INTHEHIGHCOURTOFTHE FEDERALCAPITALTERRITORY

INTHEABUJAJUDICIALDIVISION

HOLDENATCOURT45 SITTINGINWUSEZONE 2–ABUJA

BEFOREHIS LORDSHIPHONJUSTICEELEOJO

ENENCHEDELIVERED ON2ND FEBUARY 2023

SUITNO.FCT/HC/CV/2457/22

BETWEEN

URBAN SHELTERS INFRASTRUCTURESLTD…….APPLICANT

AND

MUHAMMED SANI&2ORS …….RESPONDENT

JUDGEMENT

BeforethecourtisanOriginatingSummonsfiledonthe 22nd July2022.TheApplicanthavethereinformulated the following issuesfor determination;

1.Whetherintheinterpretationofaninstrument,the principleofliteralinterpretationwillapplywherethe wordingoftheinstrumentareambiguousandwheresuch interpretationwillbeabsurdandoccasioninjusticetoand prejudiceanyofthe partiestotheinstrument.

2.Whetherapartycouldbecompelledtogivewhathe doesnot have or dowhat isimpossible?

Andwherethequestionsareresolvedbythecourtin Claimant'sfavor, they claim thefollowingreliefs;

1. **ADECLARATION**thatthefirstparagraph,particularlythe words“….exercisingrighttoselectanylockupshopand duplexshopoftheirchoice”,intheCourtjudgement deliveredbyHisLordshipHon.JusticeN.ANasirofthe High Court oftheFederalCapitalTerritory Abuja sittingat Maitama,Abujadated the 3rd of November 20021,IS INTERPRETEDtomeanthatthe1stand2NdRespondent havetherighttochooseorselectlockupshopsand duplexshopssituateatShagari/DEI-DEI,F.C.T,whichare unencumberedatthetimetheymaketheirchoicesorsel ections.
2. **ADECLARATION**thattheApplicantcannotgivewhatitdoe snothavebyreasonoftheagedlonglegalmaxim; “nemodatquodhabet”,whichliterallymeansthatnoone giveswhat he does not have.
3. **ADECLARATION**thatthelawdoesnotpermittheimpossibl e,giventhemaxim;‘Lexnoncogitad impossiblia’,whichliterallymeansthatthelawdoesnot compelone to doimpossible acts.
4. **ADECLARATION**thatthefirstand2ndRespondentsinchoo singorselectinglockupshopsandduplexshops situateatShagari/Dei-dei,FCT,shallnotchooseorselect

shopsthat have alreadybeen sold and taken by offtakers ofthe marketproject.

5. **ADECLARATION**thatthe1st and2nd Respondentsin choosingorselectinglockupshopsandduplexshops situateat Shagari/Dei-dei, FCT, shallonlychoose or select shopsthatareunencumberedatthetimeofexcisingtheir rightsofchoiceand /orselection.

InsupportoftheOriginatingSummonsisanaffidavitof thirty(30)paragraphswithattachedexhibitsandan accompanyingwritten address.

Factsasdeposedtointhesupportingaffidavitby Rosemary N.EmovonaversthattheApplicantwhoisalimitedliabilityco mpanyandthe 2nd judgementdebtorintheconsentjudgementdelivered byHon.JusticeM.ANasiroftheHighCourtoftheF.C.Ton the3rd November2021,agreedwith the1st and2nd Respondentswhoarebusinessmencarryingouttheir businessintheF.C.Tonthetermsoftheconsent judgementbeforeadoptingsameasconsentjudgement before thetrialCourt.

Applicantaverredthatitwastheiragreementthathe wouldallowthe1st and2nd Respondentsselectanylockup

shopsandduplexshopsoftheirchoicesituateinthe Shagari/Dei-deimarketF.C.Tascontainedinparagraph one(1)oftheconsentjudgement.Infurtheraverment, ApplicantisopinedthattheRespondentsmisinterpreted thesaidparagraphone(1)oftheconsentjudgement particularly thewords"…exercisingrighttoselectany lock upshopandduplexshopoftheirchoice"tomeanthey haveunfetteredrighttochooseorselectanylockupshop andduplexshopwhetherencumberedornotatthetime theymaketheirchoices.Attachedandmarkedas**EXHA1** wasacopyofthe consentjudgement.

