

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT ABUJA

BEFORE HIS LORDSHIP: HON JUSTICE ASMAU AKANBI – YUSUF

DELIVERED THE 18TH, SEPTEMBER 2023

SUIT NO. FCT/HC/CV/2610/2020

BETWEEN

KAIAMA GLOBAL PROPERTY LTD CLAIMANT

AND

1. NADANA GLOBAL SERVICES LTD
2. NADANA SHELTER SERVICES LTD DEFENDANT

JUDGMENT

In civil cases, the burden of first proving the existence or non-existence of a fact lies on the party against whom the judgment of the Court would be given if no evidence were produced on either side, regard being had to any presumption that may arise on the pleadings. Section 131(1) Evidence Act whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.

Section 132 Evidence Act states that the burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side. 133(1) In civil cases the burden of first proving the existence or non-existence of a fact lies on the party against whom the judgment of the court would be given if no evidence were produced on either side, regard being had to any presumption that may arise on the pleadings. See ALHAJI ADEBAYO AKANDE v. JIMOH ADISA & ANOR (2012) LPELR-7807(SC)

The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side. See MTN NIGERIA COMMUNICATIONS LTD v. OLAJIRE A. ESUOLA (2018) LPELR-43952(CA)

In the case at hand, the claimant by a writ of summons, statement of claim and other processes filed on the 11th September, 2020, claim against the defendants as follows:

1. The sum of #85, 000, 000.00 (Eighty-Five Million Naira) only being 5% of #1,700,000,000.00 (One Billion Seven Hundred Million Naira) being the value of plot 3008 Cadastral at zone CO5 Kafe - District Abuja.
2. 10% interest on the judgment sum from the date of judgment till the judgment sum is liquidated.

Pursuant to the Order of Court of 26/5/2022, the defendants' statement of defence filed on 4/12/2020, was deemed properly filed and served on the claimant. Thereafter, the claimant filed a reply to the defendants' statement of defence.

Hearing commenced on the 20/2/2023. Alh. Yahaya Umar the Manager in the claimant's company testified as Pw1. He adopted his witness statements on oath of 11/9/2020 and 27/5/22. The PW1 testified as follows:

1. That, I am a Manager in the Claimant Company in charge of land agency transactions by virtue of which I am of personal knowledge of the facts of this case.
2. That the claimant is a limited liability company engaged in Real Estate/Property Consultancy, Property Development Management and Property Agency.
3. That as property consultants and property agents, our work/duty is to inform/introduce willing purchasers of properties, properties for sale and are entitled to a commission of 5% of the purchase price from the purchaser in the event that he eventually purchases the property on the introduction.
4. That apart from paragraph 3 above it is equally our work/duty as property consultants and property agents to inform or introduce willing property developers who do not have their own property/land to land owners, for

- joint-venture development of such land by which the property developer develops the land and profits shared between the property developer and the land owner at a ratio that may be agreed by both parties.
5. That upon informing/introducing a willing property developer to a willing landowner and they agree to a joint venture transaction, the claimant will be equally entitled to 5% of the value placed on the land by both parties from the property developer who we have introduced to the landowner.
 6. The defendants are Property/Real Estate Development Companies. The 1st defendant is the parent company of the 2nd defendant, while the 2nd is a subsidiary of the 1st.
 7. That in September 2019, the defendants desirous of expanding their business of housing development in Abuja, was introduced by me and Suleiman Gunu Abdullahi a director of the claimant to Plot No. 3008 Cadastral Zone C05 of about 6.77 Hectares in Kafe District Abuja belonging to Konduga Travels Limited for joint venture development with the owners
 8. That at the behest of the defendants, we took Alhaji Dalhatu Nasir the Managing Director/CEO of the defendants to the land-Plot 3008, Cadastral Lone CO5, Kafe District Abuja who liked it and showed great interest on the land, thanked us on the choice of the land demanded to meet the owners of the land.
 9. That we reminded the Managing Director of the defendants at the site that their commission for the introduction would be 5% of the value placed on the barren land by both parties to the transaction which he agreed and stated that they already know that it is the practice and what is obtainable as agency fee in the industry.
 10. That the defendants having shown interest in the land for the joint venture development we advised them to formally write a letter of request for joint venture development of the said land to the owners and supplied the names and address of the owners to the Managing Director of the defendants.
 11. That the defendants did write the said letter which was delivered to Konduga Travels Limited-the owner of the land. The letter is titled request for joint venture housing

development project on Plot 3008 (6.77 hectares) Kafe District Abuja' addressed to the Managing Director, Konduga Travels Limited dated 11th October 2019.

