid to. That he paid a total of N55,000,000.00 in cash and other items equalled the value of the two plots. It is worthy no note that the other items used as payment were not

stated. That the first Plot turned out to be owned by someone else and the second non-existent, which prompted him to ask his lawyers to write to the Defendants requesting a refund of his N55, 000,000.00. In further proof, Claimant tendered the following exhibits; Original certificate of incorporation of Youth Wamy Ltd dated 27/07/2011 admitted in evidence and marked Exhibit DW2a; CTC of particulars of directors of Youth Wamy Ltd admitted in evidence and marked Exhibit DW2b (2 pages); CTC of memo and articles of Association of Youth Wamy Ltd (5pages) Exhibit DW2c; Deed of assignment between Hanzy Beauty and Fitness Ltd and Captain Sanusi Suleiman duly executed (3 pages) attached with a copy Certificate of Incorporation of Hanzy Beauty and Fitness – Exhibit DW3a and DW3b; Offer of statutory right of occupancy to Youth Wayi dated 10/05/2007 for land 3290.34 sqm admitted in evidence – Exhibit DW4a, attached with AGIS letter No 067710 for N21,000.00 from standard trust dated 9/05/2007; FCT acknowledgement of application for grant/regrant of statutory right of occupancy in favour of Youth Wamy dated 9/5/2007 – exhibit DW4b; Copy of certificate of incorporation of Hanzy beauty and fitness ltd dated 14/06/2011 – Exhibit DW5a; Copy of offer of statutory right of occupancy dated 10/05/2007 to Hanzy beauty and fitness ltd for land measuring 1621.19 sqm – Exhibit DW5b; pages letter from Sani & Co. dated 10th September, 2015 addressed to Alhaji Isa Umar and signed by Mohammed Sani a firm of solicitors – Exhibit DW6 and Handwritten calculation of monetary figures which shows the Jahi transaction figures with 2 signatures titled sales agreement – Exhibit DW9.

I have examined the evidence and all the exhibits before me with respect to this relief claimed by the counterclaimant. From the evidence of the Claimant, the transaction that gave rise to this relief is predicated on Exhibit DW9. The said DW9 is titled “SALES AGREEMENT” which states the

different transactions; as it relates to this relief, what is stated on the said sale agreement is the signature of parties and the following stated below:

PLOT 1459=JAHl=N25,000,000.00=1600sq

PLOT 1557=JAHl=N30,000,000.00=3,200SQM

N55,000,000.00

There is nothing in the said sales agreement that shows who owns the properties, who is selling and who is buying, neither does it state the mode of payment of the entire sum of the transaction. The Exhibit D9 which is the hanger upon which the other exhibits and evidence of the counterclaimant in relation to of this relief sought is just a piece of document with a lot of calculation evidencing different figures and nothing more. It is bereft of all the essentials that constitute a valid contract. The law is trite that for a contract to be valid, certain ingredients must be present such as offer, acceptance, consideration, intention to create legal relation and capacity. See the case of PETER VS. NDIC & ANOR (2014) LPELR-23096 (CA). Per IBRAHIM MOHAMMED MUSA SAULAWA, JCA (Pp 21 - 22 Paras F - A) in X IMOKA & ANOR v. UNITED BANK FOR AFRICA PLC(2012) LPELR-19837(CA) held:

"It is a fundamental principle of the law of contract, that to constitute a valid contract, there must be an agreement between the parties regarding the essential terms and conditions thereof. The parties must be in consensus ad idem to create a binding legal agreement."

The essential ingredients were certainly absent from the said Exhibit D9 which is the basis for the first relief of the Claimant. The Exhibit D9 being the foundation of this relief fails as the law is trite that you cannot put something on nothing and expect it to stand. In my view the said Exhibit D9 cannot be said to be a valid agreement neither can it be binding on the

parties as the terms of the contract are manifestly devoid of the basic requirements that will qualify same to be a contract capable of being enforced. I therefore hold that the Claimant has failed to prove this relief as claimed.

With respect to relief no 2, the counterclaimant is seeking for an order directing the 1st defendant to pay him the total sum of N155, 000,000.00 (One hundred and fifty five million Naira only) as consideration given to the 1st defendant for the purchase of the Porsche car and the Gwarimpa Shop.

