

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

BEFORE: HON. JUSTICE O. C. AGBAZA

COURT CLERKS: UKONU KALU & GODSPOWER EBAHOR

COURT NO: 6

SUIT NO: FCT/HC/CV/920/2020

BETWEEN:

JOSHUA OYEDEJI OLUSEGUN.....CLAIMANT

VS

DZARMA ISHAKU.....DEFENDANT

JUDGMENT

By an Originating Summons dated 27/1/2020 and filed same day, the Claimant is seeking for the determination of the following questions:-

1. Whether pursuant to the Memorandum of Agreement dated the 9th of July 2018, reached between Mr. Joshua Oyedeji Olusegun (Claimant) and Mr. Dzarma Ishaku (Defendant), the Claimant cannot exercise his right to take full possession of the subject matter of the Agreement being the property known as Plot No. 407 Dawaki Extension Relocation Layout, Cadastral Zone 07-05 Abuja and its appurtenances, measuring about 500 square meters with old file number AD40902, Right of Occupancy No. FCT/BZTP/LA/RV/66, and full Beacon Number FCT 07-05.PB14315 which is the collateral willingly deposited by the Defendant in consideration of the Terms of the Agreement.

2. Whether having regards to the Agreement, the Claimant cannot in the exercise of his right of ownership cause the said property to be sold so as to recover the sum of Six Million, Eight Hundred Thousand Naira only (6,800,000.00) being balance of money the Defendant currently owes him.
3. Whether having regards to clause represented as **FURTHER ASSURANCES**, the Defendant is not under obligation to fully cooperate with the Claimant in the event the Claimant exercises his right to take complete possession or dispose of same in line with Clause 8 (b).

IF THE ANSWERS TO THE FOREGOING QUESTIONS ARE POSITIVE, THE CLAIMANT SEEKS THE FOLLOWING RELIEFS.

1. **A DECLARATION** that the act of the Defendant in failing to keep to the Terms of the Memorandum of Agreement duly executed by parties is a fundamental breach of the Agreement which thereby confers on the Claimant the right to fully exercise his right to take over the Defendant's property, same having been divested to him by virtue of the Agreement.
2. **AN ORDER OF SPECIFIC PERFORMANCE** giving effect to the Agreement, particularly on the property described as **Plot No. 407** Dawaki Extension Relocation Layout, **Cadastral Zone 07-05 Abuja** and its appurtenances, measuring about 500 square meters with old file number **AD40902, R of O No.**

FCT/BZTP/LA/RV/66, and full Beacon Number **FCT 07-05. PB14315.**

3. **A DECLARATION** that the Defendant shall readily make himself available, and shall co-operate with the Claimant in order to effect or facilitate the purpose and intent of this Agreement.

AND FOR SUCH FURTHER ORDER OR OTHER ORDERS as this Honourable Court may deem fit to make in the circumstances.

Upon the determination of these questions, the Claimant seeks the following reliefs:-

In support of the Originating Summons is a 21 Paragraph affidavit sworn to by Joseph Oyedepo Olusegun, the Claimant, attached to the affidavit are four (4) Exhibits marked, "A1-A5", "B" "C" "D". Also filed is a Certificate of Compliance. In compliance with the Rules, filed a Written Address, in urging the court to grant the relief sought.

The Defendants was served with the Originating Summons, vide order of court granted on 29/5/2020, but failed and/or neglected to respond to the process. After several adjournments, with proof of service of Hearing Notice on the Defendant and upon his failing to appear or be represented by Counsel, the Claimant Counsel 8/11/2021, adopted his processes and urged the court to grant the reliefs sought. The implication of this is that this Originating Summons stands unchallenged and uncontroverted, and it is a trite law that where facts are not challenged or controverted, the court can act on it. See case of CBN Vs Igwilo (2007) 14 NWLR (PT. 1054) 393 @ 406.

In this instant Originating Summons, the case of the Claimant is hinged on the interpretation of the Agreement entered between the two (2) parties. Commencement of proceedings in our courts, by way of Originating Summons have been stated to apply where the main issue is, or likely to be one of construction of a written Law or Instrument. This Rule would apply where there is no substantial dispute of facts between the parties. See case of PDP Vs Abubakar (No.2) (2007) All FWLR (PT. 386) 711 @ 729 – 730 Para F – A, C – D; Toronto Hospital (Nig) Ltd Vs Ukpaka (2018) 5 NWLR (PT. 1613) 422 Para C – D; Order 2 Rule 3 (1) (2) of the FCT High Court (Civil Procedure) Rules 2018.

In this instant case, the contract Agreement that calls for interpretations and construction are Clauses 3,4,5,6 and 8 of the Memorandum Agreement as agreed by the parties. In the interpretation of contract Provisions, this court will be guided by the laid down canon of interpretation, which simply is that where the ordinary plain meaning of the words used in the contract are clear and unambiguous, effect must be given to those words without resorting to intrinsic or external aid. See Okotie – Eboh Vs Manager & Ors (2004) 18 FWLR (PT. 905) 242; Coca-cola Nig Ltd Vs Akinsanya (2018) All FWLR (PT. 931) 614.

In this instant, the three (3) questions calls for determination and consequent upon its determination, the court will proceed to consider the reliefs sought.

Before proceedings, it is proper to consider whether this suit brought by way of Originating Summons, pursuant to Order 2, Rule 3(1) (2) of the Rules of Court, is proper. By Order 2 Rule 3 (3) which reads:-

“The court shall not be bound to determine any such question of construction if in its opinion it ought not to be determined on Originating Summons but may make any such orders, as it deem fit”

To determine whether or not this suit is proper under the Originating Summons Procedure, the court must resort to look at the Summons that is the questions and reliefs to determine it. See *Agbareh Vs Mimrah* (2008) 1 SCNJ, 409. Further it is an exercise of the courts discretion in the determination of whether or not this matter that can be taken under the Originating Summons. See case of *Nelson-Moore & Or Vs Medicine Plus Ltd & Or* (2014) LPELR – 24089 (CA).

A careful perusal of the questions, reliefs anchored on the affidavit on support of the Summons clearly, in my firm view, reveals that substantial issues of disputation has arisen which calls for filing of pleadings. It is in the light of this, that this court finds that this suit brought by way of Originating Summons is not proper, rather I shall cause this suit be struck out, and order that the Claimant proceed his action by way of Writ of Summons. I so hold.

HON. JUSTICE O. C. AGBAZA

Presiding Judge
26/1/2022

EUSEBIUS ANYANWU FOR THE CLAIMANT

NO REPRESENTATION FOR THE DEFENDANT