

IN THE SENIOR DISTRICT OF PLATEAU STATE OF NIGERIA[SMALL CLAIM]
IN THE DISTRICT COURT OF THE JOS DISTRICT
HOLDEN AT NO: 5 LUGARD ROAD, JOS
TODAY 23th MAY, 2024
BEFORE HER WORSHIP D A. NYAM ---- SENIOR DISTRICT COURT
CLAIM NO: SDC/J/5/SC/008/2024

BETWEEN:

BRAIMOH JIMOH IBRAHIM ----- CLAIMANT

AND

ISAAC BOB SER ----- DEFENDANT

CLAIM:

#800,000.00[eight hundred thousand naira only]

20% post judgment sum

#100,000.00[one hundred thousand naira only] professional fees

Total= #902, 000.00 [nine hundred and two thousand naira only]

JUDGMENT

By Complaint FORM SCA2 & Summons SCA3, the Claimant claims against the Defendant the following;

Debt of #800,000.00 [eight hundred thousand naira only]

20% post judgment debt

#100,000.00[one hundred thousand naira only] being professional fees.

Upon being served with the originating processes the Defendant filed FORM SCA5 denying liability and the matter proceeding into hearing.

PW1 was the Claimant Braimoh Jimoh Ibrahim and he testified as follows; That on the 14th Dec,2023, he advertised a property on-line for #20,000,000.00 [twenty million naira only] wherein the Defendant indicated interest in buying the said property. That on the 15th Dec, 2023, he took the Defendant and one Solomon, the Defendant's Engineer to inspect the property at Rantya.

That after the inspection, the Defendant left and said negotiation should continue with the Engineer. That negotiations was between him, the vendor and the engineer. That the engineer offered #15,000.00 which was rejected by the vendor. That the engineer requested for the vendor's phone number and the claimant reminded him of his agency fee of 5% and he promised to discuss it with the Defendant.

JAMES J. CHOLLOM
REGISTRAR
SDCS LUGARD
ROAD JOS



The Claimant further testified that he called and reminded the Defendant of the Agency fees and the inspection fees but that the Defendant said he was not going to pay any agency fees that he rather forfeit buying the property than pay any agency fee.

That the Defendant sent the sum of #10,000.00[ten thousand naira only] to the Claimant instead of the #3,000.00 he earlier informed him was the inspection fees

That the vendor called making inquiries about the Defendant but he informed him that the Defendant was no more interested in buying the property because of the agency fees.

That on the 29th Dec, 2023, he called the vendor about a prospective buyer but he was informed that the Defendant had already bought the property for #16,000.00 [sixteen million naira only]

That on the 30th Dec,2023 he called the Defendant to remind him of the Agency fees but the Defendant said he was not going to discuss that with him. That he subsequently sent the Defendant messages through WhatsApp and SMS reminding him of the agency fees which is #800,000.00 [eight hundred thousand naira only] which is 5% Of #16,000.000.00 but that the Defendant did not replied the messages.

That a letter of demand was served on Defendant and he paid the sum of #100,000.00 as professional fees.

The following documents were identified by the witness and admitted in evidence and marked as follows;

- on-line advertisement for the property as EXH BM1/SDC/J/5/SC/008/2024,
 - transaction receipt from Access Bank dated 16th Dec,2023 as EXH BM2/SDC/J/5/SC/008/2024,
 - letter of demand dated 3rd Jan,2024 as EXH BM3[a]/SDC/J/5/SC/008/2024,
 - request for payment of agency fees with phone number 08037036898 as EXH BM3[b]/SDC/J/5/SC/008/2024,
 - letter of demand dated 24th Jan,2024 addressed to MR Isaac Ser by the Law Firm of Luke I. Muonanu as EXHBM4/SDC/J/5/SC/008/2024,
 - reply to the letter of demand dated 31st Jan, 2024 as EXH BM5/SDC/J/5/SC/008/2024,
 - receipt for the payment of professional fee dated 26th Feb,2024 issued to Braimoh Jimoh by the Law Firm of Luke I. Muonanu as EXH BM6/SDC/J/5/SC/008/2024,
 - Certificate of compliance as EXHBM7/SDC/J/5/SC/008/2024,
- PW1 prayed the court assist him recover his debt from the Defendant.



While being cross-examined PW1 testified as follows;

- That he is a registered property agent but he does not have his certificate in court.

