IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

(APPEAL DIVISION)

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT MAITAMA

BEFORE THEIR LORDSHIPS:

HON. JUSTICE Y. HALILU - PRESIDING

HON. JUSTICE H. MU'AZU - MEMBER

APPEAL NO.:CVA/404/2019

SUIT NO. CV/39/2017

BETWEEN:

1. YARCHILLA BABA AHMED JIDDA
2. ALIYU BABA MOHAMMED } **APPELLANTS**

AND

HAJIYA FATIMA BULAMA ..... RESPONDENT

JUDGMENT

This is an Appeal against the monetary judgment of the District Court of the Federal Capital Territory, Holden at Wuse Zone 2, Abuja, **His Worship Farida M.I Yusuf** delivered on 30th October, 2019.

The Respondent as Plaintiff in the lower court by way of Plaint filed suit **No. CV/39/17** in which it claimed against the Appellants, jointly and severally the following reliefs;

a. The sum of N840,000.00 (Eight Hundred and Forty Thousand Naira) only as refund for the failed transaction.

b. N500,000.00 (Five Hundred Thousand Naira) only as cost of suit.

On the 30th October, 2019, Judgment was entered in favour of the Respondent. The Appellants being dissatisfied with the decision of the lower court filed an appeal to this Honourable Court and raised the following grounds of Appeal;

GROUND 1

The lower court erred in law when the court granted the reliefs sought by the respondent when she failed to prove her entitlement to a favourable judgment on a preponderance of evidence.

GROUND 2

The lower Court erred in law when the Court directed the Appellant to pay to the Respondent the money claimed in the action.

GROUND 3

The lower court erred in law when the court enforced a contract in the absence of any fact or evidence establishing the existence of the contract.

GROUND 4

The lower court erred in law when the court did not consider fundamental arguments made by the Appellants and thereby breached the Right to fair hearing guaranteed to the Appellants.

GROUND 5

The lower court erred in law when the trial court extended liability in the suit to the 1st Appellant in the absence of any transaction between the 1st Appellant and the Respondent.

In accordance with the law and guidelines, parties filed and exchanged their briefs of argument.

The Appellants brief of argument is dated 11th Day of March, 2021 and filed on the same date.Learned counsel to the Appellants adopted same as his argument in this appeal. The Appellants distilled two issues for determination.

a. ***Whether the trial court was correct when it held that the Respondent was right to have rejected the goods for non – conformity when there is no evidence before the court establishing the specification of the furniture requested for.***

b. Whether the trial court was right to have directed the Appellants to jointly refund the money paid when it is clear that the

1st Appellant was not privy to the transaction between the 2nd Appellant and the Respondent.

On issue 1, ***Whether the trial court was correct when it held that the Respondent was right to have rejected the goods for non – conformity when there is no evidence before the court establishing the specification of the furniture requested for.***

Leaned counsel argued that a contract is an agreement between two or more parties which create reciprocal legal obligation to do or not to do a particular thing. Learned counsel further contended that for a valid contract to be formed there must be mutuality of purpose and intention. The two or more minds must meet at the same point; event or incident, the meeting of the minds of the contracting parties is the most crucial and overriding factor in

the law of contract. ***NICON HOTELS LTD VS. N.D.C LTD (2007) 13 NWLR (Pt. 1051) 237 @ 267 Paragraphs A – C;***

ODUTOLA VS PAPERSACK (NIG.) LTD (2006) 18 NWLR (Pt. 1012) 470 @ 492 – 493 Paragraph H – B were cited.

Learned counsel for the Appellant maintained that there was no evidence before the trial court of any breach of contract to warrant the repudiation of the Contract/Agreement.

Learned counsel similarly stated that for goods to be rejected, it must be clear that the goods supplied did not conform withthe goods requested for. There must have been a breach of the contract by the supplier who has supplied inferiorgoods. In this case, the Respondent did not even place before the

court any evidence of the standard of furniture/goods which ought to have been supplied to her.

The Respondent in her evidence simply stated that the furniture delivered to her was substandard and not the same as what was shown to her at the factory.

The question that will naturally agitate the mind of anyone is what kind of furniture did Respondent ask the Appellants to produce for her? What made the furniture supplied substandard? The Trial court at page 81 of the Record of Appeal acknowledged that the agreement between the parties was oral. Incidentally, there is no evidence placedon the record of Appeal that the Respondent gave a description or specification of the furniture she expected the 2nd Appellant to make for her.

Counsel submits that from the above, the Respondent clearly is under an obligation to accept and pay for the goods except in the event of a breach of a term of the contract. The duty of the court is to sanction the repudiation of the contract where there has been a breach or to dismiss the action filed by the Respondent where there has been no breach. Unfortunately, the trial court determined the action on the erroneous assumption that the buyer (Respondent herein) could reject the goods supplied for no reason at all.

Counsel further submits on the trite law that a court will not speculate on the terms of a contract in respect of which no evidence has been led. ***UKPANAH VS AYAYA (2011) 1 NWLR (Pt. 1227) 61 at 79;***

LADOJA VS AJUMOBI (2016) 10 NWLR (Pt. 1519) at 113 were cited.

