IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT NYANYA
ON FRIDAY 17TH JUNE, 2022
BEFORE HIS LORDSHIP: HON. JUSTICE EDWARD OKPE

SUIT NO. FCT/HC/CV/1391/2017

BETWEEN:

MR. UKA UKA KALU ……..……..……. PLAINTIFF

AND

1. **INSPECTOR EBILOMA A. BAMEYI**
2. **FEDERAL CAPITAL TERRITORY ADMINISTRATION**
3. **THE HONOURABLE MINISTER, FEDERAL CAPITAL TERRITORY**
4. **COMMISSIONER OF POLICE FCT POLICE COMMAND**
5. **THE ATTORNEY GENERAL OF THE FEDERATION**

DEFENDANTS

JUDGMENT

This suit was originally commenced against the defendants before my learned brother Hon. Justice D.Z. Senchi sometime in 2017. The matter was transferred to this court on 4/10/21 for trial denovo.

By an amended Writ of summons and Statement of Claim dated 12/11/2018 the Plaintiff seeks for:

1. **A Declaration** that the plaintiff is the sole owner of Room 12, Block 36, Area a, Nyanya Abuja and entitled to receive compensation from Federal Government of Nigeria.

2. **A Declaration** that the purported attempt by the defendants to deny the plaintiff's possession of Room 12 Block 36, Area a, Nyanya Abuja without compensation or eject him there from is illegal, void, ultra vires and of no effect whatsoever.
3. **An Order** that the plaintiff is entitled to absolute possession of Room 12, Block 36, Area A, Nyanya Abuja pending when he is paid compensation by Federal Government of Nigeria.
4. **An Order** of perpetual Injunction restraining the defendants by themselves, their agents, employees, workmen, servants or proxies from further act of trespass or interfering with the plaintiff use or occupation of Room 12, Block 36, Area A, Nyanya Abuja.
5. The sum of **Ten Million (N10, 000,000.00) Naira** only as Damages for Trespass.
6. The sum of **Fifty Thousand Naira**only as cost of litigation.

Filed along with the writ of summons is a statement of claim and witness statement on oath and the documents to be relied on in evidence.

The 1st defendant filed a statement of defence and a witness statement on oath and a counter claim.

The 2nd and 3rd defendants filed their statement of defence and witness statement on oath.

The 5th defendant also filed a statement of defence and a witness statement on oath.

Trial commenced on 10/3/22 with the Plaintiff testifying as PW1. He adopted his 3 witness statements on oath deposed to on 12/11/2018 as his evidence in chief. He tendered exhibits UUK 1- UUK 9 and was cross examined only by the 2nd 3rd and 5th defendant's counsels. The 1st and 4th defendants were accordingly foreclosed from cross examining

PW1 and from entering their defence upon application of the learned counsel to the plaintiff.

The defendants failed to lead evidence at the trial in support of their pleadings. The 4th defendant was duly served with the court processes and hearing notices but failed to enter appearance.

The plaintiff in his evidence before the court did testify that he rented room 12 block 36 at Area 'A' Nyanya Abuja. That the Federal Government sometimes in 2005 announced the sales of Federal Government Houses. That he was among the 2nd batch that bidded for Federal Government Houses. That he was issued with a letter of offer to winning bidder as a successful bidder. That he paid the sum of **₦27, 500 (Twenty Seven Thousand Five Hundred Naira)**only as 10% of the total amount for the sale of room 12 block 36.

Under cross examination, PW1 testified that apart from the initial payment of 10%, he has not made another payment because he is not being asked to make another payment. PW1 still under cross examination stated that the directive to stop payment was from the then Minister of FCTwhich directed them not to pay.

I have carefully read and digested the written addresses of Counsels to the respective parties. I have also considered the plaintiff's evidence herein. The cardinal issues that call for determination in this case are:

1. Whether the Plaintiff had made out a case to justify a grant of the reliefs sought herein.
2. Whether the 1st Defendant had made out a case to justify the grant of the reliefs sought in his Counter Claim.