This relief is in two parts. Firstly, as it relates to the claim by the counterclaimant for payment of one hundred and twenty million by the Defendant. In proof of this counterclaimant from his statement on oath stated that he bought a shop from the Defendant at Gwarimpa at the sum of N120,000,000.00 which said transaction failed. That the transaction was evidenced in a handwritten note signed by parties and dated 06/08/2012. The law is trite that he who asserts must prove and upon evaluation of the entire evidence and exhibits tendered with respect to this relief, the question that begs to be answered is whether the Claimant has sufficiently been able to prove he is entitled to this relief. For a binding contract of sale of property to be said to be in existence, there ought to be a final and complete agreement of the parties on the essential terms, namely the parties to the contract, definition of the property to be sold as it relates to the size, plot number and proper description of the property, the consideration for the sale and the nature of the interest to be granted. Once there is an agreement on these essential terms, a contract of sale of property is made and concluded. See the case of MINILODGE (LTD & ANOR VS. NGEI & ANOR (2009) LPELR-1877(SC). In this instant case, from the said "House Sale Agreement" dated 6/8/12 relied on by the

counterclaimant, the names of the parties are different, particularly the counterclaimant. In the agreement it is stated as "**Alh. Bello Sardaina**" as opposed to Alh. Bello Mohammed before this Court. There is nothing before this Court that creates a nexus between the two names. Also, the exact property claimed in this relief is different from that stated in the said "House Sale Agreement". In the House Sale Agreement, the property being sold is described thus:....."**My House at Gwarimpa Plot Shop.....**"The Plot Shop at Gwarimpa is not defined as to the address, size of plot, plot number and other basic components to describe a landed property. The relief being claimed is with respect to Gwarimpa Shop. The property being claimed is clearly not the same and not defined in the said House Sale Agreement. In my view, the Claimant has failed to establish by sufficient evidence that he is entitled to the refund of N120,000,000.00 (One hundred and twenty million Naira) only, and I so hold.

In respect of the Porsche Car claimed, counterclaimant gave evidence that he bought a Porsche car from the 1st defendant for the sum of N35, 000,000.00 (Thirty-Five million naira only) and paid for the car with original title documents of his plot of land at Guzape District, valued and agreed for N35, 000,000.00 (Thirty Five million Naira only). That upon taking delivery of the porsche car, he realised that it had serious mechanical defects and he immediately returned the car to the 1st defendant but the 1stDefendant neither returned his title document nor refunded the value. In proof of this Claimant tendered a page from the diary where the alleged transaction was recorded which showed the alleged transaction between parties and signed by parties with respect to the Porsche car. The transaction as recorded in Exhibit D10 is hereunder reproduced:

*“TRANSACTION BETWEEN ISA. & ALH. BELLO SANI
06/07/2013
POUCH CAR- 35 MILLION NAIRA
YOU ARE TO RETURN PAPER GUZAPE PLOT AT 30 MILLION YOU
ARE TO BALANCE ALh BELLO SAID 5 MILLION-
HOWEVER WE SURRENDER THE TWO SPARE KEYS OF THE
POUCH CAR TO ISA WAITING BALANCE 5 MILLION FOR GUZAPE
PAPER”*

The said Exhibit D10 as reproduced above, is claimant’s proof to show the existence of the transaction between parties as it related to the sale and/or return of a Porsche car. The said transaction as stated above in my view is unclear and uncertain and cannot be said to operate as an agreement between parties for the purchase of car in return for a land as the terms between the parties are uncertain. As gleaned from the extract above, it is uncertain who is to return the title document, who bought car, why were keys being returned. The counterclaimant gave evidence to the fact that the Porsche car came defective, and it was agreed that it be returned. That agreement is not before this Court. Ordinarily, where the parties never met and goods were sold on description and upon delivery of the goods, the goods failed to conform to the description, the buyer is automatically entitled to repudiate the contract and demand a refund. There is nothing to show in this case that the Porsche car was sold, that it came defective, and it was the agreement that it be returned upon the discovery of any defect. This is not the position in this case as firstly there is no agreement between the parties with respect to the sale of the car. The transaction as stated in Exhibit D10 will not qualify as an agreement between the parties as the intention of the parties are not clearly expressed in the said Exhibit D10 and the Court cannot go outside or infer what was not stated in the

document. In the case of FGN Vs. ZEBRA ENERGY LTD(2002) 3 NWLR (PT.754) pg.471 CA at pg. 4910492 para F-F, Musdapher JCA (as he then was) held that a person seeking enforcement of a contract must show that all condition precedent thereto have been fulfilled and that he has either performed his part or is ready and willing to perform all the terms which ought to be performed by him.

Also, the Court in BILATERAL INTERNATIONAL LTD. NDIC (2012) 15 NWLR Pt.120 70 pg 407 @431 para A-B Per Adekeye JSC held

“In order to create a binding contract, the parties must express agreement in a form which is sufficiently certain for the Court to enforce”.

In this case, Exhibit D10 which is the foundation of this relief sought by the Claimant is unclear as to the intention of the parties as it relates to the Porsche car, This court cannot therefore infer from the extract from the diary(Exhibit D10) that there is a transaction for the sale of a Porsche car between the parties or that the parties agree that the car be returned in the event of the existence of a mechanical fault. Therefore, it is my view and I so hold that the claimant has failed to prove this relief as there can be no breach of a non-existent contract.