Applicantfurtheraverredthateight(8)outofthe seventeen(17)shopsselectedbythe1st and2nd Respondentshadbeenpaidforbyoff-takersofthe marketevenbeforethetermsoftheconsentjudgement wasagreed,adoptedandenteredby the court. Attachedandmarkedas**EXHA2**iscopiesofpayment receipts issued to theoff-takers.

Applicantinsistshecommunicatedthelimitationofthe eight(8)encumberedshopstotheRespondentsandwent furthertomeetwiththem,whereheofferedalternative optionstothem,anofferwhichaccordingtothe

Applicant,theyaskedfortimetoconsider. Applicant maintains that it followedupwithanotherletterurgingthe Respondentstomakeuptheirmindsbeingthat they(Applicant)areinthebusinessofselling the shopsandthey wereswampedwithotheroffers for them.Attachedandmarked **EXHA3&EXHA4**respectivelyweredocument/letter exhibitingtheeight(8)alternativeshopstheApplicant offeredtheRespondentsandtheletterurgingthe Respondentsto decide swiftly.

Applicant furtheraverredthattheRespondentsremained adamantintheirwrittenresponseontheirchoiceofshops, insisting that the phrase, "exercisingright toselect anylockupshopandduplexshopoftheirchoice"was meanttogivethemanunfetteredrighttochooseanylock upshopwhetherunencumberedornot,whilealsostating thattheywereunwelcomingofthenewpricereview. Attachedandmarkedas**EXHA5**wasacopyofthesaid response.

Infurtheraverment,Applicantstatedthatviaaletter dated17th Feb2022,itreiteratedthatthephrase"…any shop"couldnotpossiblymeanshopswhichwerealready encumbered,statingfurtherthatareviewoftheentire

marketshopswasdonebefore theconsentjudgementon the3rdNovember2021wasdelivered,alettertowhich ApplicantallegestheRespondentsrepliedonthe21st March2022alsoreiteratingtheirpositionthattheyhave unfetteredrighttochooseandselectanyshopoftheir choice situate at Shagari/Dei-dei market. Both correspondencesareexhibitedinannexuresmarked**EXH A6**and**EXHA7**respectively.

Applicant furtheraversthatin itsbid forjustexecutionofjudgement, itaskeditsSolicitortoseeklegalredressand furtheraskedthattheyfileanappealforaproper interpretationoftheconsentjudgementintheCourtofAppeal.Applicant wentfurtherto file amotionfor stay of executionoftheconsentjudgementbeforethetrialHigh CourtoftheF.C.TpendingthehearingoftheAppeal,a motionwhichApplicantalsowentaheadtowithdraw subsequently.The aboveisallexhibitedinannexuresmarked**EXHA8**and **EXHA9**respectively.

Counselto theApplicant in hiswritten addressraised twoissuesfor determination;

1.Whetherintheinterpretationofaninstrument,theprincipleofliteralinterpretationwillapplywherethe

wordingsoftheinstrumentareambiguousandwheresuchinterpretationwillbeabsurdandoccasioninjusticeto and prejudice anyofthepartiesto theinstrument?

2.Whetherapartycouldbecompelledtogivewhathe doesnot have ordowhat isimpossible?

Inarguinghiscase,Counselcitedthecaseof***AWOLOWO VsSHAGARI(2001)FWLR(PT.73)53;ALFAVsZAKARI(2010)ALLFWLR(PT.515)283***andalegionofothercases toemphasize onthe basic canonsofinterpretationofinstruments which istoestablishtheintention ofthosethatmadesameinstrumenttoachieve practicableandrealizablejustice.Inaddressingme, Counsel'sargumentisthatthefundamentalprincipleoflawinthe interpretationofjudgementoftheCourtand otherdocumentsisthatwherethewordsusedin instrumentsareclearandunambiguous,literalruleof interpretationwill beappliedtogivethewordsused insuchinstrumentstheirnaturalmeaning,Counsel furtherarguedthatwheretheapplicationofthe literalruleof interpretationwilloccasionabsurdity,injusticeand prejudiceagainstanyofthepartiestotheinstrument,the Courtwilldeviatefromliteralruleofinterpretationtootherrulesofinterpretationtoachievejustice.Furtherin herargumentCounselinsiststhatthewordingofthefirst paragraphoftheconsentjudgment,particularlythe