12. That sequel to the letter of 11th October 2019, a meeting was arranged and held between the defendants and Konduga Travels Limited - the owner of the land for further negotiations based on the said letter of 11/10/19. The meeting was held on the 18th of October 2019 at the defendants' office at 6th Floor, Nikon Re-Insurance Building, Plot 784A Herbert Macaulay Way, Central Business District Abuja and in attendance amongst other persons were: a. Alhaji Yahaya Abdullahi Babanang -(Chairman of the Defendants) 08033316656.
b, Dalhatu Nasir- (Managing Director of the Defendants) 09092837694
c. Mohammed Mukhtar Mohammed- 08065333808 (Representative of Konduga Travels Limited).
d. Usman Musa Umar - 08038358553 (Representative of Konduga Travels Limited)
e. Yahaya Umar - 08033120895 (Representative of the Claimant)
f. Suleiman G. Abdullahi - 08037019504 (Representative of the Claimant) and others.
13. The claimant avers that at the meeting, the parties i.e. the defendants and Konduga Travels Limited the owner of the land agreed to move forward with the joint venture as proposed in the defendants letter of 11th October 2019, whereby the defendants where to: raise funds required for the construction of the houses and provision of infrastructure; design the houses and secure necessary approvals from Government agencies; execute the construction of the houses and provide infrastructure according to approved guidelines; market and sell the houses, while Konduga Travels Limited was to: make the unencumbered Plot 3008, Cadastral Zone C05, Kafe District available for development to the defendants. The proceeds to be shared on a 60% profit to the defendants and 40% to the owners of the land which was accepted by the owners of the land.
14. That at the said meeting, the defendants and Konduga Travels Limited- the owners of the property after heated

negotiation finally agreed and pegged the value of Plot 3008 Cadastral Zone CO5, Kafe District to #1,700,000,000.00 (One Billion Seven Hundred Thousand Naira). We reiterated our commission of 5% from the defendants for introducing them to the land and the eventual agreement for the joint venture housing development; which the defendants affirmed to pay having introduced them to the property and the owners of the property upon which negotiations had taken place with an agreement to go into the joint venture development with the owners of the land.

15. That as a result of the meeting of 18th October 2019 and the agreements reached on the joint venture development of the land, Konduga Travels Limited - the owners of the land by the end of October 2019 made available the land, unencumbered to the defendants for the said development.

16. That upon Konduga Travels Limited - the owners of the land making same available to the defendants, the defendants named the land/project Nadana Garden City Kafe Abuja, secured it and mounted their signage's on the land showing that they have taken possession of the land. I took pictures of the land showing various signage's of the defendants on the land with my telephone - Infinix Note CE0197 android phone from which the pictures were transferred to and printed from HP Laser Jet M1132 MEP. That at the time of taking the pictures and transferring same for printing out they were used regularly to store and process information of the kind contained on the pictures; and where in good working condition at all material time during the said period of production and the information contained was derived and produced from that which was supplied to the computer. The defendants equally started advertising the houses/property for sale through handbills and brochures of houses at Nadana Garden City Kafe Abuja.

17. That despite taking possession of the land, the defendants have failed and refused to pay our commission of 5% on the sum of #1,700,000,000.00 (One Billion Seven Hundred Thousand Naira) the value placed on the land jointly by the defendants and the owners of the land.

18. That it was the claimants who introduced Plot 3008 Cadastral Zone C05 of 6.77 Hectares Kafe District Abuja to

the defendants and informed them that it was available for joint venture and that it was on the basis of this introduction that negotiation for the joint venture development proceeded and was concluded and the land eventually handed over to the defendants.