The Claimant in relief 3 is seeking for the sum of N25, 000,000.00 (Twenty-five million Naira only) against the 1st defendant being the value of infinity Q56, infinity Q5, Mercedes Benz E-Class 2007 model, a Prado Jeep motor vehicle collected by the 1st defendant. In proof, counterclaimant gave evidence to the effect that on the 29th of December 2012, the Defendants took delivery on demand, an infinity Q56, infinity Q5, 2007 Mercedes Benz E-Class and a Prado jeep all valued at the sum of N25, 000,000.00 (twenty five million naira only) and promised to pay but the Defendant failed to furnish the payment for the cars. The counterclaimant tendered Exhibits

D10 and D6 as proof to the existence of the transaction between parties and demand for payment of the cars respectively.

I have evaluated the evidence before me in respect of this relief, although the Defendants did not by any form defend this counterclaim, the burden of proof rest on the Counter claimant. The law is that the onus of proof is on the person who asserts the positive and not on the person who asserts the negative, and the counter claimant who asserts that there was a transaction between the parties with respect to the cars being claimed must establish in evidence that the defendant failed to make payment upon delivery of the car. See Sections 131 and 132 of the Evidence Act 2011, and EZEMBA VS IBENEME, LPER(2004) SC 142/2000, (2004) 7 SC (pt. 11) 45. The question therefore is, has the counterclaimant been able to prove that he is entitled to this relief? The counter claimant tendered Exhibit D10 in proof of the said transaction. Is the said Exhibit D10 sufficient evidence to show that there is a transaction between the parties and if there is, was each parties obligation fulfilled? The Court, Per Adekeye JSC in Union Bank of Nigeria Plc. V. Ajabule (2012) All FWLR (Pt.611) p.1413 at p.1438, paras. B – D held

"It is established that, in the law of contract, the law is that, a written contract or agreement entered into by parties is binding on them. Where there is any disagreement between the parties on any particular point, the only reliable evidence for the resolution of such disagreement is the written contract or agreement of the parties. The reason being that where the intentions of the parties to an agreement are clearly expressed in a document, the court cannot go outside the document in search of other documents or facts not forming part of the intention of the parties.

Where there is a contract regulating any arrangement between the parties, the main duty of the Court is to interpret that contract to give effect to the wishes of the parties as expressed in the contract document. The documentary evidence being relied on by the counter claimant in proof of the existence of a transaction for the sale of cars between the parties is unreliable as the intention of the parties are not expressed or stated in the said document. The said document merely states amongst other things, the list of cars so claimed by the counterclaim. To create a binding contract, the parties must express agreement in a form which is sufficiently certain for the Courts to enforce. See BILATERAL INTERNATIONAL LTD VS. NDIC (2012) 15 NWLR Pt.1270 Pg. 407 at 431 para A-B.

In my view, the Counterclaimant has not sufficiently proved that he is entitled to this relief, the relief therefore fails, and I so hold.

The claimant is also seeking for the sum of N25, 000,000.00 (Twenty-five million Naira only) as general damages against the defendants and 10% post Judgment interest from the date of Judgment until Judgment sum is fully liquidated. The Counter claimant having failed to prove his claim, these reliefs therefore fail. Having failed in all reliefs prayed for in the counter claim, it is worthy to note that the Court is not to make contract for parties. While the law recognizes the fact that some contracts/agreements are often recorded in the most crude and illiterate manner, it is the duty of the Court to construe any such document fairly by bringing out the intention of the parties without seeking to destroy same due to the defect contained in the said agreement. See OMEGA BANK PLC VS. O. B.C (2005) 8 NWLR 9pt.928) pg.547 SC @ pg.574-575 paraH-A. Unfortunately, the scenario is completely different with the present case as exhibits

tendered are not only crude but defective, completely devoid of interpretation, baseless and not capable of binding parties, hence, the Court cannot legally read into an agreement, the terms on which the parties have not agreed. See DALEX NIG LTD VS. OIL MINERAL PRODUCING AREAS DEVELOPMENT COMMISSION (OMPADEC) (2007) 7 NWLR (pt.1033) pg.441 para A-B where Ogbuagbu JSC held that where the words of a contract are clear, the words should be given their simple and ordinary grammatical meaning as it is not the business of the Court to make a contract for the parties before it or to re-write the contract already made by them. It is to this effect that I am of the view that the counterclaimant having failed to prove its case by credible evidence, the case of the counterclaimant hereby fails in its entirety and is accordingly dismissed.

Parties: Parties absent.

Appearances: B. C. Nweke, Esq., for the Claimant. O. A. Obayuwu, Esq., for the Defendant.

**HON. JUSTICE M. R. OSHO-ADEBIYI
JUDGE
30THSEPTEMBER 2021**