

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT MAITAMA

BEFORE HIS LORDSHIP :HON. JUSTICE Y. HALILU

COURT CLERKS : JANET O. ODAH & ORS

COURT NUMBER : HIGH COURT NO. 15

CASE NUMBER : SUIT NO: CV/268/18

DATE: : THURSDAY 7TH OCTOBER, 2021

BETWEEN

1. YITECH CONSULT LIMITED PLAINTIFFS

2. JOHN WILLY BARIDAKARA

AND

ODEY OCHICHA DEFENDANT

JUDGMENT

The Plaintiffs commenced this action vide Writ of Summons and statement of claim filed on the 19th November, 2018 and dated same day wherein they claim as follows:-

1. The sum of ~~₦~~3,000,000.00 (Three Million Naira) only being the commission of the Plaintiffs in the loan transaction.
2. The sum of ~~₦~~2,700,000.00 (Two Million and Seven Hundred Thousand Naira) only representing 9% of the 10% of the loan sum the Plaintiff would have earned per annum on the loan

Or alternatively to reliefs 1 and 2 above.

An Order of this Court compelling the Defendant to specifically perform the contract by taking the loan and paying the Plaintiffs their earned commission.

3. The sum of ₦350,000.00 (Three Hundred and fifty Thousand Naira) being the Plaintiffs' Solicitor's fee to prosecute the suit.
4. Cost of the suit.
5. Order of this Court limiting the time within which the Judgment sum shall be paid.
6. Order of this Court mandating the Plaintiffs to sell the Defendant's four (4) bedroom duplex situate at House 71, 62 Road Housing Estate, Gwarimpa, Abuja to recover the Judgment sum in exercise of their right of lieu or attachment over the property.

7. Order of this Court that the Plaintiffs sale of the property shall confer absolute and good title to the buyer.
8. Post-Judgment interest on the Judgment sum.

Upon service of the Writ on the Defendant and after pleadings were exchanged, the suit was set down for hearing.

The case of the Plaintiffs as distilled from witness statement on oath of John Willy Baridakara is that the Defendant approached the Plaintiffs to help source for loan or credit facility on commissions and terms for him, and accordingly, Defendant applied for a loan of ₦30,000,000.00 (Thirty Million Naira) from the lender. The Defendant engaged the Plaintiffs to use their professional contacts and networks to source for the loan to save the political

ambition and businesses of the Defendant, which services the Plaintiffs rendered successfully and delivered on their own promise.

It is further deposition of the Plaintiffs that Defendant agreed to reduce their oral agreement into writing by signing agreement titled **“Consultant Commission Agreement”** dated 12th September, 2018.

That Defendant covenanted under the Consultant Commission Agreement dated 12th September, 2018 to pay 10% of the sum of N30,000,000.00 (Thirty Million Naira) only, that is N3,000,000.00 to the Plaintiffs for brokering a deal for the loan transaction.

That the Plaintiffs know as a fact that Defendant is refusing or circumventing the Plaintiffs from earning

their fees as agreed on the Consultant Commission Agreement as he is making efforts to obtain the loan behind the Plaintiffs in order to avoid paying the Plaintiffs their due and earned commission as contained on the Consultant Commission Agreement.

That Defendant also agreed to pay a commission of 9% of the sum of N30,000,000.00 to the Plaintiffs per annum, that is N2,700,000.00 (Two Million Seven Hundred Thousand Naira) within the life time of the loan.

It is further the evidence of PW1 that on or about 14th September, 2018 when the Plaintiffs requested Defendant to pay them the commission as contained on the Consultant Commission Agreement since the Defendant has breached the agreement, Defendant

together with his wife came to the Plaintiffs chambers (Assurance Solicitors); knelt down and pleaded with one of the Plaintiffs' Solicitors present and the Plaintiffs that he would love to compensate the Plaintiffs with the sum of ₦600,000.00 (Six Hundred Thousand Naira) only as against the ₦3,000,000.00 (Three Million Naira) and 9% per annum of the loan which is also due to the Plaintiffs.