- That he took the Defendant and the vendor to inspect the property the first day he met him and he informed the Defendant about the agency fees while negotiation was ongoing while still at the property and not through the phone. That he was not engaged by the vendor as an agent.

- That the face-book page where the property was advertised belongs to his wife Helen Braimoh.

- That the vendor has the right to sell his property to whoever he chooses with out the consent of the Claimant.

- That the Defendant informed him that he was not going to pay any agency fees before he bought the property. That the agency fee is usually 5% and that there is no agency contract between him and the Defendant.

- That he advertised the property, took the Defendant to the property, followed up and helped in the negotiation.

- That service charge and agency fee means the same thing. And he does not know if agency fee is paid before the property is bought.

During re-examination PW1 testified that his registration name is Bliss Field Braimoh Services.

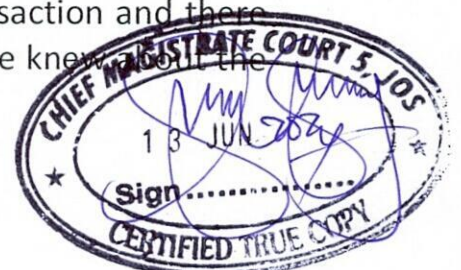
DW1 was the Defendant himself Isaac Bob Ser and he testified as follows; That a property was advertised on-line wherein he indicated interest and called the number on the page, that a female answered and referred him to the Defendant wherein him, the Claimant and the vendor proceeded to inspect the property situate at Rantya the next day.

That while negotiation was ongoing between him and the vendor, the Claimant approached him with the issue of agency fees. That he told the Claimant that he is under the impression that the claimant is the agent of the vendor but the Claimant instead said he is his agent. That he informed the Claimant that if agency fee is going to be a problem he rather not buy the property, because he would not pay for the property and still pay agency fees.

That he paid the Defendant #10,000.00 [ten thousand naira only] instead of the agreed #3,000.00 [three thousand naira only] as inspection fees in appreciation.

During cross-examination DW1 testified as follows;

- That he does not know the Claimant prior to the transaction and there was a transaction between him and the Claimant and he knew about the



property because of the advert and that there is a 5% service charge on #20 Million on the advert.

-That he did not respond to EXHBM3[b]/SDC/J/5/SC/008/2024 & EXHBM8/SDC/J/5/SC/008/2024 but he called.

-that he would not have known about the property if not for the Claimant.

-that the Claimant was around during the negotiation, and the negotiation was done by his Estate Valuer and they stopped at #15,000,000.00 [fifteen million naira only] the first day.

-witness confirmed that his phone number is on EXH3[b]/SDC/J/5/SC/008/2024 & EXHBM4/SDC/J/5/SC/008/2024.

That there is a contractual agreement between him and the Claimant and EXHBM1/SDC/J/5/SC/008/2024 form part of the contractual agreement for inspection fee.

-that he told the Claimant he would forgo the property because of the agency fee and he did not pay the agency fee after buying the property.

-that the Claimant is not his agent.

-And that he was not aware that the agent of the vendor is one olivia.

DW2 is Solomon David Nedubu who testified as follows;

That him, the Defendant, the Claimant and another gentleman went and inspected the property at Rantya and that during negotiation, the issue of agency fees came up and the Defendant said he was not going to pay the Claimant any agency fee because he did not commissioned him to search for a property for him, there was no contract/agreement between them to that effect. That the Claimant is supposed to be the agent of the vendor. The Defendant informed the Claimant that if he is to pay the agency fee he rather not purchase the property.

While being cross-examined DW2 testified thus;

That the Defendant saw the advert for the property on line, the Claimant took them to the property and the Claimant was not part of the negotiation. That the Defendant does not have an agent and he does not know the vendor's agent.

That the Claimant called him as regards the agency fee but he does not know if the Defendant paid the Claimant any agency fee.

At the closed of the Defense. Both parties filed and adopted their respective Final Written Addresses.

The Defendant Final Written Address is dated and filed on the 2nd May 2024. The Defendant formulated 2 issues for determination wit;



[1] “whether a valid and enforceable contract for the payment of Agency fee was entered into between the Claimant and the Defendant”

[2] “whether agency relationship existed between the Claimant and the Defendant”

Issue 1 [One]

The Defendant submitted the there is no valid contract between the Claimant and the Defendant for agency fee and cited JOHN DAVIDS CONTRUCTION CO LTD V RIACUS CO LTD [2019] 16 NWLR [pt. 1697] pp 178 para G-H & OLOJA V GOV, BENUE STATE [2022] 3 NWLR [pt.1816]pg 25 para F-H to argue that for there to be a valid contract there must co-exist a precise offer, an unqualified acceptance and a legal consideration with the intent to create a legal relation. The hall mark of a valid contract is consensus ad idem, the meeting of the minds by the parties concerned.

