

IN HIGH COURT OF THE FEDERAL CAPITAL TERRITORY, ABUJA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA

BEFORE HON. JUSTICE J. ENOBIE OBANOR
ON THIS DAY THE 11TH OCTOBER, 2023

CASE NO.: CV/2724/2021

BETWEEN:

ALHAJI YASHA'U ABUBAKAR

...CLAIMANT

AND

THE ESTATE OF MALLAM WADA
ABDULLAHI MAIDA

...DEFENDANT

JUDGMENT

The Claimant before this Court commenced this suit under the Undefended List Procedure by way of Writ of Summons filed on 18th October, 2021 against the Defendant. The Claimant is seeking the following reliefs;

- i. The Plaintiff claims against the defendant, the liquidated sum of N6,000,000 (Six Million Naira) only being outstanding balance sum due to the plaintiff for facilitating the regularization of the title of Mallam Wada Abdullahi Maida over Plot No. 2904 Cadastral Zone A06, Maitama Abuja.

- ii. An order directing the defendant to pay to the plaintiff 10% interest from the date of judgment until judgment sum is liquidated.

The Defendant filed its Memorandum of Conditional Appearance and its Notice of Intention to Defend and an Affidavit in support on 3rd June, 2022. At the hearing of the undefended list, this Court found that the Defendant's Affidavit disclosed triable issues and thus this suit was transferred to the general cause list.

Pursuant to the order transferring the case to the general cause list, parties filed and exchanged pleadings and the suit was set down for hearing.

Hearing commenced on 26th April, 2023. The Claimant testified for himself. The summary of his story is that the late Mallam Wada Abdullahi Maida entered into a contract with him for a consideration of N12,000,000 (Twelve Million Naira) and that the term of the contract is for the Claimant to use his goodwill and contact to facilitate the regularization of his (Mallam Wada's) title to Plot 2904, Cadastral Zone A06, Maitama Abuja. He stated that the Sum of N6,000,000 was paid to him and the balance of the 6,000,000 was to be paid on completion of the facilitation. He stated that he carried out his instruction and when he made effort to reach Mallam Wada Abdullahi Maida on phone and personal visit to his office to bring to his notice the completion of the facilitation and regularization of his title over the said

plot, he was informed that Mallam Wada died after a brief illness and has been buried according to Islamic rights. The Claimant stated that he furnished the family of Mallam Wada with all the documents and the facilitation agreement but that they have refused to pay his balance of N6,000,000 (Six Million Naira) only. Hence this suit. The Claimant tendered two documents; the facilitation agreement dated 31st August, 2019 and the letter of demand to the Demand admitted as Exhibit A and B respectively.

Under cross examination, the Claimant stated that Mallam Wada paid for the R of O before he died. The regularization process was completed after the death of Mallam Wada and not before. The Claimant did not collect the Right of Occupancy and that there was no time frame given for the completion.

The Defendant opened their defence on the 19th May, 2023. Philip Orshe testified as DW1. He adopted his witness statement on oath. The case of the defendant is that Mallam Wada acquired interest in the property now known as property of plot 2904, Cadastral Zone A06, Maitama, Abuja then known as Plot No 3130 Maitama Cadastral Zone A6, Abuja some years before 2022 and that the property was covered by an old certificate of occupancy. However, the title documents was required to be regularized and Mallam Wada instructed DW1 and his counsel to regularize his title documents. Due to the difficulty involved with regularizing the title documents at the Abuja Geographic Information System (AGIS), the DW1 stated that Mallam Wada was approached by

one Samailar Abubakar who claimed he could help facilitate the regularization at AGIS and was paid N10,000,000 (Ten Million Naira) but that the Samailar Abubakar failed to deliver and in fact disappeared. Another person by the name Owolaiye Temitope also collected N6,000,000 (Six Million Naira) for the same purpose of facilitation and also failed to deliver. Then came also the Claimant with the promise to deliver. That Mallam Wada, like every other arrangement that was made earlier, entered into an agreement for the sum of N12,000,000 (Twelve Million Naira) only with the Claimant in this suit for the facilitation of the regularization of the title document. The Claimant was therefore paid the sum of N6,000,000 (Six Million Naira) as the first payment. DW1 stated that the Claimant, just like the others could not deliver and that the Claimant did absolutely nothing in furtherance of the agreement.