On issue 1:

The document that the Plaintiff is relying on to claim title to room 12, block 36 is the letter of offer to winning bidder (Exhibit UUK 1), the

question is, can the said document confer title to the plaintiff without fulfilling the conditions stated therein.

From the evidence before the court, I have no doubt that the plaintiff had a contract of sale of room 12, block 36 with the 2nd and 3rd defendants. The evidence at the trial revealed that the plaintiff did not pay the outstanding 90% balance of the cost of the house sold to him and this was corroborated by the Plaintiff in paragraph 20 of his statement of Claim. This only means that the plaintiff is yet to comply with the terms of the contract between him and the 2nd and 3rd defendant.

This is an admission on the part of the plaintiff that he is yet to fulfil the terms and conditions contained in exhibit UUK1 for which he claims title and seeks declarativereliefs from this court.

Even the Plaintiff's counsel in paragraph 2.3 of his written address stated clearly that the plaintiff paid only 10% of the sum for the sale of room 12 block 36. I therefore hold that since the plaintiff is yet to fully furnish consideration for the sale of room 12 block 36, he has no right to enforce under the contract.

It is the evidence of the plaintiff that he paid only 10% of the sum for the sale of the subject matter of this dispute. Even under cross examination, the plaintiff testified that besides the 10% payment he made, he has not made any other payment because there was a directive from the then Minister of FCT that he should not pay. The said evidence on the directive of the Minister is 'Ipse dixit' which is defined in Black's Law Dictionary as:

"Something asserted but not proved."

In DEBBS & ORS V. CENICO NIGERIA LTD (1986) NWLR PT. 32 846; (1986) LPELR-934 SC Oputa JSC stated thus:

> ***"There can be no question that a 'mere ipse dexit' is an admissible evidence but it is evidence resting on the assertion of the one who made it. Where there is need for further prove 'a mere ipse dexit' may not be enough."***

Nobody corroborated this testimony of PW1 that he heard the Minister of FCT giving such directive and the claimant expects the court to believe such tales by moonlight story. The court cannot act on a vague reference. The court is not referred to where this directive was written, made public either by Radio, TV or Newspaper publication.

The plaintiff stated that he received directives from the then minister of FCT not to complete the payment of the sum for the sale of room 12 block 36 without adducing any form of evidence to that effect. I quite agree with the plaintiff's counsel submission in paragraph 4.1 of his written address wherein he quoted Section 131 (1) and (2) of the Evidence Act thus:

> ***"Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of fact s which he asserts shall prove that those facts exits" and "when a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person."***

See the cases of **NDUUL V. WAYO & CO. (2018) VOL. 285 LRCN 47 and THE NATIONAL INVESTMENT & PROPERTIES COMPANY LIMITED V. THE THOMSON ORGANIZATION LTD (1969) 1 NMLR 99** cited and relied on by the plaintiff's counsel in this regard.

The plaintiff in this case failed to lead evidence at the trial to support his assertion that the then minister of FCT gave him a directive not to pay the outstanding balance for the sale of room 12 block 36 to which he lay claims. Again, I agree with the submission of the plaintiff's

counsel in paragraph 4.25 and 4.26 of his written address and the cases of **INTALFIED ENGINEERING V. SALEH & SONS (1992) ABJ.LR.116 AT 118; FEDERAL CAPITAL TERRITORY AUTHORITY V. ALHAJI MUSA NAIBI (1992) ABJ LR 82 AT 92**cited and relied by him to the effect that a claim which is merely pleaded but in respect of which no evidence is adduced must be rejected or dismissed by the court.

It is trite that parties are bound by the terms of their contract and the plaintiff cannot claim title or any benefit from a contract for which he is yet to fulfil its terms and conditions.

