

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT COURT NO. 4, MAITAMA ON THE
13TH DAY OF JULY, 2022

BEFORE HIS LORDSHIP: HON. JUSTICE U. P. KEKEMEKE

SUIT NO. FCT/HC/CV/2423/2018

COURT CLERKS: *JOSEPH ISHAKU BALAMI & ORS.*

BETWEEN:

CHRONICLES PROJECTS LIMITED
CLAIMANT

AND

BIMA SHELTER LIMITED **DEFENDANT**

JUDGMENT

The Claimant's Writ of Summons and Statement of Claim dated 24/07/2018 but filed on the 25th of July 2018 is for the following:

- 1) A Declaration that the unilateral variation of the purchase price of the property to wit: SH 03 5-Bedroom Duplex situate at Bima Shelter Estate, Apo Dutse, Abuja allocated to the Claimant, Messrs

Chronicles Project Limited from the initial sum of ~~N40~~ Million to ~~N95~~ Million is null and void and of no effect.

- 2) A Declaration that the subsequent purported Notice of Revocation of the allocation issued on the 8th day of June 2018 in respect of the property to wit: SH 03 5-Bedroom Duplex situate at Bima Shelter Estate, Apo Dutse, Abuja allocated to the Claimant is null and void and of no effect.
- 3) An Order of specific performance directing the Defendant to complete and handover the said property to wit: SH 03 5-Bedroom Duplex situate at Bima Shelter Estate, Apo Dutse, Abuja allocated to the Claimant based on the agreed purchase price of ~~N40~~ Million.
- 4) A perpetual injunction restraining the Defendant from parting, selling, dealing with or disposing of the property to wit: SH 03, 5-Bedroom Duplex situate at Bima Shelter Estate, Apo Dutse, Abuja otherwise than to the Claimant.

Parties exchanged Pleadings and the case set down for hearing.

The Claimant called a witness in proof of his case. He is Ameh Moses Sunday. He is a civil servant. He said he deposed to a Witness Statement on Oath on 25/07/2018. He adopted same as his oral testimony.

In the said written Statement on Oath, he said he is the authorized representative of the Claimant. That sometime in January 2014, the Claimant offered to purchase from the Defendant, a 5-Bedroom Duplex situate at Bima Shelter Estate, Apo Dutse, Abuja.

The Defendant offered the said property to the Claimant for a price of ₦40 Million. Upon the Claimant's acceptance of the said purchase price, it was issued with a Provisional Letter of Allocation by the Defendant dated 13/01/2014.

By the payment terms in the said letter, the Claimant was expected to pay an initial deposit of ₦10 Million and subsequently the balance of ₦30 Million in three (3)

instalments of ₦10 Million each before taking over possession of the said property.

That prior to the issuance of the Letter of Allocation, the Claimant had advanced the initial deposit of ₦10 Million to the Defendant. The Claimant subsequently and after it was issued with the letter paid the sum of ₦5 Million to the Defendant and another ₦5 Million through the Defendant's Chairman/Representative which payment was unreceipted and was actually deducted from a personal loan granted same by the Claimant's representative.

That it was mutually and verbally agreed between parties at a meeting held around 20th February 2018 at Bima Shelter Estate premises. That the Claimant will come up with a payment schedule to complete the balance of ₦20 Million to enable Defendant complete and handover the said property to the Claimant.

That about eight (8) days after the said meeting and before the Claimant could submit the said payment schedule to the Defendant, the Defendant unilaterally decided to vary the

price of the said property from the initial ~~N40~~ Million to ~~N95~~ Million vide its letter of February 28, 2018.

In response, Claimant restated its position and willingness to complete and finalize payment based on its proposed payment schedule but Defendant refused to accept same but remained adamant on the unilateral increased purchase price.

That Claimant became helpless in view of the ridiculous increment. The Defendant eventually revoked the allocation made to the Claimant vide its Letter of Allocation dated 8/06/2018.