The Defendant stated that Mallam Wada himself finally took steps and sought audience with then FCT Minister and base on their meeting was able to make progress in the regularization. However, the process was not completed until after the death of Mallam Wada. The regularization was therefore completed by the Defendant and they obtained the documents themselves. The Defendant stated that the Claimant has no proof of any step taken in furtherance of the contract. The Defendant tendered 8 documents in proof of its case which were admitted in evidence and marked as A, B, C, D, E, F, G and H respectively.

The Defendant therefore counter claimed for a refund of the N6,000,000 (Six Million Naira) paid to the Claimant as provided for in the agreement.

At the close of evidence, the parties were directed to file and exchange their respective final written addresses. The Defendant filed its final address on 16th June, 2023 while the Claimant filed on 6th July, 2023. Both parties conversed arguments in support of their case.

This Court shall adopt the sole issue formulated for consideration by the Claimant in resolving this case thus;

Whether the Claimant is entitled to the reliefs sought in view of the subsisting and valid contract dated 31/08/2019?

The trite position of our law is that the burden and standard of proof is placed on the Claimant to establish its case. It is therefore cardinal and a well settled principle of law that the burden of proof in civil matters is generally on the Claimant. See ADAMU v. NIGERIAN AIRFORCE & ANOR(2022) LPELR-56587(SC). Therefore, Claimant in this suit as in every civil matter has the responsibility in law to prove his case on a balance of probability, that is, he is to prove that he is entitled to the claim before the Court.

Thus, the legal burden in this suit is on the Claimant to establish that there is an invalid and enforceable contract in the first place.

It is elementary law of contract that a contract is consummated where there is a clear and unambiguous offer with the intention to be legal bound, an acceptance of the said offer without any variation and the fulfilment of the terms of the contract in the form of consideration. See: *Wakama v kalio* [1991] 8 N.W.L.R. (pt. 207) p. 123.

In the instant case, the Claimant by its pleadings and evidence stated that he entered into a contractual relationship with the late Mallam Wada and evidenced by the facilitation agreement dated 31st August, 2019. Thus, a contract comes into existence when these elements are present.

However, the existence of a written instrument is not sufficient to establish that the contract is enforceable by the party seeking such enforcement. In *AKINYEMI vs. ODU'A INVESTMENT COMPANY LIMITED* (2012) 17 NWLR (PT. 1329) 209 @ 236 which was relied on in *DUNKWU v. OAR (NIG) LTD* the Court held thus:

“It is important to note that before a contract could be enforced between parties, there must be a definite offer by the offeror and a definite acceptance by the offeree. In essence, the contract is enforceable only when there is consideration.

Consideration is something that indicates conclusively that the promisor intended to be bound by the contract entered into.”

Also, in UMARU V SANUSI PARIS & ANOR (2021) LPELR – 56309 (CA) the Court of Appeal held thus:

“Generally, contracts are legally enforceable agreements, with the implication that where one party to a contract is of the opinion that the other party is not fulfilling its obligations created under the contract, the offended party can approach the Court to seek enforcement of the contract or receive monetary compensation in the form of damages.”

Thus the principle of law is that a party seeking to enforce a contractual agreement must have performed his own obligation under the contract and upon such fulfilment, it indicates conclusively that the contract becomes enforceable. See the case of AKINYEMI vs. ODU’A INVESTMENT COMPANY LIMITED (supra). DUNKWU v. OAR (NIG) LTD (supra).

In the instant suit therefore, the performance of the Claimant’s obligation under the contract is directly in issue in order for the Claimant to be entitled to the relief sought.

With respect to the performance of the contract, the Claimant in its pleadings and evidence only stated that he used his goodwill and contact at the relevant department which culminated in the regularization of the title of Mallam Wada Abdullahi Maida over

Plot 2904, Cadastral Zone A06, Maitama, Abuja which was evidenced by the fact that there is now an offer of Statutory Right of Occupancy with file No. KT 63268. Also, the Claimant stated that he made effort to reach Mallam Wada on phone and personally visited his office to bring to his notice, the completion of the facilitation and regularization of his title over the property and was informed that he died after a brief illness and has been buried according to Islamic right.

In essence, the Claimant is relying on the fact that the regularization has been done and the existence of the title documents as a proof that he carried out his obligation under the contract. However, the Defendant has disputed this position and demonstrated to this Court that the regularization was done with no assistance or facilitation from the Claimant.