The law on this point is as handed down by the Supreme Court in **AGBARA V.MIMRA (2008) 2 NWLR (PT.1070) 378** where it was held as follows:

> ***"If parties enter into an agreement they are bound by its terms and that either of them or the court cannot legally or properly read into the agreement terms on which the parties have not agreed and did not agree to. As a matter of fact Section 132 of the Evidence Act states that the only admissible evidence of a contract is the contract itself although the section recognises exceptions. Thus if and where there is any disagreement as to what is or are the term of an agreement on any particular point, the authoritative source of information for the purpose of resolving the disagreement is of course the written agreement entered by the parties."***

The Plaintiff by reliefs 1 and 2 seeks this court for declaratory reliefs and it is trite that a party who seeks declarative reliefs must strictly prove same. See the case of **NDUUL V. WAYO & CO. (supra)** cited and relied on by the plaintiff's counsel where the Supreme Court held thus:

> ***"Where a claimant seeks declarative reliefs, the burden is on him to prove his entitlements to those reliefs on the strength of his own case. A declaratory relief will not be granted, even on admission. The claimant is also not entitled to rely on the weakness of the defence. If any. It has been held that the rational for this position of law is that a claim for declarative reliefs calls for the exercise of the court's discretionary powers in favour of the claimant. He must therefore place sufficient materials before the court to enable it exercise such discretion in his favour."***

Applying the above principle of law to the case at hand, the plaintiff herein has not proved his entitlement to the reliefs sought on the strength of his own case rather, he is relying on the weakness of the defence in this case. I therefore, hold that the declaratory reliefs have not been proved to the satisfaction of the court notwithstanding the default of the defence in this case.

Recently, the Supreme Court in the case of **OBE V. MTN NIG. COMMS. LTD (2021) 18 NWLR PT.1809 415 at 436** held:

> ***"In all civil suit, the onus to prove a particular fact or a case in general is on the party who asserts, since civil suits are determined on the balance of probability and preponderance of evidence, a party who proves his case will obtain judgment based on such preponderance of evidence and balance of probability in his favour……. Thus, he who asserts or claims a relief must prove it by credible evidence and judgment and grant for such claim must be based on legal evidence of strong probative value and weight."***

It is trite law that in construing the relationship of the parties in a written contract, exhibit UUK1, this court must confine itself to the

plain words and meaning which are derivable from the provisions containing the rights and obligations of the parties provided therein. Exhibit UUK1 binds the parties and it is outside the province of this court to look for terms outside Exhibit UUK1. In the case of **A.B.C. TRANSPORT CO. LTD V. OMOTOYE (2019) 14 NWLR PT.1692 197**, the apex court has this to say:

> ***"Parties are bound by the terms of their contract and if any dispute should arise with respect to the contract, the terms in any documents which constitute the contract, are invariably the guide to its interpretation."***

See **IBRAMA V. SPDC (NIG) 2005 17 NWLR PT.954 364 at 379 – 380; FCMB V. OGBUEFI (2021) 10 NWLR PT.1783 19 and EFREDE V. ITA (2021) 9 NWLR PT1780 89.**

Parties are bound by the terms of their contract. Exhibit UUK1 and the court cannot go outside it on a voyage of discovery. See **ABDULLAHI VS. WAJE COMMUNITY BANK (2007) 7 NWLR PT.663 9, 25 and AGBAREH VS. MIMRA (2008) 2 NWLR PT.1071 378, 412**. The plaintiff cannot pretend that the terms and conditions contained in exhibit UUK1 and accepted by him does not exist.

Again, in a claim for declaration of title, the onus is on the claimant to prove to this court that he is entitled to the declaration he is seeking. See **ITAUMA V. IME (2007) 7 SCNJ 40 AT 48-49**, the Supreme Court held as follows:

> ***"Now, in a claim for declaration of title, the onus is on the plaintiff to satisfy the court that he is entitled on the evidence brought by him to the declaration he seeks. The plaintiff rely on the strength of his own case and not on the weakness of the defendant's case. If the onus is not discharged then, the proper judgment is for the defendant."***

The plaintiff's contention is that room 12 block 36 was sold to him by the 2nd and 3rd defendants. The plaintiff relied on Exhibit UUK1 to support this assertion. By this, it is evident the plaintiff traces his root of title over the said property to the Letter of Offer to the Winning Bidder made by the 2nd and 3rd defendants to the plaintiff. The fountain head of his claim is thus the Letter of Offer to the Winning Bidder which is exhibit UUK1. I have painstakingly and microscopically examined Exhibit UUK1 which was issued by the 2nd and 3rd defendants.