The Defendant also argued that the Defendant saw the advert for the sale of the property on-line and made a move which is an invitation to treat to make an offer and which the Defendant did by offering to purchase the property and reject that of the agency fee which is not a condition precedent for the purchase of the property and cited OLOJA V GOV, BENUE STATE[supra] to buttress his point.

Issue 2[two]

The Defendant argued that there is no agency relationship between the Claimant and the Defendant because the Defendant did not consented that the Claimant should be his agent and cited EYIBOLI V MUJADDADI [2022] 7 NWLR [pt. 1810]pg 455 para G.

The Defendant also submitted that the Claimant has failed to prove his assertion that he is a registered agent because his licence was not tendered in evidence and cited AKUBUIRO V MOBIL OIL [NIG] PLC [2012] 14 NWLR [pt. 1319] pg 70-71 para H-A CA to submit that he who asserts must prove. And urge the court to dismiss the Claimant case for lacking in merit.

The Claimant Final Written Address is dated and filed on the 6th May,2024. the Claimant formulated 1 issue for determination wit;

“Whether the Claimant has proved his case to warrant recovery of its debt from the Defendant”



The Claimant argued that the Defendant is obligated to pay to the Claimant 5% of the total purchase price of #16 million which is #800,000.00 for the services rendered by the agent /broker who is the Claimant because he introduced the buyer to the vendor.

That the Claimant is a broker and a broker is a person who acts as an intermediary between buyers and sellers in exchange for a commission. That in the instant case, there is an agency relationship between the Claimant and the Defendant because the Claimant acted on behalf of the Defendant who after seeing the advert, agreed to the terms in EXH BM1/SDC/J/5/008/2024 and cited G.T.B V OGBOJI [2019] 13 NWLR [pt,1688] 67 pp 72 at 84 para F-G [CA]

Claimant submitted that intention of parties are gathered from the term of contract and that parties are bound by the terms of their contract and cited ACC TRANSPORT CO LTD V OMOTOYE [2019] 14 NWLR [pt. 1692] 197 pp 201 at 213-214 paras E-B SC& DHL INT'L LTD NIG V EZE-UZOAMAKA [2020] 16 NWLR [pt.1751] 445 pp 453 at 486 para D-E, 489-490 para E-B [CA].

Claimant further argued that refusal by the Defendant to abide by the term of the contract without reason breaches it and automatically becomes a debt recovery which must be paid. And urge the court to grant the reliefs sought.

REPLY ON POINT OF LAW

The Defendant filed a reply on points of law dated and filed on the 9th May,2024. wherein he cited AZOR V DAEWO [NIG] LTD [pt. 1680] pp 222 paras C-D to argue that there is no legally binding contract between the Claimant and the Defendant and debt is a sum due to contract.

I have keenly perused the case of the Claimant and meticulously studied the materials placed before me and for ease of reference I have adopted issue 1 formulated by the Defendant for consideration with a modifier wit;

“whether a valid contract and enforceable contract for the payment of Agency fees was entered into between the Claimant and the Defendant to warrant the court to enter judgment in favor of the Claimant”

SECTION 131 EVIDENCE ACT 2011 provides thus;



“whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts shall prove those facts exist”

I commend **AKUBUIRO V MOBIL OIL [NIG] PLC [2012] 14 NWLR [pt.1319] pp 70-71 paras H-A CA**. Where the court held thus;

“ he who substantially asserts the affirmative of an issue has the burden of proving that issue or fact”

What is a contract? A contract was defined by the Court of Appeal in **SOCIETE GENERALE BANK [NIG] LTD V SAFA STEEL & CHEMICAL MANUFACTURING LTD [1998] 5 NWLR [pt. 548] 168 CA** as;

“a legally binding agreement between two or more persons by which rights are acquired by one party in return for acts or forbearance on the part of the other”

Who is an Agent? An agent has been described as a person who has been legally empowered to act on behalf of another person or entity. An agent may be employed represent a client in negotiation and other dealings with third party.

An agency relationship is said to exist when one person or party [the principle] engaged another [the agent] to act for him.