words“exercisingrighttoselectanylockupshopand duplexshopoftheirchoice”,onthefaceoftheconsent judgementasdelivered are ambiguousand cannot be interpretedliterallybecauseitwilloccasionabsurdity, injusticeandprejudiceagainsttheApplicantwhoisnot expectedtogivewhatitdoesnothaveifgiventheliteral interpretation.Whileciting***PDPVsINEC(2001)(PT.31)2735***an d also,***ONYEDEBELUVsMWANERI(2009)ALLFWLR(PT.453)1264***amongstahostofothercases,Counsel urgedtheCourttoinvokeit’swisdomtoresorttoother cannonsofinterpretationsotherthant h e literalrulein interpreting the first paragraph ofthe consentjudgement whilepointingoutthatthecourtisatlibertytoadopta fairinterpretationcapableofpracticalapplicationandnot torestrictitselftothestrictgrammaticalwordsusedon thefaceoftheinstrument.

The1st and2nd Respondentswhoaresuingforthemselves andotherpurchasersoftitledocumentsoflandat Shagari/Dei-deiAbuja,inresponsetotheoriginating Summonsfiled,anine(9)paragraphcounteraffidavit

deposedtobyHafsaIsa,dated15th November2022 accompanied with exhibitedannexures.

RespondentsrefutedtheavermentsoftheApplicant statingsameisfalseandmisleading.Applicantaversthat theyaretheoriginalownersoftheopenspaceofland locatedatShagariDei-dei,apropertywhichthey purchasedfromthe3rdRespondent,theyfurtheraverred thatwhiletheywerewaitingforthe3rdRespondentstoissueth emtheapprovedprototypedesignforthebuilding ofthestores,theApplicantstookpossessionand commencedbuilding.OnenquiryfromtheApplicant,the 1stand2ndRespondentdiscoveredthatthatthe3rd RespondentcontractedtheApplicanttobuildcorner shopsonthesaidplotsofland.Respondentsstatedthat thisresortedtoalawsuitwithSuitNo:CV/377/18. Respondentsaverredthattheyprayedforinjunctiveand otherreliefsandeventuallytherewasanexecutionand adoptionoftermsofsettlementtowhichHisLordship, Hon Justice M.ANasir delivered aconsentjudgment.

Respondentsfurtheraverredthatwhentheytookstepsto enforce the judgement,the Applicant introduced conditions,includingapricereview,whichwerenot

includedinthetermsofthesettlementtowhichthey vehementlyopposedwhilestatingthattheyneverasked fortimetothinktheissueover,rathertheyrejectedthe offeroutrightly.Respondentsadmitsthatareviewoftheentir e marketshopswasdoneafterthejudgmentwasdelivered.Stat ingfurther,theRespondentsstatedt h a t theCourt,per JusticeM.Nasirgrantedanorderofinterlocutory injunctionrestrainingthe Applicantfromdealingwiththesubjectmatter,including sellingofsame,copyoftheinjunctionisexhibited alongside thiscounter affidavitand marked**EXHR4**.

RespondentsinsisttheApplicantwasnotsatisfiedwith mostaspectsoftheconsentandthatwasthebasisu p o n w h i c h i t filedanappealashighlightedinparagraph2of thedocumentexhibitedin**EXHA8,**attachedtothe OriginatingSummons,thisavermentasmadeby Respondentsisexhibitedin**EXHR5**.Allegingfurther,the RespondentsstatedthattheApplicantfiledanapplication forextensionoftimewithinwhichtofilenoticeofappeal outoftimeandmotionforstayofexecutionofthe consentjudgement.RespondentsconcludethattheApplican tonlyfiledthisapplicationtobuytimetodispose

thewhole propertyand denytherespondents the fruit of theirjudgementstatingthattheywillbeheavily prejudiced ifthe Applicant's applicationisgranted.

Inhiswrittenaddress,Counselraisedtwoissuesfor determination viz;

1. Whetherthiscourthasthejurisdictiontotemperwith theconsentjudgmentbyvaryingoraddingsometermsnotcontemplatedbythetermsofsettlementsigned,filedand adopted bythepartiesto the suit.

2.Whethertheprincipleofonecannotgivewhathedoes nothavewillbeapplicableinthecircumstancesofthiscase.