By the provisions of Section 128(1) of the Evidence Act, 2011, no evidence may be given of it except the document itself. Its contents cannot be contradicted or altered or added to or varied by oral evidence. In line with this, the court is to construe it based on its contents or what are written on it. See the case of **M.T.N. (NIG) COMMUNICATIONS LTD V. C-SOKA (NIG) LTD (2018) LPELR – 44423 (CA)** dutifully cited and relied on by the 2nd and 3rd defendant's counsel.

By the contents of Exhibit UUK1, there is conclusive prove that the said room 12 block 36 was offered to the claimant which he duly accepted. The best that can be made of the said exhibit is that the plaintiff accepted the offer and the terms contained therein. See **BILL BROTHERS LTD V. DANTATA & SAWOE C.C.N. LTD (2021) 12 NWLR (SUPRA) 82.**

A careful examination of clause 3 a – c in exhibit UUK1 shows that the letter of Offer to the winning Bidder was conditional on the occurrence of the events in the said clause, none of which were completed. Where a right is subject to the occurrence of an event or condition precedent, the right cannot vest until the occurrence of the event. See **BILL BROTHERS LTD V.DANTATA & SAWOE C.C.N. LTD (SUPRA); FCDA V. KORIPAMO – AGARY (2010) 10 NWLR**

PT.1213 364 at 392; OWENA BANK (NIG) PLC V. ADEDEJI (2000) 7 NWLR PT. 66 609.

Festinately, evidence even if unchallenged or contradicted still has to be evaluated by the court to see if it is credible enough to sustain the claim. See **OGUNDIPE VS. A-G KWARA (1993) 2 NWLR 313 588; NEKA B.B.B. MANUFACTURING CO. LTD VS. A.C.B. LTD (2004) 15 WRN 1 AT 27 AND BUHARI VS. OBASANJO (2005) 8 MJSC 1 AT 268** as stated by Oguntade JCA (as he then was) in **HARUNA V. SALAU (1998) 7 NWLR PT. 559 653 at 659** thus:

> ***"The argument that because the plaintiff's evidence was unchallenged, judgment should be given in his favour is patently unsound. It is trite that the evidence given by a plaintiff even if unchallenged may still be insufficient to sustain the claim made by the plaintiff. "***

See also **UWAJE V. MADUEMEZIA (2015) LPELR 24543 1 AT 25-26.**

Therefore, this court still has the bounden duty to evaluate the evidence adduced by the claimant to see if it established and proved his claim for declaration of title sought herein.

The plaintiff's counsel in paragraph 4.41 of the written address submitted that the plaintiff evidence before the court was unchallenged and therefore entitled to the reliefs sought. I do not agree with this submission of the plaintiff's counsel in the light of the decision of the court of Appeal in **HARUNA VS. SALAU (supra)** earlier referred to herein. In addition, despite the fact that the defence in this case was weak, the plaintiff cannot benefit from the grace of unchallenged evidence since he has not fulfilled the conditions to entitle him to the claims sought. The 2nd and 3rd defendants in their final written address stated clearly that the plaintiff has not

completed the payment for which the subject matter of this suit was sold to him. In the Supreme Court case of **OGUNDALU V. MACJOB (2015) 8 NWLR (PT. 1460) 96, 119** Rhodes Vivour JSC re-stated the position of the law thus:

> ***"That where the purchase price is not fully paid there can be no valid sale even if the purchaser is in possession……. Where part payment of the purchase price was made and the purchaser defaults in paying the balance within a reasonable time the vendor would be at liberty to re sell since legal title remains with the vendor until full price is paid by the purchaser."***

On the whole, looking at Clause 3(a), (b) and (c) of Exhibit UUK-1 which the claimant is relying on to claim title to the subject matter of this suit, the question to be determined at this point is whether the plaintiff complied with the terms and stipulations stated therein. I hold that the plaintiff is yet to comply with the terms stipulated in Exhibit UUK 1 for which he relies on to claim title.