It is the case of the Claimant that he advertised a property for sale on-line wherein the Defendant indicated interest in the property and the Claimant, the Defendant, the vendor and one engineer proceeded to the site in Rantya, Jos, to inspect the said property. That the Defendant indicated interest in the said property and that while negotiation was ongoing between the Vendor, the Defendant and his engineer. The Claimant reminded the Defendant of the agency fee wherein the Defendant said he was not going pay any agency fees. This peace of evidence was corroborated by both the DW1 and DW2. The law is trite that facts admitted needs no further prove. I commend **OWENA V OKOROGBO [2018] LPELR-45221**.

Now there are five indices to a valid contract, offer, acceptance, consideration, intention to create legal obligation and capacity to contract. All five must co-exist to create a valid contract. A contract can not be formed if any of the ingredient is absent. I commend **AMANA SUITS HOTELS LTD V PDP [2007] 6 NWLR [pt. 1031] 453 CA**.

In **OLOJA V GOV, BENUE STATE [2022]3 NWLR [pt.1816] pp 25 paras F-H**. The court held thus;



“to constitute a binding contract, there must be an agreement in which the parties are ad idem on essential terms and condition thereof. The promise of each party must be supported by consideration... In other words, for an enforceable contract to materialized between parties, there must co-exist a precise offer, an unqualified acceptance and a legal consideration with the intent to create a legal relationship. The hallmark of a valid contract is consensus ad idem, the meeting of minds by the parties concerned”

An agreement or contract is a bilateral affair, which needs the ad idem of the parties. Therefore, where that parties are not ad idem, the court will find as a matter of law that an agreement or contract was not duly made between the parties. I commend **ODUTOLA V PAPERSACK [NIG] LTD [2006] 18 NWLR [pt. 1012] 470 SC.**

For there to be a valid agency contract, the parties must be in consensus ad idem, meeting of the minds by the parties to the contract. Granted the Claimant’s wife advertised the property on-line for sale and she referred the Defendant to her husband the Claimant who took the Defendant to inspect the property. But was there an agency agreement/contract between the Claimant and the Defendant?

I have carefully perused the the evidence of all witnesses in this suit, I can not seem to find where any of them mentioned an oral, written or implied contract between the Claimant and the Defendant.

An essential element of a valid contract is missing, which is that parties must be in consensus ad idem, there must be a meeting of the minds of parties to the contract. The claimant himself attested to the fact that the Defendant categorically told him that he was not going to pay him any agency fee because he did not engaged him as his agent. This piece of evidence was neither deny nor controverted by the Claimant. It is settled law that when evidence called by a witness is unchallenged, the court is at liberty to accept such evidence in proof of the issue in contest. I commend **OGUNYADE V OSHUNKEYE & ANOR (SC) 363/2002.** And I so hold.

Consensus ad idem, the meeting of the minds is conspicuously missing in the Claimant’s case. An agency contract cannot be imposed and that is exactly what the Claimant is doing in this suit.

In an agency relationship there must be a principal and an agent, and the principal engages the agent to act for him. There is nothing before the



court to show that the Defendant engaged the Claimant to act for him. Infact, the Claimant while been cross-examined said;

“there is no agency contract between me and the Defendant”

It is trite law that facts admitted needs no further prove.

As started earlier in this judgment, he who asserts must prove and the burden is on the Claimant to prove the existence of a agency relationship between him and the Defendant and From the preponderance of evidence before this Hon. court the Claimant has woefully failed to prove the existence of such a relationship either expressly or impliedly.

The Claimant having failed to established the existence of valid agency contract between him and the Defendant, is he entitled to the #800,000.00[eight hundred thousand naira only] he is claiming as agency fee?

I refer the court to the case of **UZOR V DAEWO NIG LTD[supra]** where it was held thus;

“a debt is a sum of money due by contract”

The question earlier asked is answered in the negative reason being that a debt is recoverable only due by a valid contract. And I so hold.

In the whole, the Claimant having failed to discharged the onus placed on him by the Evidence Act, his claims failed like a pack of cards for lacking in merit.

This suit is accordingly struck out for lacking in merit.

Parties should bear their cost.

That is the judgment of the court.

RIGHT OF APPEAL.

Signed. 

Her Worship D.A Nyam.

Senior District Judge.

23rd May,2024

APPEARANCES: N.I Dalong for the Claimant who is in court.

P.L Panwal holding the brief of F.M Pukuma for the Defendant who is not in court.





**CERTIFIED TRUE COPY
REGISTRAR**