That the Defendant after the promise to pay ₦600,000.00 (Six Hundred Thousand Naira) through issuance of cheque or transfer till now refused to honour the promise, and that paid his Solicitors the sum of ₦350,000.00 (Three Hundred and Fifty Thousand Naira) to prosecute this Suit.

PW1 tendered the following documents in evidence:-

1. Letter of consent dated 10th September, 2018 marked Exhibit '1'
2. Consultant Commission Agreement Marked Exhibit '2'
3. Letter from the Law Firm of Omang C. Omang & Co. dated 17th September, 2018 marked Exhibit '3'
4. Letter from Assurance Solicitors dated 26th September, 2018 marked Exhibit '4'
5. Way Bill receipt dated 28th September, 2018 marked Exhibit '5'
6. Letter from 1st Plaintiff instructing the Solicitor i.e Assurance Solicitor marked Exhibit '6'
7. Membership application from Global/Thrift marked Exhibit '7'

8. Letter dated 9th August, 2018 marked Exhibit '8'
9. Cash receipt in the name of the 2nd Plaintiff marked Exhibit '9'
10. Letter of collateral release marked Exhibit '10'
11. Bank Teller of UBA Plc. marked Exhibit '11'
12. Official Cash receipt marked Exhibit '12'

PW1 was cross-examined and subsequently discharged, and Plaintiffs then closed its case.

The Defendant opened his defence and called DW1 (OdeyOchicha). The case of the Defendant as distilled from the witness statement on oath of DW1 is as thus;

The Defendant contended that the purpose of the loan was to purchase the All Progressives Congress Governorship Nomination forms which was sold

between the 5th September, 2018 to the 11th September, 2018, and that there was no visit to any Bank and there was no formality for draw down as there was no offer letter or acceptance from the lender to him.

It is the evidence of Defendant that Plaintiffs rendered no service to him whatsoever other than collecting the sum of ₦300,000.00 (Three Hundred Thousand Naira) from him as processing fee.

That he only promised to pay the sum of ₦3,000,000.00 (Three Million Naira) to the Plaintiffs if they secure the loan for him as the money was to be paid from the ₦30,000,000.00 (Thirty Million Naira) draw down on the loan and not from any other source.

Defendant stated further that there were no funds to be given to him by the Plaintiffs or any lender. That he was not offered any loan which he rejected as the Plaintiffs did not spend any time, money, energy and/or resources. That Plaintiffs rather fraudulently collected the sum of ₦300,000.00 (Three Hundred Thousand Naira) from him as processing fees which they did not expend in doing anything.

DW1 was cross-examined and discharged.

On his part, DW2 in his statement avers that the Plaintiffs asked the Defendant to pay the sum of ₦300,000.00 (Three Hundred Thousand Naira) as processing fees for the loan. The original sum which he was to pay to them was the sum of ₦150,000.00 (One Hundred and Fifty Thousand Naira). The payment was doubled to ₦300,000.00 (Three

Hundred Thousand Naira) because of the urgency involved and to enable them work on Saturday and Sunday to get the loan amount ready on Month 10th September, 2018 to enable him meet the deadline for the purchase of the forms but they failed in their promise and took his money without working for it.

Defendant tendered acknowledgment letter of the receipt of ₦300,000.00 dated the 7th September, 2018 tendered and marked as Exhibit 'D1'.

Defendant then counter claimed against the Plaintiffs as follows:-

- a. An Order of the Court directing the Defendants/Plaintiffs to refund the sum of ₦300,000.00 (Three Hundred Thousand Naira) to the Plaintiffs/Defendants.

b. Interest of 10% on the above sum until the sum is liquidated.

DW2 was subsequently cross-examined and accordingly discharged.

Plaintiffs replied to the counter claims and stated that the sum of ₦300,000.00 was for processing of the loan, loan application form, valuation and investigation of the property and other Sundry expenses which the Defendant agreed to, and that the Defendant who is guilty of unilateral repudiation of contract cannot turn around to claim damages.