Counselisopinedthatbothissuesaretobeansweredin thenegative.Citingthecaseof***RACEAUTOSUPPLYCO. LTDVsAKIB,FBNVsT.S.AINDUSTRIESLTD(2010)PRT 633AT641***Counselarguedthataconsentjudgement beingafinaljudgement,neitherthisCourtnorthecourt thatdeliveredthejudgementhasthejurisdictionto review,interpretorsitonanything arising from itsavefor clericalmistakesorslip.Counselwhilestatingthe circumstancesforsettingasideaconsentjudgementcitedthe caseof***LAMURDEVsADAMAWASTATEJ.S.C(1999) 12NWLR(PT6229)P.86***insistingthattheApplicanthad notdisplayedanyofthecircumstancesorconditions whichwillnecessitatethesettingasideoftheconsent

judgement.Counselinsiststhattheclausesoftheconsent judgementareclearandunambiguousandthatboth partiesagreedandsignedvoluntarilyhavingunderstood it'spurports.Counselisopinedthatevenifthecourthas thejurisdictiontointerprettheconsentjudgement,the interpretation willnotbe allowed to introducefresh facts not contemplated bythetermsofthesettlementandthe consentjudgementdelivered,heinsiststhatoncethe courtoflawinterfereorreviewitbywayofadditionor subtractionorotherwise,thenitlossesthename,color and featureofa consentjudgement.

Infurthersubmission,Counselopined thattheprincipleof"onecannotgivewhathedoesnothave",willn otapplyinthe circumstancesofthiscasebecausetherewasnovalidsale betweentheApplicantandthenamesexhibitedinEXHA2 oranyotherpersonswhoboughtashoporshopsduring thependencyofthesuit.Counselinsiststhatifatall purportedoff-takersboughtthesubjectmatterfromthe Applicantandfailedtoappearincourtasinterested

partiesbeforethedeliveryofthejudgement,theCourtoflaw he maintains,doesnothavebusinesswithanyoneor theinterestofanyonewhoisnotapartytothesuit.Counselcite dthe caseof***GREENV.GREEN(2001)FWLR(PT.76)795;*** ***FAWEHENMIV.NBA(NO.1)(1989)2NWLR(PT105)494***and ahost ofother cases to drive home this point.

InresponsetotheRespondent'scounteraffidavit,the Applicantfiledafiveparagraphedreplyaffidavitdatedand filedonthe25th November2022whereApplicant vehemently refutes Respondents' averments.

ApplicantstatedthattheRespondentsraisednewfacts andlegalissuesintheircounteraffidavit.Theyinsistthat theyowetheRespondentnodutytopresentthe approvedprototypeofthebuildingplanfortheshops.Applica ntdeniedintroducingnewconditionscontraryto thecontentof the consentjudgement.Theyfurtherstated thatitisnotwithinthepowerofthesitemanagerorthe Managingdirectortoknowthenumberofshopsthatare encumberedornot.Applicantstatedthatofftakersare thosewhopurchasedshopsattheopenmarketandmade paymentbeforethecommencementofthebuilding project,thustheyprovidedthefundusedbythe

Applicant.Applicantdeniedtheforgeryofthereceipts exhibited.Applicantalso deniesthattheconsentjudgement precludestheApplicantfromreviewingthepricesofthe shops,maintaining also thattheydid not introduceanypaymentplanat variancewiththecontentoftheconsentjudgement, whilestatingthepricereviewaffectedalltheshopsandnotjust that oftheRespondents.

Applicantdenieshis applicationwastargetedattheCourt varyingtheconsentjudgementbut rather, that it is forthecourtto interpretthefirstparagraphoftheconsentjudgment.

LearnedCounselinhisreplyonpointsoflawraisedthree (3)issuesfor determination viz:

1. WhetherthisHonourableCourthasjurisdictionto entertainthisapplicationconsideringthecircumstance ofthiscase?
2. Whetherthisapplication is anabuse ofCourt process?
3. Whetherthe1st and2nd Respondentprovedtheir allegationofforgeryagainsttheapplicantandalsosupplied sufficientfactstobringthetransaction betweentheapplicantandtheoff-takersunderthe doctrine of *lispendens*andillegality?