19. That it was on the basis of the claimant's introduction of the defendants to the land that put in motion the instrumentality and was the causal effect that ultimately led to the joint venture agreement in favour of the defendants and for which they have taken possession of the land and we are therefore entitled to our commission as agents.
20. That by the custom of property/estate agency the claimant is entitled to 5% of the value of the land from the defendants having introduced the land to them which led to the joint venture agreement and eventually taking possession of the unencumbered land.
21. That the claimant have made repeated demand for our commission, orally, by phone calls and several visits to the defendants yet they have failed refused and neglected to pay our commission necessitating us to instruct our Counsel - Obi C. Nwakor Esq of Obi C. Nwakor & Co to write a letter of demand to the defendants for the payment of the sum of #85,000,000.00 (Eighty Five Million) representing 5% of the sum of #1,700,000,000.00 as their agency fees, yet the defendants have still neglected to pay the said agency fee.
22. That the defendants in a reply to the claimants' Solicitors letter dated 23rd June 2020 did not deny that it was the claimant who introduced them to the property nor that our fees is the sum of #85,000,000.00 (Eighty Five Million) representing 5% of the sum of #1,700,000,000.00.
23. That I make this oath in good faith conscientiously believing same to be true and in accordance with the Oaths Act.

The Pw1 thusly stated in his further witness statement on oath as follows;

1. That I am a Manager in the Claimant Company in charge of land agency transactions by virtue of which I am of personal knowledge of the facts of this case and by virtue of which I make this further witness statement on oath.

2. That our agency fee was not payable upon the successful completion or conclusion of conveyance or when the purchaser pays the purchase price but on our informing/introducing the defendants (property developer) to a willing landowner and they agree to a joint venture transaction.
3. That we carried out that which was required of us by the defendants which is introducing them to a property owner and which was what we bargained to do for the defendants upon which they contracted with the land owners and was given/took possession of the land for the joint venture development.
4. That the defendants made a payment of the sum of #14,000,000.00(fourteen million naira) to the owners of the land- Konduga Travels Limited as part payment of the premium of the sum of #300,000,000.00 (three hundred million naira) agreed by both parties.
5. That we carried out all that we bargained and undertook to do for the defendants which is finding and introducing to them a property owner willing to go into joint venture property development with them and which they indeed went into and that the transaction fail through by the default of the defendants does not deprive us of our remuneration having discharged our bargain.
6. That I make this oath in good faith conscientiously believing same to be true and in accordance with the Oaths Act.

The following exhibits were admitted in evidence by the claimant;

1. Print out Ocean View Estate Ibeju-Lekki Lagos together with 4 pictures marked Exhibit A;
2. The letter of 9th June 2020 and 23rd June 2020 marked as Exhibit B1 & B2 respectively;
3. A copy of document headed attendance marked Exhibit C;
4. The copy of Request for joint venture housing development project on plot 3008 (6.77 hectares) Kuje district Abuja dated the 11th October 2019 marked Exhibit D.

Under cross examination, the claimant admits not being an estate valuer and that it is not contained in exhibit D that the value of the property is #1,700,000, 000.00(One billion Seven Hundred Naira). He reiterated that the developer and owners of land had a meeting.

He admits that the defendant and Konduga Travels Ltd had a Memorandum of Understanding [MOU]. He states under cross examination that it is stated in the MOU, that a joint venture agreement will be entered into between the defendant and the landowner. He states that the Joint Venture Agreement [JVA] was actualized, based on the fact that the defendants were on site for three months. He is aware that the defendant was expected to pay the sum of #300,000, 0000.00 (Three Hundred Million Naira) but that the defendant pleaded to pay #150,000, 000, .00 (One Hundred and Fifty Million) as premium which was accepted by the owners of the property. He admits that the defendant couldn't pay the #150,000, 000. 00; that the defendant was only able to pay #14,000, 000.00 (Fourteen Million Naira). The Pw1 states, he has no evidence of the payment of the #14,000,000.00. He is aware that Konduga ltd terminated the JVA entered with the defendants. He states that the defendant admits the claimant's claim in exhibit B; however, the Pw1 admits that it is not contained in exhibit B that the claimant is entitled to 5% by mere introduction. The Pw1 is aware that Konduga Travels Ltd have contracted out the land to another party.