Counsel urged the court to resolve this issue in favour of the Appellants.

On issue 2, ***whether the trial court was right to have directed the Appellants to jointly refund the money paid when it is clear that the 1st Appellant was not privy to the transaction between the 2nd Appellant and the Respondent.***

Counsel argued that the trial court, in its decision, directed the Appellants, jointly and severally to refund the money paid to the 2nd Appellant. It is the submission of counsel to the Appellant that this final conclusion is perverse and fails to take into consideration the fact of this case. Clearly, this perverse conclusion is borne out of the conclusion of

the court that the 2nd Appellant was an agent to the 1st Appellant.

OKWEJIMINOR VS GBAKEJI (2008) 5 NWLR (Pt. 1079) 172;

GUARANTY TRUST BANK PLC. VS SOLOMON (2016) LPELR – 40342 (CA);

NIGER PROGRESS LTD VS. NORTH EAST LINE CORPORATION (1989) LPELR – 1986 (SC) were cited.

Counsel further argued that from the facts of the case, the 2nd Appellant did not have the consent and authority of the 1st Appellant to collect any money from the Respondent and to make any furniture for the Respondent. This is apparent and clear from the evidence before the court which shows clearly that the furniture was made at a totally different workshop and not the workshop where the

furniturefound at the house of the 1st Appellant was made. Therefore no basis for the lower court to have invoked the doctrine of Agency since the Respondent and the 2nd Appellant both agreed to conceal the production of the furniture from the 1st Appellant.

Counsel respectfully urges the court to resolve the issues formulated for determination in favour of the Appellants and allow the appeal because:

i. The Respondent who had the burden of proof was unable to prove the nature, type and specification of the agreement between the parties as well as how the alleged breach occurred.

ii. In the absence of any breach, it is impossible for the Respondent to unilaterally repudiate the

contract between herself and the 2nd Respondent as that will amount to a breach of contract.

iii. The 1st Appellant, who had no idea about what happened between the Respondent and the 1st Appellant is not liable and the trial court was wrong to have directed her to refund the money she did not collect.

Upon service, the Respondent filed his brief of argument and distilled the following issues for determination to wit:-

1. ***Whether the trial court was correct when it held that the Respondent was right to have rejected the goods for non – conformity.***

2. ***Whether the trial court was right to have directed the Appellants to jointly refund the***

money paid in view of the facts that circumstances of this case.

On issue 1, ***Whether the trial court was correct when it held that the Respondent was right to have rejected the goods for non – conformity.***

Learned counsel submits that the lower court did not err in law when it held that Respondent rightly rejected the goods in a contract of sale of goods as in the instant appeal, where goods are sold by description or specification and upon delivery, they fail to conform to the description or specification, the buyer is automatically entitled to repudiate/reject the goods supplied and demand a refund of his/her money.

FBN PLC. VS OZOKWERE (2006) 4 NWLR (Pt. 970);

CYPRIAN VS UZO (2015) LPELR – 40764 (CA);

ONYEKWELU VS ELF PETROLEUM (NIG.) LTD (2009) 5 NWLR (Pt. 1133) 181 were cited.

Learned counsel urged the court to resolve this issue against the Appellants.

On issues 2, ***Whether the trial court was right to have directed the Appellants to jointly refund the money paid in view of the facts that circumstances of this case.***

Learned counsel submits that the relationship between the Respondent and the Appellants is in forms with the maxim "qui - facit per aliumfacitperse" which means "he who acts through another does the act himself."

Counsel positsthat when a person – an agent, acts or does something on behalf of another person – the principal, such act will be regarded as that of the principal and it will on the hand bring about the same consequence on the principal as if he had contracted for himself.

UBA PLC. VS SIEGNER SABITHOS (NIG.) LTD (2018) LPELR – 51586 (CA) was cited.

In conclusion, learned counsel humbly urged the court to resolve all the issues raised in this appeal against the Appellants, dismiss the Appeal with costs and uphold the decision of the Trial Court delivered on the 13th of October, 2019.

COURT

We have gonethrough the respective briefs of argument filed by the Appellants on the one hand and Respondent on the other hand..

Both issues 1 and 2 formulated by Appellants and Respondent are same; to – wit:-

a. Whether the trial court was correct when it held that the Respondent was right to have rejected the goods for non-conformity when there is no evidence before the court establishing the specification of the furniture requested for.

b. Whether the trial court was right to have directed the Appellants to jointly refund the money paid which it is clear that the 1st Appellant was not privy to the transaction between the 2nd Appellant and the Respondent.

We hereby adopt the two issues as ours for determination.

We need to state the age long position of the law that for there to be a breach of contract, there must have been a valid and legally enforceable contract between the parties. From the state of pleadings at the trial court, Respondent and the Appellants are ad – idem on the existence of contract to make furniture..

There was offer, acceptance and consideration an intention to create a legal relationship.