That there was no time parties agreed on a monthly instalment of ~~N18,300,000.00~~ as stated in the Defendant's Letter of Revocation. The Claimant's proposed Schedule of Payment was never submitted for consideration before the purported Letter of Revocation.

That the said property is just about 50% completion stage and far from being ready to be handed over to the Claimant.

The Defendant refunded the initial ₦20 Million paid on the property by the Claimant by paying same into the Claimant's account on the 9th of July 2018 without Claimant's consent. The Letter of Allocation is Exhibit A.

Under Cross-Examination, the witness states that he is a Director of the Claimant. He is a non-executive Director. The MD and other officers have a direct facts of the case.

He sold the land in which this duplex is built to the Defendant. That they are paid in full and on time as stipulated in the agreement.

On a further question, he said there is no time frame in Exhibit A. That if there was a time frame, he would have completed.

The informal agreement he said was to make final payment when the property is completed. That it was after the informal meeting that the offer was revoked. That he received the refund.

The above is the case of the Claimant.

The Defendant called a witness in defence of the claim. She is Geraldine Oba of Plot 3, Sankuru Close, Maitama, Abuja.

She claims to be the Legal Secretary in the employment of the Defendant in this suit. She is familiar with the facts of this case. She adopts her written Statement on Oath deposed to on 10/03/2021 as her oral testimony.

She deposed that Claimant misrepresented facts or made false allegations concerning the transaction. That there was a Provisional Letter of Allocation dated 13/01/2014 issued to Claimant for the purchase of the property in question for the sum of ~~N~~40 Million.

That prior to the issuance of the Letter of Allocation, parties discussed price and mode of payment. That the Provisional Letter of Allocation is temporary understandings between parties which may form the basis of a final contract.

That the ~~₦~~40 Million was far below the market rate for a similar 5-Bedroom Detached Duplex with Boy's Quarters in Apo Dutse area of the city.

That the minimum market price for a 5-Bedroom Detached Duplex is Seventy-Five Million Naira. That given the rate of inflation and increase in the price of building materials, prompt payment and within 90 days was the best guarantee of the purchase price.

That after paying ~~₦~~20 Million, the Claimant willfully failed, refused and neglected to complete payment of the outstanding purchase sum more than four (4) years after the Letter of Allocation.

The Nigerian economy entered into a deep recession compounded by drastic fall in the value of the Naira. That the above made the company to change the price. The Claimant was given a discount of ~~₦~~25 Million.

That there was no final and or concluded contract for the sale of the property. That Defendant revoked the allocation as a result of the Claimant's failure to make further payment.

The Defendant returned the part-payment of ₦20 Million. That the letter of 20/02/2018 stating a Schedule of Payment was not received by the Defendant. It was an afterthought and never intended to be delivered to the Defendant.

Under Cross-Examination, she answered that there is nothing in Exhibit A allowing a variation of price.

To a further question, she answered that final payment should be made upon completion of the building. She answered that at the time the suit was filed, the building was not completed.

That the last payment was made six (6) months after the Offer Letter was issued. That there was no way he would have continued with work on that particular property.

That above is the case of the Defendant.

The Defendant's Counsel adopted his Final Written Address and posited three (3) issues for determination which are in fact two.

- (1) Whether the Claimant established its juristic personality for the purpose of maintaining this action.*
- (2) Whether Exhibit A amounts to a valid contract that can be enforced by the Court.*
- (3) Even if Exhibit A creates a binding contract, whether the Claimant who failed to pay for the property within a reasonable time can claim the relief now sought.*

The Defendant's Counsel argued that having traversed paragraph 1 of Claimant's Statement of Claim that it is a limited liability company, it behoves on the Claimant to prove its juristic personality by producing its Certificate. That the burden is on the Claimant. The Claimant, he argued has failed to discharge that burden.

That from Exhibit A, a valid contract would only come into place when payment of the full sum is made. That Exhibit A is a conditional contract. That it is a provisional arrangement. That it is not a contract.

That assuming Exhibit A creates a binding contract, a Claimant who fails to pay for the property within a reasonable time cannot claim the relief sought. That Claimant failed to adhere to the terms contained in the Letter of Allocation.