The Defendant in its pleadings and evidence has demonstrated the processes leading to the regularization of the title document such as; the payments done, the stages of progress until the death of Mallam Wada and that the regularization was completed after the death of Mallam Wada. All the documents and payments made in the process were done by the Defendant and are in custody of the Defendant. Also, the Defendant, and not the Claimant collected the title documents.

It is trite that the determination of every civil suit is on the preponderance of evidence. Thus, the Court of Appeal in the

case of OKOLIE v. OKOLIE (2020) LPELR-51411(CA) Per BALKISU BELLO ALIYU, JCA (Pp 28 - 29 Paras D - B) state thus;

"...By way of introduction to the determination of the two issues, it is a settled principle of law by a long line of decisions of this Court and the Apex Court that civil cases are decided on preponderance of evidence, which expression according to the Black's Law Dictionary, 9th Edition, page 1301 means: "Greater in weight of the evidence, not necessarily established by the greater number of witnesses testifying to a fact but by evidence that has the most convincing force; superior evidentiary weight that though, not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other. This is the burden of proof in most civil trials...." Preponderance of evidence is also referred to as balance of probability. See also Sections 131 to 134 of the Evidence Act 2011."

With the guidance of the law as stated in the case above, it is clear that the case of the Defendant is more convincing and believable than that of the Claimant. If the case of the Claimant is accepted merely because there is now in existence an offer of statutory right of occupancy *simpliciter* without further proof of steps taken, then the other gentlemen who attempted the facilitation of the title document may as well return for their balance too.

Thus, the Claimant has failed to convince this Court that he is entitled to the reliefs sought. And I so hold.

The Counter-Claim of the Defendant.

The Defendant in this suit has a Counter-Claim and it is the law that a counter-claim is a different action in itself and the position of the law is that whoever desires any Court to give judgment as to any legal right or liability depends on the existence of facts which he asserts shall prove that those facts exist. See Section 131 of the Evidence Act. Thus, the burden of proving the existence or not-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. See also *Central Bank of Nigeria v Aribu* (2018) ALL FWLR (PT 925) at 136.

The case of the Defendant/Counter-Claimant, resting on its pleadings and evidence in the substantive case is that The facts established by the Claimant/Defendant to Counter-Claim has activated the refund clause in the contract and thus ought to refund the N6,000,000 (Six Million Naira) being part-payment collected from Mallam Wada Abdullahi Maida by the Plaintiff for the facilitation of regularisation of the title over the said property.

In addition, the validity of the contract and its terms is not in question by both parties. Thus, having been admitted by both parties, indicates that a valid contract is effectively in place and

these facts is no longer in issue. As stated in *AJIBULU v. AJAYI* (2013) LPELR-21860(SC) The Supreme Court Per CLARA BATA OGUNBIYI, JSC (Pp 19 - 20 Paras G - B) stated;

"The law is long established and affirmed by this Court in plethora of authorities that an admitted fact is no longer in issue - see the case of *Olufosoye & Ors Vs. Olorunfemi* (1989) 1 NWLR (pt. 95) 26. The same principle was also applied in the case of *Bunge & Anor Vs. Gov. Rivers State & Ors* (2006) 12 NWLR (Pt. 995) 573 at 600 wherein this Court held thus: "When a fact is pleaded by the plaintiff and admitted by the defendant, evidence on the admitted fact is irrelevant and unnecessary. There is no dispute on a fact, which is admitted."

Now, the implication of the existence of a valid contract is that where one party has acted contrary to the terms of the contract, that party is said to be in breach of the contract. See the case of *GAMBAGA v. RABIU & ORS* (2014) LPELR – 41079 (CA) wherein the court of appeal held thus:

"A breach of contract means that the party in breach has acted contrary to the terms of the contract as in the instant case either by non-performance or by performing not in accordance with its terms."

In the instant case, the Defendant/Counter-Claimant before this court has stated that the Claimant/Defendant to Counter-Claim did practically nothing whatsoever towards the fulfillment of its

obligation under the facilitation contract. Thus, it is the Claimant/Defendant to Counter-Claim who has acted contrary to the terms of the contract and there is therefore a breach of contract by the Claimant/Defendant to Counter Claim.