There was no reexamination.

On the part of the defendants, Dalhatu Nasir, the Managing Director of the Defendants' company testified as Dw1. He adopted his witness statement on oath of 4/12/2020 and testified as follows:

1. I am the Managing Director of the defendant and make this statement from personal knowledge.
2. That we are aware that agreed agency fees are payable to agents upon the successful completion or conclusion of conveyance, i.e when a purchaser pays the purchase price of the property introduced by the agents or when the land subject of the transaction is consummated by the property in

- the land passing from vendor to purchaser or when purchaser has acquired an equitable interest in the property.
3. That the Claimant in fact introduced the defendants to Messrs Konduga Travels Limited, owners of Plot 3008, Kafe District, Abuja measuring 6.77 Hectares covered by Certificate of Occupancy contained in file MISC 137043, for a joint venture partnership as co-developers in terms of the Memorandum of Understanding dated 8/11/2019 between 1st Defendant and the said Messrs Konduga Travels limited.
 4. The Memorandum of Understanding dated 8/11/2019 between the 1st Defendant and the said Messrs Konduga Travels Limited stipulated that 1st Defendant shall make a premium payment of #300,000,000.00 to Messrs Konduga Travels Limited comprising of initial payment of #150,000,000 two months from the date of the Memorandum of Understanding and that the other sum of #150,000,000.00 shall be paid after the completion of the first phase of the project (completion of 51 buildings on the land) in six months term.
 5. That Defendants were unable to furnish to the said Messrs Konduga Travels Limited, the agreed consideration of initial premium payments of #300,000,000.00 or any sum at all, and so was unable to acquire any interest whatsoever in the statutory Right of Occupancy over Plot 3008, Kafe District, Abuja measuring 6.77 Hectares covered by Certificate of Occupancy contained in file MISC 137043, in line with the Memorandum of Understanding or at all.
 6. Defendant's inability to pay Messrs Konduga Travels Limited the agreed consideration of initial premium payments of #300,000,000.00 or any sum at all, in line with the Memorandum of Understanding led to the termination of the agreement for joint venture by the said Messrs Konduga Travels Limited on 26/2/2020, who have proceeded to possess the property.
 7. Messrs Konduga Travels Limited wrote the 1st Defendant, a letter dated 25/1/2020 and titled "Notice of termination of joint partnership agreement for the development of plot 3008, Kafe District, Abuja" citing defendants' financial incapacity.

8. Messrs Konduga Travels Limited wrote the 1st Defendant, a letter dated 26/2/2020 and titled "Letter of termination of joint partnership agreement for the development of plot 3008, Kafe District, Abuja" citing defendants non-compliance clause 12 and 13 of the Memorandum of Understanding.
9. Defendants received the letter of demand of 5% of the sum of #1,700,000,000.00 as agency fees for introducing defendants to Messrs Konduga Travels Limited for the joint venture for the development of plot 3008, Kafe District, Abuja. But the Defendants Solicitors, A.M Giragi & Co wrote a reply dated 23/6/2020 to the Claimant's Solicitors, OBI NWAKOR&CO, and stated the position that the prospective property joint venture transaction which Claimant introduced to the defendants NEVER materialized and so Claimant is not entitled to 5% of the sum of #1,700,00,000.00 as fees or any sum at all.
10. That by the custom of the trade of land or property, agents are only entitled to properly agreed agency fees ONLY when the transaction it introduced crystallized into a SALE, OR A PERFORMED CONTRACT and not when the transaction, as in this case with plot 3008, Kafe District, Abuja, is TERMINATED for non- performance and without any further obligation.
11. Defendants state that the Claimant's suit is speculative, gold-digging and frivolous and should be dismissed with substantial cost.
12. That I make this affidavit in good faith believing same to be true to the best of my knowledge and in accordance with the Oaths Act.

Under cross examination, the DW1 admits not being a property agent. He states that the claimant's agency fee is subject to the crystallization of the intention of the business between the defendants and owners of the land, which eventually didn't crystallize. He admits that the defendants failed to perform their own task, by providing funds.