Counselinhissubmissioncitedthecaseof***GALADANCHI V.ABDULMALIK (2015)1NWLR (PT.1440)376***to buttress hisargumentthatthisCourthasjurisdictiontoentertain thisapplicationintheinterestofjustice,justasevery otherfinaljudgmentofthecourtwithregardto***SEC294 OFTHECONSTITUTIONOFTHEFEDERALREPUBLICOF NIGERIA,1999(ASAMENDED)***.Counselisopinedthata consentjudgmentwhichisamutualagreementbetween partiescanberevisitedbythesameCourtincertain circumstanceslikethiscurrentone.Emphasingfurther thattherearecircumstanceswherefinaljudgementscanbes etasidebytheCourtthatgaveit,Counselcitedthe caseof***LAMURDEV.ADAMAWASTATEJ.S.C(1999)2 NWLR(PT.629)86AT99.***

Counsel howeversubmitsthat theApplicantisnotseekingforthejudgementtobeset asideratherfortheinterpretationofthefirstparagraph ofthesaidconsentjudgment,hecitedthecaseof***N.D.I.C.U.B. NPLC(2015)12NWLR9PT.1473)278AT303.***

Inconclusion,hesubmitsthatwhereanallegationof crimeismadebyaparty,samemustbeprovedbeyond reasonable doubt, citingSEC135(1) EVIDENCE ACT.

All said and done, I think one issue stands out for the courts determination which in my opinion is whether this court has the powers to interpret the judgment of another court.

Now , this matter was commenced by way of originating summons. Originating summons is regulated by theprovision of Order 2 Rule 3 of the Rules of this court 2018 which provides that any person claiming under a deed, will, enactment, or other written instrument may apply by originating summons for the determination of any question of construction arising under the instrument and for a declaration of the rights of the person interested. Secondly, originating summons may be used where any person claiming any legal or equitable right in a case where the determination of the question whether he is entitled to the right depends upon a question of construction of an enactment , may apply by originating summons for the determination of such

question of construction and for the determination of such question of construction and for a declaration as to the right claimed.

What I have been called to interpret is a judgement of this court Coram Mairo Nasir J.

Having taken Deed, will and enactment out of the equation, The question is whether the consent judgment of Mairo Nasir J between the parties comes within thedefinition of"written instrument" capable of being accommodated under the rule.

The word'instrument' is defined in Strouds Judicial Dictionary , as 'anything reduced to writing, a document of formal or solemn character.'

However, it has been held that whether anything reduced to writing is aninstrument largely depends on the context in whichit is used. For example the same Strouds Judicial Dictionary, Volume 3 at page 1386 stated plainly that "orders of court were not instrument withinApportionment Act, 1834". One may find support inthis observation by Stroud to say that a judgmentof a court of law can hardly be accommodatedunder the words "other written instrument" underRule 3 of Order 2 of the High Court of the FCT (CivilProcedure) Rules, 2018 , which governs originating summons. That aside, the the court has held in ***RACE AUTO SUPPLY COMPANY LIMITED & ORS v. ALHAJA FAOSAT AKIB (2006) LPELR-***

2937(SC)that

ajudgment of a court of law cannot be subjected tointerp retation by a court of co-

ordinate jurisdictionlike a deed, a will or an instrument co ntaining rightand obligation of parties under Order 2 Rule 3 of the rules of this court. Inany case, even if the consent judgment in thepresent case were to be regarded as instrumentunder Order 2 Rule 3 , the provision would not give a High Court jurisdiction to determine anyquestion of construction or interpretation arisingfrom the judgment of a court of co-ordinatejurisdiction and the same court aspresided by Mairo Nasir, J. or that of a higher courtlike the Court of Appeal. If a judgmentof a court of law were to be regarded as aninstrument like a deed or will, then even thejudgment of the Court of Appeal or the supreme court couldbe subjected to interpretation by the High Courtwhich would is rather absurd. Inthe present case therefore, it is mydetermination at this moment that this court lacks thecompetence to subject the consent judgment of thesame court delivered by Mairo Nasir, J. to interpretation of the contents or terms thereof.

In the absence of statutory authority or except where the judgment or Order is a nullity, one judge has no power to set aside or vary the order of another judge of concurrent and co-ordinate jurisdiction. The rationale or reason for this is that there is only one High Court in a State. See Anambra v. Okafor (1966) 1 All NLR 205 at 207. In the case of MR.

AKINFELA FRANK COLE v. MR. ADIM JIBUNOH & ORS (2016) 4 NWLR (PART 1503) 499 AT 521 C-H the apex Court in the land reaffirmed the position stoutly.
See RIOK NIGERIA LIMITED v. INCORPORATED TRUSTEES OF NIGERIAN GOVERNORS' FORUM & ORS

(2022) LPELR-58087(SC). In all, I am unable to do what I have been called to do in this case and all that remains is for me to order that this case be and is hereby dismissed.

ELEOJO ENENCHE

2/02/23
JUDGE