Parties closed their respective cases to pave way for filing and adoption of written addresses.

Learned counsel for the Plaintiffs formulated the following issues to wit;

1. Whether the Defendant repudiated the Consultant Commission Agreement by his action in the circumstances of the transaction giving rise to this Suit?
2. Whether the Plaintiffs are entitled to damages for the repudiation of the Consultant Commission Agreement by the Defendant?
3. Whether from the intent and purpose of Consultant Commission Agreement, the Plaintiffs have or are entitled to a lieu on the property of the Defendant.
4. Whether the Plaintiffs are entitled all the reliefs claimed including reliefs relating to Solicitor's cost, cost of action and post-judgment interest if successful in this Suit?

Learned counsel contended on issue one, that acceptance of an offer makes the offer binding between the parties and the parties to the agreement cannot voluntarily withdraw from the contract without consequence; this is because there is implied term in a contract that parties must fulfil their obligation under the contract. ***A.G RIVERS STATE VS.A.G AKWA IBOM & ANOR (2011) LPELR – 633 (SC); In AWIEH & ORS VS.OWOFIO (2012) LPELR – 9472 (CA); TOTAL NIGERIA PLC. VS. MOSHOOD A. AKINPELU & ANOR (2004) ALL FWLR (Pt. 214) 145 at 156*** were cited.

On issue two,whether the Plaintiffs are entitled to damages for the repudiation of the Consultant Commission Agreement by the Defendant?

Learned counsel argued that the measure of damages the Plaintiffs are entitled to in this suit is that which will put them in the financial position as if the contractual terms have been duly carried out, that is the sum of ₦3,000,000.00 (Three Million Naira) and ₦2,700,000.00 (Two Million Seven Hundred Thousand Naira) i.e. ₦5,700,000.00 (Five Million Seven Hundred Thousand Naira). If the Defendant has taken the loan or performed the contract, the Plaintiffs would have earned ₦5,700,000.00 (Five Million Seven Hundred Thousand Naira).

SYNDICATED INVESTMENT HOLDINGS LIMITED VS. NITEL TRUSTEES LTD. & ANOR (2014) LPELR – 22952; EMIRATE AIRLINE VS. NGONADI (2013) LPELR – 22053 were cited.

On issue three, whether from the intent and purpose of Consultant Commission Agreement, the Plaintiffs

have or are entitled to a lieu on the property of the Defendant.

Learned counsel submit that the parties agreed from the outset that the Plaintiffs shall have right of lieu and attachment on the property or money of the Defendant (owner of property) anywhere should the Defendant fails to pay the Consultants as agreed in the agreement. Counsel referred to paragraphs (d) and (e) under Non Circumvention in Exhibit '2'.

OYAMENDA & ANOR VS.ABDULRAHMAN & ANOR (2013) LPELR – 22744 (CA).

On issue four,whether the Plaintiffs are entitled all the reliefs claimed including reliefs relating to Solicitor's cost, cost of action and post-judgment interest if successful in this Suit?

Learned counsel submit that the principle of law is that a successful party is entitled to be indemnified for costs of litigation which includes charge incurred by the parties in the prosecution of their cases. ***NAUDE VS. SIMON (2013) LPELR – 20491*** was cited.

Learned counsel further urge the court to dismiss the counter-claim of the Defendant as the ₦300,000.00 (Three Hundred Thousand Naira) claim, is a pre-contract negotiation which is not contained in Exhibit '2' and not binding on the Plaintiffs. That the ₦300,000.00 (Three Hundred Thousand Naira) was extended for processing fee for the loan including valuation and investigation of the property of the Defendant.

Counsel finally urge the Court to grant the Plaintiffs claim as they have proved same.

On their part, Defendant formulated the following issues for determination to wit;

1. Whether the Plaintiffs have made out a case against the Defendant.
2. Whether the Plaintiffs are entitled to the reliefs sought in this suit.