The said contractual clause upon which the Defendant/Counter-Claimant based its claim for refund in the contract states thus;

"It is further agreed as follow:

- 1. That in the event of the failure of the Facilitator to produce the regularization in respect of the Plot No. 2904, Cadastral zone A06, Maitama, Abuja and in the name of the First Party, the Facilitator shall refund to the first party the sum of N6,000,000 (Six Million Naira) which the first party initially paid to the facilitator in respect thereof."*

Thus case of the Defendant/Counter-Claimant is that the Defendant to the Counter-Claim did absolutely nothing in furtherance of the contract as such is bound to refund the money received as stated in the contract.

As this Court already held earlier, the case of the Defendant/Counter-Claimant exceed that of the Claimant/Defendant to Counter-Claim in weight when placed on the scale of justice as a such the Defendant's case is believable and I hold that the Counter Claim succeeds.

Furthermore, in an action for breach of contract, the remedies available are either specific performance or damages. **See the case of ENWELU v GIUMEX INVESTMENT LTD (2017) LPELR-42777 (CA)** wherein the Court held thus;

"It is trite that there are two remedies available for breach of contract of sale; one is an order of specific performance and the other, damages for breach of contract."

Thus, damages is a consequence of a breach of contract where specific performance cannot be ordered. The Claimant is therefore entitled to the grant of damages and as claimed by the Defendant/Counter-Claimant, damages would be the appropriate natural cause for the instant suit.

Additionally, the Counter-Claimant is also seeking the cost of this suit. The award of cost in favour of a successful party is at the discretion of the Court. Cost follow event and a successful party would be entitled to the award of cost in its favour unless there are special reasons why he should be deprived. See the case of NNPC v. CLIFCO NIG LTD, (2011) LPELR -SC 233/2003. I see no such reason why the Claimant should not be granted in this case.

The Counter-Claimant also sought for post-judgment interest at 10% from date of Judgment. The rule guiding post judgment sum is that it must be provided by law or in the rules of Court. This Court is empowered to grant post-Judgment interest by

Order 39 Rule 4 of the Rules of this Court. See also the case of OGUJEJIFOR & ANOR v. UBAKASON (NIG) LTD(2022) LPELR-56783(CA) where the Court of Appeal upheld the provision of the rules thus;

"I now come to the Cross - Appellant's claim for post - judgment interest. The starting point is the position of the law that this is a claim rooted in the Rules of the Court below and need not even be proved at all. By Order 39 Rule 4 of the High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules 2018 which it is provided as follows: "The Court at the time of making any judgment or order or at anytime afterwards, may direct the time within which the payment is to be made or other act is to be done, reckoned from the date of the judgment or order or from some other point of time, as the Court may deem fit and may order interest at a rate not less than 10% per annum to be paid upon any judgment."

Thus, the prayer for post judgment interest also succeeds.

Therefore, I find merit in the case of the Counter-Claimant, and this court enters judgment as follows;

1. The case of the Claimant is dismissed for lacking in merit.
2. An order that the Claimant/Defendant to Counter-Claim immediately refund to the Defendant/Counter-Claimant, the sum of N6,000,000.00 (Six Million Naira), being part payment collected from Mallam Wada Abdullahi Maida by

the Plaintiff for the facilitation of regularisation of the title over Plot No 2904, Cadastral Zone, A06, Maitama, Abuja.

3. The sum of N1,000,000 (One Million Naira) as general damages for the Plaintiff's breach of contract entered with Mallam Wada Abdullahi Maida for facilitation of regularisation of the title over Plot No. 2904 Cadastral Zone Maitama, Abuja.
4. Ten percent (10%) interest per annum from the date of judgment till the Claimant/Defendant to Counter-Claim fully liquidates the entire judgment debt.
5. Cost of this action in the sum of N100,000.00 (One Hundred Thousand Naira) only against the Claimant/Defendant to Counter-Claim and in favour of the Claimant/Counter Claimant.



HON. JUSTICE J. ENOBIE OBANOR

Hon. Judge

Appearance:

For the Claimant;

Chris Ohene, Esq. with M.D. Kyaagba, Esq.

For the Defendant;

A. J. Osayande, Esq. with E. E. Apeh, Esq. David I. Okore, Esq,
and O. Osemwegie-Osarodion, Esq.