The following Exhibits were tendered:

1. Notice of termination of joint partnership agreement dated 25/01/2020 and 26/2/2020 marked DW1 and DW2

2. Memorandum of understanding between Nadana Global services ltd v Konduga Travels ltd dated 06/11/2019, marked Exhibit DW3

At the close of the parties' case, and pursuant to the rules of this Hon. Court, parties filed and exchanged their final written addresses. The defendant's final written address is dated and filed the 2/5/2023, and deemed properly filed and served on the claimant on 11/7/23. It was settled by Ishaku I. Garba Esq wherein he formulated a sole issue for determination, to wit;

Whether by virtue of the pleadings, and evidence before this court the claimant is entitled to Judgment as per its claim.

On the part of the claimant, Obi C. Nwakor Esq. settled the final written address. It is dated and filed on the 10/5/2023. He adopted the issue framed by the Defendant.

The summary of the submissions of counsel to the defendants, is that the claimant is not entitled to its claims as contained in the statement of claim, based on the fact that the defendants' and Messrs Konduga Travles Limited failed to execute the Joint Venture Agreement as envisaged in exhibit Dw3; that the defendants didn't satisfy the precondition of formalizing the relationship with Messrs Konduga Travels Ltd, which eventually led to the termination of the relationship between the defendants and Messrs Konduga. He cited *AKANMU V. ADIGUN* (1993) 7 NWLR (PT.304) 218 AT 236 to buttress his argument on whether parties are bound by their pleadings. He, equally referred to *BPS CONSTRUCTION & ENGINEERING CO. LTD V. FCDA* (2017) LPELR - 42516(SC) in support of his argument on the meaning and legal effect of memorandum of understanding.

On the part of the claimant, learned counsel submits that any fact that is admitted or not denied need not be further proved and that parties are bound by their pleadings; Counsel referred to *SALAMI V OKE* (1987) 1 NWLR (PT 63) 1. *OLALE V. EKWELENDU* (1984) 1, NWLR (PT. 115) 326. *EGBUE V. ARAKE* (1988) 1 NWLR (PT.

84) 590, DANIYAN V. LYAGIN (2002) 7 NWLR (PT. 766) 346. LBEANU V. OGBEIDE (1998) 9 SC 88.

He argued that the defendants admitted all the essential paragraphs contained in the statement of claim, save for the fact that the claimant is not entitled to its commission based on the failure of the defendants' inability to fulfill its part with Messrs Konduga. It is the argument of counsel to the claimant that since it was not a party to the MOU between the defendants' and Messrs Konduga, the case of BPS CONSTRUCTION & ENGINEERING CO. LTD V. FCDA (SUPRA) in the context it was cited by the defendants, goes to no issue. Again, the claimant's counsel urged the court, to look into the said MOU in determining the claims of the claimant in its favour. Counsel cited the cases of AKIN-TAYLOR V BOJA INVESTMENT & DEVELOPMENT CO. LTD (2013) LPELR – 21468 (CA), BADAWI V ELDER DEMPSTER AGENCIES LTD (1968) NCLR 400.

I have carefully considered the evidence of parties as well as the final written addresses filed on their behalf and it is my view that the issue formulated by counsel for the defendants is sufficient to determine the case that is; *whether by virtue of the pleadings, and evidence before this court the claimant is entitled to Judgment as per its claim.*

In the instant case, parties are ad idem, that the claimant introduced the defendants to one Messrs Konduga Travels Ltd. see paragraphs 6 & 7 of the Statement of claim and Paragraphs 3 of the Statement of defence. See also their respective witness statements on Oath as well as the pleadings.

Now, the contention between parties is whether the defendants are entitled to the sum of #85,000,000.00 (Eighty – Five Million Naira) only i.e 5% of #1,700,000,000.00 (One Billion, Seven Hundred Thousand) for introducing the defendants to Messrs Konduga Property Ltd. In determining this, it is the duty of the claimant to establish with credible and cogent evidence, that the defendants

agreed to pay 5% of #1,700,000,000.00, particularly that a Joint Venture Agreement was entered into between the defendants and Konduga as these assertions was denied by the Defendant in their statement of defence. See paragraph 2 of the statement of defence. The defendants further put the Claimant to the strictest proof.