Learned counsel on issue one, whether the Plaintiffs have made out a case against the Defendant, argued that the relationship between the parties in this case is that of a simple contract where the Plaintiffs committed to carrying out specific duties and Defendant in turn and upon performance of the said duties by the Plaintiffs was supposed to carry out his own part of the contract. Thus, the failure of the

Plaintiffs to carry out their own part of the contract automatically absolves the Defendant because it is trite law that you cannot put something on nothing and expect it to stand..No..***IDUFUEKO VS.PTIZER (2014) 58 (Pt. 1) NSCQL 601 at 627, (2014)12 NWLR (Pt. 1420) 96 SC; GOVERNOR OF LAGOS STATE VS. OJUKWU (1986)1 NWLR*** were cited.

Counsel argued further that Defendant stated in his testimony before the Court that time was of the essence as he needed the loan to enable him purchase the APC Governorship Nomination Form which the Plaintiffs failed to deliver on their promises. Defendant's counsel contended that there was no offer for loan from any lender to the Defendant and there was also no acceptance of a loan offer by the Defendant to anybody.

Where there was no contract with any lender with all the elements of a valid contract, the Plaintiffs cannot ask for specific performance. ***PORTS AND CARGO HANDLING SERVICES LIMITED & ORS VS. MIGFO NIGERIA LIMITED & ANOR (2013) 53 2 NSCQR 428 at 462.***

On issue two, whether the Plaintiffs are entitled to the reliefs sought in this suit, learned counsel submit that throughout the trial and the evidence before the Court, there is nowhere the Plaintiffs showed the Court that they have a lie on the property of the Defendant. The Plaintiffs' prayers contained in the endorsed Writ of Summon are not sustainable by law and logical reasoning. The Plaintiffs' prayers in relief one(1) is not sustainable because there was no loan transaction and so the Plaintiffs cannot be asking for the sum of ₦3,000,000.00 (Three Million

Naira). *MACFOY VS. UNITED AFRICA COMPANY LIMITED (1961) 3 WLR (Po) 1405 at 1409.*

Counsel finally submit that from the totality of facts and evidence before the Court and the testimonies of all the witnesses before the Court, counsel urge the Court to dismiss the case of the Plaintiffs and uphold the prayers of the Defendant contained in his counter claim.

COURT:-

I have read through the issues formulated for the determination of this suit by parties. The issues seem similar.. I therefore hereby adopt the issues formulated by the Defendant as mine for determination; to wit:-

- 1. Whether the Plaintiffs have made out a case against the Defendant;*
- 2. Whether Plaintiffs are entitled to the reliefs sought.*

The law on the function of contract is most elementary for all intents and purposes.

I shall however for the sake of this Judgment attempt to consider those basic essentials that ought to be in place for there to be in law a valid and enforceable contract.

The function of contract elementarily speaking is governed by the making of an offer by the offeror and the corresponding acceptance of it by the offeree. The offer and acceptance constitutes an agreement if the two parties are ad-idem.

JOHNSON WAX (NIG.) LTD VS SANNI (2010) 3 NWLR (Pt. 235) SC. reiterated the fact that offer, acceptance, consideration and mutuality of purpose and intention must be present for there to be a valid contract.

An offer is a definite indication by one person to another that he is willing to conclude a contract on the terms proposed which when accepted will create a binding legal obligation, the offer may be verbal, written or even implied from the conduct of the offeror. The offeree has the option of outright rejection of the offer. ***AMANA SUITES HOTELS LTD VS PDP (2007) 6 NWLR (Pt. 1031) 453 at 476 paragraph F- H.***

Acceptance on the other hand is an unconditional assent communicated by the offeree to offeror,

whereas consideration as defined at page 277 of Black's law Dictionary means the endorsement to a contract, the reason or material case or a contract, some right, interest, profit or benefit to one party or some forbearance deferment, loss or responsibility given, suffered or undertaken by the other.

On whether the Plaintiffs in this case in view are entitled to the reliefs claimed or not, it becomes most expedient to evaluate the evidence adduced by the Plaintiffs.