The Claimant failed to tender documents which he referred to in his pleadings. That the documents are likely to be unfavourable to him. That oral evidence cannot replace the content of a document.

Learned Counsel urges the Court to dismiss the claims.

The Claimant's Counsel also adopted its Written Address and raised only one (1) issue for determination, which is:

Whether the Claimant is entitled to the reliefs sought on the preponderance of evidence.

He argues that the Claimant is not in breach of the conditions in Exhibit A and is entitled to the reliefs sought.

That a definite offer was made vide Exhibit A. That Claimant accepted the offer. The Defendant is aware of the corporate personality of the Claimant. That it is a technicality.

That the condition for the invocation of Section 167 (d) of the Evidence Act does not exist. That Defendant did not lead a credible and cogent defence.

Learned Counsel urges the Court to grant the reliefs sought.

In my humble view the issues postulated by the Defendant which were reacted upon by the Claimant's Counsel are the germane issues for determining this suit. They also encompass the Claimant's general issue.

They are:

- (1) Whether the Claimant has established its juristic personality for the purpose of maintaining this action.**
- (2) Whether Exhibit A amounts to a valid contract that can be enforced by the Court in the circumstance of this case.**
- (3) Even if Exhibit A creates a binding contract, whether the Claimant who failed to pay for the property within a reasonable time can claim the relief now sought.**

On Issue One, learned Counsel to the Defendant canvassed that the Defendant joined issues with the Claimant when he traversed in its pleadings that the Claimant should strictly prove his juristic personality.

The Claimant's argument is that the Defendant is very much aware of the Claimant's corporate personality.

The object of pleadings is to compel parties to define accurately and precisely the issues upon which the case between them is to be contested to avoid element of surprise by either party. It also guides the parties not to give evidence outside the facts pleaded as evidence on a fact not pleaded goes to no issue.

See **OLADUNJOYE vs. AKINTERINWA (2000) 4 SC (PT. 1) 19.**

OSHODI vs. EYIFUNMI (2000) 7 SC (PT. 11) 145.

The main function of pleadings is to ascertain with as much certainty as possible the various matters that are in dispute between the parties and those in which there are agreement on which no issues have been joined, so as to avoid any surprise by either party.

See **BUHARI vs. OBASANJO (2005) 2 NWLR (PT. 900) 241.**

In the instance case, paragraph 1 of the Statement of Claim states:

"The Claimant is a limited liability company incorporated under the laws of the Federal Republic of Nigeria with its registered office at Block 1 Flat 10, Maiduguri Close, Area 3, Garki, Abuja within the jurisdiction of this Honourable Court."

The Defendant traversed the above averment in paragraph 1 of the Statement of Defence as follows:

"1. The Defendant denies paragraph 1 of the Statement of Claim and shall put the Plaintiff to the strictest proof of that averment."

Once pleadings have been settled and issues joined, the duty of the Court as in the instant case is to proceed to trial of the issues. If one party fails or refuses to submit the issues raised in the pleadings for trial by giving or calling evidence in their support, the Court must unless there are

other legal reasons dictating to the contrary resolve the case against the defaulting party.

See **WAEC vs. OSHIONEBO (2006) 12 NWLR (PT. 994) 258.**

IMANA vs. ROBINSON (1979) 3-4 SC 1.

In the instant case, the Claimant failed to give evidence in support of the claim to be a limited liability company under the laws of the Federal Republic of Nigeria despite the clear averment to the contrary in the Statement of defence.

The evidence of the Claimant's Counsel in his Written Address that Defendant know and is aware that the Claimant is a limited liability company does not suffice.

The issue is resolved in favour of the Defendant against the Claimant. In other words, the Claimant failed to proof that it is a limited liability company clothed with juristic personality to sue and be sued.