The plaintiff during the trial did not present the court with any prove or evidence of full payment for the property sold to him. I am afraid, I cannot be persuaded by the plaintiff's counsel submission that there was sale of the property in exhibit UUK1. The price of the property is a fundamental term in a contract of sale of land. In the absence of which there can be no sale of the property or land. In the case of **YOUNG SHALL GROW MOTORS LTD V. ONALAJA (2021) 3 NWLR PT.1763 300** the Supreme Court held:

> ***"Contracts are enforceable when there is consideration. Consideration is something that indicates conclusively that the promisor intended to be bond. Consideration is thus mandatory for enforceability……The implication of this is simple; the appellants did not pay the price of the said property; hence there was neither consideration***

nor contract…….It follows therefore generally, that where a fundamental term of contract is left undecided and undone, then there is no contract."

Also per KatsinaAlu, JSC in **SALIBA VS. YASSIN (2002) 4 NWLR PT.756 1 at 6**

It is conclusive that exhibit UUK1 does not have the effect claimed by the plaintiff, viz conferment of title or ownership of room 12 black 36 on him.

The claimant stated that he is in possession of room 12, block 36, Area 'A' Nyanya. Possession no matter how long cannot ground a claim in title against the true owner. See **OSENI V. BAJULU (2010) ALL FWLR PT.511 813 AT 830** where it was held:

" He may not have known and this is long established that long possession of a property (except where a plea of laches and acquiescence are successfully raised), does not and will not, ripen to ownership of or confer title to the property."

See also **NWOSU V. UDEAJA (1989) 1 SCNJ 152 166; (1990) 1 NWLR PT.125 188.**

More importantly, if a pleaded root of title is not established as in this case, it will be futile to go to issue of possession or act of ownership. See **UKAEGBU VNWOLOLO (2009) 3 NWLR PT.1127 194 AT 220.**

The plaintiff is a trespasser. Title to land must precede acceptable acts of ownership, more so, in the face of challenge by the adverse party. The acts of ownership cannot stand on their own. The claimant must first prove a valid root of title to be able to rely on acts of ownership or long possession. See **OWHONDA V. EKPECHI (2003) 9 SC 1; FASORO V. BEYIOKU (1988) NWLR PT.76 263; UDE V. CHIMBO (1998) 9-10 SC.**

Where ownership (title) is not established, acts of possession need not be considered as they would not amount to acts of ownership or possession but acts of trespass. See **OKHUAROBO V. AIGBE (2002) 3 SC PT.1 141.**

The law is trite that an unauthorised invasion of the right of the party in possession can maintain an action in trespass against the whole world except the owner. See **UBA PLC V. SAMBA PETROLEUM CO. LTD (2002) 16 NWLR PT. 793 PG 361.**

Applying the above principle of law to the case at hand, the plaintiff cannot maintain an action in trespass against the 2nd and the 3rd defendants who are the owners of the property in dispute.

This means, the plaintiff, if he is on the property in issue, is a squatter. He has no property as none was given to him.

In addition, the Plaintiff by relief 4 on the statement of claim seeks from this court an Order of perpetual injunction against the defendants.

Injunction being an equitable remedy, he who comes to it must come with clean hands. I consider it manifestly reprehensive and absurd for the plaintiff to rely on his act of trespass to ask the court to grant him an injunctive remedy. See the case of **AKAPO V. HAKEEM HABEEB & ORS (1992) 7 SCNJ 119.**

The 2nd and 3rd Defendant's Counsel made a heavy weather about the time the plaintiff accepted the offer made to him. I hold that, the 2nd and 3rd defendant having accepted the plaintiff's part payment of 10% of the cost of the property sold to him outside the 14 days prescribed period are estopped from complaining that the plaintiff has no contract with them.

By their conduct, the doctrine of estoppel by conduct will be invoked against the 2nd and 3rd defendants as they are estopped from now stating that the plaintiff did not accept the offer within the prescribed time after they have accepted the partpayment of 10% he made despite knowing that he did not accept the offer within the prescribed period.

Therefore, the totality of the submissions of the 2nd and 3rd defendant's Counsel and the cases cited and relied on in paragraphs 3.5 – 3.10 of their written address with respect to the time of acceptance of the offer, will not avail them. The right thing for them to have done was also to reject the part payment of the plaintiff as at the time it was made since according to them the plaintiff did not accept their offer.