The Plaintiffs in proving his case testified through John Willy Baridakara, and tendered the following documents;

1. Letter of consent dated 10th September, 2018 marked Exhibit '1'

2. Consultant Commission Agreement Marked Exhibit '2'
3. Letter from the Law Firm of Omang C. Omang & Co. dated 17th September, 2018 marked Exhibit '3'
4. Letter from Assurance Solicitors dated 26th September, 2018 marked Exhibit '4'
5. Way Bill receipt dated 28th September, 2018 marked Exhibit '5'
6. Letter from 1st Plaintiff instructing the Solicitor i.e Assurance Solicitor marked Exhibit '6'
7. Membership application from Global/Thrift marked Exhibit '7'
8. Letter dated 9th August, 2018 marked Exhibit '8'

9. Cash receipt in the name of the 2nd Plaintiff marked Exhibit '9'
10. Letter of collateral release marked Exhibit '10'
11. Bank Teller of UBA Plc. marked Exhibit '11'
12. Official Cash receipt marked Exhibit '12'.

Defendant on his part tendered Exhibit 'D1' i.e acknowledgment of payment of N300,000.00 (Three Hundred Thousand Naira).

From the available evidence before the court, the issue between Claimant's and Defendant clearly seems to have been narrowed to Exhibit '2' i.e Consultant Commission Agreement.

The court shall therefore consider the embodiment of the said agreement in the determination of this action.

Indeed, documents tendered before a trial court are certainly meant for scrutiny or examination by the court. They are not tendered merely for sake of tendering but for purpose of examination and evaluation. A trial court has the onerous duty of considering all documents placed before it in the interest of justice. It has a duty to closely examine documentary evidence placed before it in the course of its evaluation and comment or act on it.

MOHAMMED VS ABDULKADIR (2007) VOL. 4, 58, at 104 Line 20 -30.

It is the case of the Plaintiffs that Defendant willful and voluntarily engaged their services to help him to source for N30,000,000.00 (Thirty Million Naira) loan and that this was perfected through Consultant Commission Agreement. The said Consultant

Commission Agreement was tendered and admitted in evidence as Exhibit '2'.

I shall for ease of reference, reproduce relevant paragraphs of Exhibit '2'.

Paragraph 4, of Exhibit '2'

“The owner of property has mandated the Consultant to source for a loan of N30,000,000.00 (Thirty Million Naira) only, using the above property as collateral with titled documents bearing Federal Housing Authority within the period of one year (1), and has agreed to pay 30% as interest per annum”.

Paragraph 2, under the scope of this contract

“The Consultant shall be entitled to 10% as payment for any fund sourced for the owner of property by or through the Consultant. The fee shall be paid immediately the owner of property receives the cash or confirmation of payment from his Bank.”

Paragraph 9 *“The owner of property shall give a payment instruction to the bank in writing, introducing the amount and account details of the Consultant/Facilitators for an immediate payment to the owner of property in respect to the above payment Order, or either in the form of an Irrevocable Standing Payment Order (IPSO)”*.

Paragraph C, under Non Circumvention

“Should the owner of property attempts to circumvent the Consultant, the Consultant

shall nonetheless be entitled to its Commission provided that the owner of property has the fund from the Consultant source?”

It is trite that, where the language, terms, intent or words to any part or section of a written contract, document or enactment are clear and unambiguous as in the instant case, they must be given their ordinary and actual meaning as such terms or words used best declare the intention of law maker unless such would lead to absurdity or be in conflict with some other provision thereof. It therefore presupposes that where the language and intent of an enactment or contract is apparent, a trial court must be distort their meaning. ***OLATUNDE VS.OBAFEMI AWOLOWO UNIVERSITY (1998) 5 NWLR (Pt. 549) 178.***

Indeed, from the Exhibit '2' quoted above, it is obvious that the relationship between the parties in this case is that of a simple contract where the Plaintiffs accepted to carryout specific duties and the Defendant in turn and upon performance of the said duties by the Plaintiffs was supposed to carryout his own part of the contract.

The following questions then become important to be asked:-

Have Plaintiffs carry-out the said duties as agreed in Exhibit '2' i.e the agreement!