On the second Issue, *whether Exhibit A amounts to a valid contract that can be enforced by the Court.* The said Exhibit A is a letter dated January 13, 2014. It is titled "Provisional Letter of Allocation of SH 03 A, 5-Bedroom Detached Duplex at Bima Dutse Shelter Estate Apo-Dutse, Abuja".

I shall reproduce the relevant portions of Exhibit A.

"Further to the interest expressed by you on our above property and your application, we are pleased to inform you that House No. SH 03 A, 5-Bedroom Detached Duplex with Boy's Quarters at Bima Shelter Estate, Apo-Dutse, Abuja has been provisionally allocated to the following terms and conditions:

- 1. Your purchase price is ₦40 Million.*
- 3. Subsequent payment of ₦30 Million in three instalments of ₦10 Million each before taking full possession.*
- 4. A Deed of Sublease shall be prepared and issued to you upon completion of all*

payments, cost of which shall be borne by you.”

Although the Courts are not enjoined to make contracts for parties where none exists, the Court will seek to uphold bargains made commercially.

In the construction of the terms of a contract, the meaning to be placed on it, is that which is the plain, clear and obvious result of the terms used.

A contract or document such as Exhibit A is to be construed in its ordinary meaning as question of fact. Thus, where the words of a contract agreement or document are clear, the operative words in it should be given their simple and ordinary grammatical meaning.

See **OMPADEC vs. DALEK LTD (2002) 12 NWLR (PT. 781) 384.**

It is possible for a contract to emerge from series of correspondences between two persons. It must be apparent when the correspondences exchanged are read together that the parties have come to an agreement.

See **NEJI vs. ZAKHEM CONSTRUCTION (NIG.) LTD (2006) 12 NWLR (PT. 994) 297 SC.**

I shall go back to the said Exhibit A. It is provisional. It is also subject to some terms and conditions. One of the conditions is that the Claimant shall pay ₦30 Million in three instalments of ₦10 Million each before taking full possession.

That a Deed of Sublease shall be prepared and issued upon completion of payment.

That possession will only be given upon full payment of the consideration including legal fees.

The law is that where an offer is subject to a condition such as stated in Exhibit A, the formation of the contract is

postponed until the happening of the event on which the offer is conditioned.

See **TSOKWA OIL MARKETING CO. vs. BON LTD (2002) 11 NWLR (PT. 777) 163 SC.**

F. G. N vs. ZEBRA ENERGY LTD (2002) 18 NWLR (PT. 798) 162 SC.

SUBERU vs. A. I. S. L. LTD (2007) 10 NWLR (PT. 1043) 590 CA.

I totally agree with learned Counsel to the Defendant on this issue that the formation of a contract in the instant case is subject to the fulfillment of the conditions in Exhibit A. The issue is also resolved in favour of the Defendant against the Claimant.

Assuming and not conceding that the Claimant is a legal person and that there is a contract, is the Claimant not in breach of same contract?

Parties are bound by the terms of contract contained in an agreement without any subtraction or addition. If parties have agreed as in this case between themselves for the formation of a contract and these conditions were embodied in a document, then they are bound by the terms and conditions set down in the said document.

See **AFROTECH vs. MAI & SONS LTD (2000) 12 SC (PT. 11) 1 at 15.**

OWONIBOYS TECH. SERVICE LTD vs. UBN LTD (2003) 15 NWLR (PT. 844) 545 SC.

A person wishing to enforce a contract must show that he personally provided consideration. The Claimant failed to prove that he fulfilled paragraph 3 of the conditions by providing all the consideration. This issue is also resolved in favour of the Defendant against the Claimant.

In totality, the Claimant failed to prove his case on the preponderance of evidence and is therefore not entitled to the reliefs sought. The suit lacks merit and it is accordingly dismissed.

HON. JUSTICE U. P. KEKEMEKE
(HON. JUDGE)
13/07/2022

Parties absent.

Chuks Udo-Kalu, Esq. for the Claimant.

F. R. Onoja, Esq. for the Defendant with me is G. A
Maxwell, Esq.

COURT: Judgment delivered.

(Signed)

HON. JUDGE

13/07/2022