See ***MAJEKODUNMI VS NATIONAL BANK OF NIGERIA LTD. (1978) 3 SC 119.***

We are minded to state here that both Respondent and Appellants have not demonstrated by evidence

the nature of furniture expected to have been made..The colour, fabric, wood, etcetera – etcetera.

We say this with every sense of modesty that had the furniture and the desired fabric, wood to be used been brought before the Trial Magistrate in evidence, the decision could have been well made, taken into account the weight of evidence.

From the evidence of PW1 (Respondent) as contained at page 48 of the Records of Proceedings, she stated that the 1st Appellant introduced her to the 2nd Appellant whom she said was into furniture making and that the total cost of the furniture was N1.2 Million. She paid the sum of N540,000.00 into 2nd Appellant's personal account and another N300,000.00 bringing the sum total to N840,000.00 before the furniture was delivered only to discover

that it was not made to specification which made her reject same.

PW1 clearly stated that 1st Appellant introduced her to the 2nd Appellant as her manager and urged her to pay through him.

PW2 under cross – examination also stated that when 1st Appellant found out that 2nd Appellant did not give receipt for the payment and made the furniture on his own, she fired him. Only a master or principal could have fired the 2nd Appellant i.e agent.

1st Appellant did not give evidence to state her side of the story..of equal importance is the fact that the evidence afore given by PW1 and PW2 on what had happened was not contradicted. The evidence of DW1 that PW1 asked him to keep the business

between them cannot hold water and does not hold water.

1st Appellant who introduced 2nd Appellant as a furniture maker stated that he was her manager and said PW1 could pay money into his account has not given evidence on what had happened, and since there was no written document evidencing the transaction, it is the evidence of PW1 against that of DW1 that shall be weighed.

The evidence of PW2 as contained on the records has clearly compromised the position of 1st Appellant.

The ancient doctrine of privityof contract has been defined as "***That connection or relationship which exists between two or more contracting parties.***"

See ***REBOLD IND. LTD. VS MAGREOLA (2015) 8 NWLR (Pt. 1461) 201 at 231 per FABUSI JSC (as he then was).***

The doctrine, which is part of our corpus juris, postulates, generally, that a contract cannot confer/bestow rights, or impose obligation arising under it, on any person except parties to it. Put simply, a stranger to contract cannot gain or be bound by it even if made to his benefit,

See ***J.E OSHEVIRE LTD. VS TRIPOLL MOTORS (1997) 5 NWLR (Pt. 503).***

Appellants and Respondent had a binding contract, for all intends and purposes, and once the furniture was not made to specification as agreed, Respondent was very right in law to reject the said furniture, request for refund and even damages in law.

The conduct of the Appellants was in breach of the contract for the supply of the said furniture.

See ***PAN BISBILDER (NIG). LTD. VS FIRST BANK OF NIGERIA LTD (2000) 1 SC. 71.***

We have no reason disturbing the findings of the Trial Magistrate on the issue.

We resolve the said issue No. 1 in favour of the Respondent against the Appellants.

Next is issue No. 2.

The doctrine or concept of vicarious liability in civil actions of torts has its foundation in the common law position that a master is liable for any wrong, even if it is a criminal offence or tortuous act, committed by his servant while acting in the course of his employment, and that a principal is also responsible

for acts done by his agent in the discharge of the authority of the agency.

In other words, there must be some proof of relationship to establish such liability. This was evolvedfrom the principle enunciated in the case of ***HERN VS NICHOLAS (C. 1700) 1 SALK, 289 by Sir John Holt, C.J, when he said;***

> ***"Since somebody must be a loser by this deceit, it is more reason that he,that employs and puts trust and confidence in the deceiver, should be a loser than a stranger."***

See ***ZANG VS ITUMA (2014) LPELR – 23521 (CA).***

The learned authors of Clerk and Linsdel on Torts 14 Edition, Paragraph 237 at page 238 state the law thus:-

"***Liability of master for Torts of servant, where the relation of master and servant exists, the master is liable for the torts of the servant so long only as they are committed in course of the servant's employment.***

The nature of the torts is immaterial and the master is liable even where liability depends upon a specific state of mind and his own state of mind is innocent."

From available evidence as contained at pages of the Records, 1st Appellant held out the 2nd Appellant as her manager and urged Respondent to pay money into his account. 1st Appellant equally fired the said 2nd Appellant when she found out that he did not issue Respondent receipt evidencing paymentby Respondent for the furniture.

These are clear actions of master/servant or principal/agent relationship. 1st Appellant who never

gave evidence at the trial court and who held 2nd Appellant as her manager has clearly compromised her position and cannot be heard in law to deny the action of the 2nd Appellant who clearly acted as her agent.

The Trial Magistrate was correct to have asked both Appellants to pay the said sum.

We resolve issue No. 2 in favour of the Respondent against the Appellants.

On the whole, this appeal shall be dismissed for lacken in merits and substance.

Same is hereby dismissed.

HON. JUSTICE Y. HALILU
Presiding Judge
2nd February, 2022

HON. JUSTICE H. MU'AZU
Hon. Judge
2nd February, 2022