Where is the evidence of disbursement of the fund to the Defendants!

I answer the afore-raised questions in the negative.

Indeed, the failure of the Plaintiffs to carry out their own part of the contract automatically absolves the Defendant because it is trite law that you cannot put something on nothing.

IDUFUEKO VS.PT13er (2014) 58 (Pt. 1) NSCQ1 601 at 627.

As earlier quoted from paragraph 2 of Exhibit '2' which is the main document before this court, the Consultant shall only be entitled to 10% as payment for any funds sourced for the owner of the property receives the cash or confirmation of payment from his Bank, but the Plaintiffs in their evidence before this Court failed woefully to show and or prove that the Defendant received any such money or had any confirmation of payment from his bank. Failure to prove these shows clearly that Defendant did not

receive any cash or got any confirmation of payment from his bank for any funds sourced from the Consultant or any other person. The burden of proof has not been discharged by Plaintiffs. See section 131(1) & (2) Evidence Act, 2011.

This is what Plaintiffs' witness said in paragraph 14 & 22 of his witness statement on oath, as follows:-

Paragraph 14 *“After all formalities for draw down, the financiers agreed to disburse the loan to the Defendant and the Defendant agreed to take the loan. Thereafter, the Lender invited the Defendant to visit the Lender’s Bank for the draw down”*.

Paragraph 22 *“following the scaling of all hurdles and formalities for loan disbursement and exposing the Defendant to the Lender to the Bank,*

the Defendant began to show hostility toward the Plaintiffs.

These assertion could not be substantiated in evidence as the witness while giving evidence could not mention the name of the Lender, the date which the Lender invited the Defendant to the Bank, the name of the Bank and/or that the said Lender gave any money to the Defendant.

It is instructive to state that the onus of proof does not exist in vacou. The onus of proof is the legal duty or obligation to establish facts in relation to an issue in dispute. This burden lies on that person who would fail if no evidence at all were given on either side. See Sections 131(1) & (2), 132 & 133 of Evidence Act 2011; ***APOSTLE PETER EKWEZOR & 3 ORS VS. THE REGISTERED TRUSTEES***

OF THE SAVIOUR'S APOSTOLIC CHURCH OF NIGERIA – ELC(2020) 3462 (SC), LONGE VS F.B.N PLC.(2006) 3 NWLR (Pt. 967) 228.

There is no gain saying that by Exhibit '2', parties entered into a valid contract.

I however need to state clearly here, that the law with respect to sanctity of contract is established, jurisprudentially speaking. Plaintiffs who have not shown performance of their obligation with clarity cannot use the same obligation Defendant undertook in the said Exhibit '2' which was meant to be realizable after securing the loan against Defendant, moreso, when such loan was never secured. Exhibit '2' cannot be used as trap on the Defendant.

There is no law that says a party to a contract cannot resile or repudiate from an agreed terms of contract

be it in writing or orally made. Repudiation occurs where a party to contract either in writing or words conveys to the other party, as done vide Exhibit '3' by Defendant in this case that he no longer intends to honour his obligations in the agreement when they fall due.

Repudiation operates as an immediate breach and discharges the person from his obligation in the contract.

See ***COMMISSION FOR WORKS, BENUE STATE & ANOR VS. DEVCON LTD. (1988) NWLR (Pt. 83) 407.***

I however need to state that not all repudiations determine contracts. It is for the innocent party i.e Plaintiffs in this case to decide bringing an action by way of damages or specific performance, depending

on the nature of the contract. See *OLANIYON VS. UNIVERSITY OF LAGOS (1985) NWLR (Pt. 9) 599.*

It is spelt that Defendant who entered into agreement with Plaintiffs withdrew from the said agreement when he got his Lawyers, Omang C. Omang & Co. to do a letter of withdrawal.

The said letter which was tendered in evidence i.e Exhibit '2' leaves Plaintiffs with two options i.e to consider the contract as terminated and seek damages or insist on specific performance.