The Pw1 under cross examination was asked thus:

Q: It is not true that the defendant's lawyers in response to your lawyer admitted your claim as you presented;

A: It is true;

Q: Is there anywhere it is contained in Exhibit B that you are entitled to 5% by mere reason of your introduction?

A: No, there is no made mention of that.

Q: Now, are you aware that Konduga Travels Ltd, the owners of the land in question have already contracted the land out to another party and not the Defendant?

A: I am aware

Again, the Pw1 admitted that it is not stated in exhibit D, that the value of the property is #1,700,000,000.00. I have gone through the processes and exhibits tendered by parties, there is no where it is expressly stated that the defendants will pay to the claimant the sum of #85,000,000.00. The claimant in one breadth argued that a person who is not a party to a contract cannot enjoy or suffer the burden of the contract, while in another breadth urged the court to look at exhibit Dw3 i.e the MOU between the defendants and Konduga Travels Ltd in arriving and supporting the claimant's claims. It appears the claimant is approbating and reprobating at the same time on same issue. (party's bound by their contract case law. The law is clear on a contract); thus, a person cannot be bound by a contract to which is he/she is not a party to; in

other words, the claimant cannot benefit from same. I cannot look at exhibit Dw3 to determine the relationship or agreement made between the claimant and the defendants. Going further, the claimant asked the defendants to produce the original of the attendance list. See paragraph 11 of the statement of claim. This averment was denied by the defendants. See paragraph 6 of the statement of defence. I must say, that the exhibit C, the Attendance list is of no consequence as same lacks probative value. I cannot read any meaning to the names or the essence of same in this suit.

As stated earlier, it is trite law, that the burden of first proving the existence of a fact lies on the claimant. See also Ss 131 - 133 of the Evidence Act 2011 which states the fundamentals of such proof. Again, the claimant averred in paragraph 4 of the Reply and also led evidence that the defendants made a payment of the sum of #14,000,000.00 (Fourteen Million Naira) to the owners of land, Konduga Travels Ltd as part payment of the premium of the sum of #300,000,000.00 (Three Hundred Million Naira) agreed by both parties. While being cross examined, the Pw1;

Q: Are you aware that the defendant pleaded to pay #150,000,000.00 as premium which was accepted by the owners of the property;

A: He started paying. He paid up the #14, 000, 000

Q: You have the evidence of the payment of the #14, 000, 000?

A: I don't have the evidence because it was transfer that he made to the account.

Q: Are you also aware that the said Konduga Tour Ltd the land owners terminated the Joint Ventures Agreement with the Defendant?

A: I am aware.

Q: Is there anywhere it is contained in Exhibit B that you are entitled to 5% by mere reason of your introduction?

A: No, there is no made mention of that.

Q: Now, are you aware that Konduga Travels Ltd, the owners of the land in question have already contracted the land out to another party and not the Defendant?

A: I am aware

Stemming from the above, it is clear that the claimant also has no evidence to support the evidence of the payment of #14,000,000.00; equally, the claimant agrees with the defendants' that the Messrs Konduga Travels Ltd has terminated the Joint Partnership Agreement for the development of plot 3008 Kafe District Abuja vide exhibit Dw1 and the site has been taken over by the owner of the land. I have had a careful consideration of the evidence put forward by parties, particularly the claimant who is saddled with the responsibility of first proving his case, I must state that the claimant failed to buttress the averments contained in statement of claim as well as its reply with concrete evidence. The claimant failed to provide a single shred of evidence to substantiate its claim. There is absolutely nothing to show that the Defendants agreed to pay the sum of #85,000,000.00 [Eight -Five Million Naira] only being 5% of #1,700,000.00 being the value of plot 3008 Cadastral Zone C05 Kafe District, Abuja.

On the whole, I must say, that I agree with the defendants that this suit is not only speculative, gold digging and frivolous, it is equally annoying and time wasting. Accordingly, the suit is dismissed and cost of #50,000 is awarded against the claimant and in favour of the defendants.

ASMAU AKANBI – YUSUF

[HON. JUDGE]

APPEARANCES

Obi C. Nwakor Esq. for the Claimant

Gabriel Ayegba Esq. for the Defendants.