I agree with the submissions of the 5th defendant's counsel in their written address to the extent that the plaintiff has also not made a case against 5th defendant. The plaintiff did state under cross examination that "I did not acquire the property from the 5th defendant and that the basis of his claim for N10, 000,000.00 damages was for the maltreatment he suffered from the 1st defendant"

Issue 2:

The crux of the plaintiff case is centered on the 1st defendant who also alleged that he derived his title from the 2nd and 3rd defendants.

The 1st defendant filed a statement of defence and a counter claim against the plaintiff as follows:

1. The 1st defendant repeats all his averments in his statement of defence and deposition on oaths thereto as part of his counter claim.

2. The 1st defendant counter claims room 12, block 36, Area 'A' Nyanya allocated to him by the 2nd and 3rd defendants through the 4th defendant as owner occupier of the above mentioned room 12.

3. The sum of **₦20, 000,000.00 (Twenty Million Naira)** as general damages, arrears of rent, trespass. Loss of earnings and embarrassment.

The 1st defendant via his witness statement on oath which was never adopted frontloaded 9 documents in support of his counter claim.

The question is whether a court can act on frontloaded documents not tendered and admitted in evidence?

It is settled position of the law that a court is not allowed to act on any document not tendered and admitted in evidence before the court. No court is allowed to go outside the gamut of evidence before it to shop for materials upon which to use to decide a case before it. See the Supreme Court cases of **WASSAH & ORS V. KARA & ORS (2014) LPELR 24212 SC; MATTHEW V. STATE (2019) LPELR-40930 SC AND OPARAJI V. OHANU (1999) LPELR -2747 SC**

I therefore hold that the frontloaded documents which were never tendered in evidence cannot avail the 1st defendant in his counter claim.

The 1st defendant did not lead evidence at the trial in support of his pleadings. It is trite law that a claim which is merely pleaded but in respect of which no evidence is adduced must be rejected or dismissed by the court. See the Supreme Court cases of **A.B.C.TRANSPORT COMPANY LIMITES V. OMOTOYE (2019) VOL 296 LRCN 27; NWADIKE & ORS V. IBEKWE (1987) LPELR-2087 SC and FEDERAL CAPITAL TERRITORY AUTHORITY V. ALHAJI MUSA NAIBI (1992) ABJ L R 82 AT 92.**

The 1st defendant filed a counter claim against the plaintiff but failed also to lead evidence to prove his counter claim. This only means that the 1st defendant abandoned his counter claim against the plaintiff.

It is trite law that the court would normally dismiss a counter claim which has been abandoned. In **OPARJI V. AHIHIA (2012) 4 NWLR (PT. 1290) CA – per Eko JCA** - where the trial court struck out the defendant's counter claim for abandonment, the court of Appeal held thus:

> ***"Even if the defendant had abandoned the counter claim by not adducing any evidence on it, the appropriate order to make is not one striking out the counter claim, but an order dismissing it."***

Applying the above principle of law to the instant case, the 1st defendant's counter claim must be dismissed.

In view of the foregoing and for all I have stated earlier in this judgment, I am of the view, based on the evidence adduced at the trial that the plaintiff has not discharged the onus placed on him in this case. That onus, as I said earlier, is for the plaintiff to show that it complied with the terms and conditions of the offer contained in Exhibit UUK-1 accepted by him. The plaintiff was unable to do that in this case and he must therefore fail in his action for a declaration of title to room 12, Block 36, Area 'A' Nyanya, Abuja. Therefore, the plaintiff's action against the defendants fails and it is accordingly dismissed. Likewise the abandoned counter claim of the 1st defendant is also hereby dismissed.

Appearances: Lucky Okpeahior for the Claimant.

G.P. Bwakat for 2nd and 3rd Defendants holding the brief of AyubaAbang.

SimionEnock (ASC FMJ) for the 5th Defendant.

HON. JUSTICE EDWARD OKPE
(JUDGE)
17/6/22