It is settled law that the Court would not Order for specific performance if there is an absolute remedy at law i.e when a named Plaintiff would be adequately compensated in damages by common

law. See *ODOGWU VS. AMZARONDA (2010) LPELR – 4680 (CA)*.

Going by the reliefs claimed by Plaintiffs, they seek damages and specific performance. By the nature of the contract between Plaintiffs and Defendant, the breach can easily be assuaged in damages and therefore Defendant cannot in law be compelled to remain in a contract that Plaintiffs had not performed i.e securing N30,000,000.00 (Thirty Million Naira) for the Defendant, for Defendant to in turn perform his part of the obligation.

The law allows Defendant opportunity to resile, as rightly done in this case vide Exhibit “3” as earlier stated.

I need to say that Plaintiffs having not delivered on their obligation as contained in Exhibit “2” cannot and are not entitled to reliefs “A” and “B”.

On the same analysis, relief “C” i.e the alternative prayer compelling Defendant to perform the said contract by taking the loan and paying Plaintiffs their commission is a non-starter, more so that no evidence was led to show any such N30,000,000.00 (Thirty Million Naira) to have been secured.

The said relief also fails and accordingly dismissed.

On damages, which is the window left for the Plaintiffs, I shall consider the categories of damages as my take off point. Damages could be special or general.

Special damages are specific and peculiar losses suffered as a result of the wrongful act or contract of the Defendant.

On the other hand, general damages, which the law in its wisdom presumes to flow automatically from the wrong inflicted on a Claimant by a Defendant from whom they are claimed and such do not need to be specifically pleaded and proven. See ***ARAB CONSTRUCTION LTD & ANOR VS ISAAC (2012) LPELR – 9787 (CA)***.

From the available evidence before the court, Plaintiffs who were under an obligation to source for N30,000,000.00 (Thirty Million Naira) on behalf of the Defendant have not put before the court any such evidence to show for their efforts.

Defendant on his part, tendered Exhibit “D1” which was the receipt acknowledging payment of N300,000.00 to the Plaintiffs for the processing of the said loan of N30,000,000.00 (Thirty Million Naira).

I have no doubt in my mind that Plaintiffs who even though have not placed any such evidence of what they have done with Defendant’s N300,000.00 (Three Hundred Thousand Naira) which was meant to be used as processing fees for the loan, would have made telephone calls and equally moved around in their “effort” to secure the said loan amount for the Defendant.

I hereby award the sum of N200,000.00 as general damages to the Plaintiffs against the Defendant.

The next relief is that of seeking an Order of this court to sale Defendant's 4 bedroom duplex House situate at House 71, 62 Road Gwarimpa Housing Estate, Abuja.

I consider the said relief as a clear show of desperation. It is refused and dismissed. Plaintiffs' case succeed in part.

I shall now turn to the counter claim of Defendant/Counter Claimant.

The interest and demands of justice will certainly and always be dictated by the peculiar facts and the surrounding circumstances of each case.

On the counter claim of the Defendant/Counterclaimant for the refund of the N300,000.00 paid to the Plaintiffs for the processing of the agreed N30,000,000.00 (Thirty Million Naira)

loan, it is my judgment that eventhough Plaintiffs who dragged Defendant before this court for the sundry claim as shown on the face of the writ of summons and statement of claim have not shown by evidence what effort they have put in place to secure the said loan, I am certain they have encured expenses and shall not be requested by the order of this court on the strength of Plaintiffs' counter claim to refund all the N300,000.00 given to them as Processing fees.

I hereby Order Plaintiffs to refund the sum of N150,000.00 (One Hundred and Fifty Thousand Naira) to the Defendant, being half of the N300,000.00 (Three Hundred Thousand Naira) paid Plaintiffs as processing fees for the aborted loan request.

Justice Y. Halilu
Hon. Judge
7th October, 2021

APPEARANCES

**ChidiOdoEsq.with C.A Uka-uzor Esq. - for the
Plaintiffs.**

**Ekunke S.O Esq.holding the brief of Omang C.
Omang Esq.- for the Defendant.**