IN THE COURT OF APPEAL
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA

ON TUESDAY THE 21ST DAY OF MAY, 2024

BEFORE THEIR LORDSHIPS:

HAMMA AKAWU BARKA	-	JUSTICE, COURT OF APPEAL
ABBA BELLO MOHAMMED	-	JUSTICE, COURT OF APPEAL
OKON EFRETI ABANG	-	JUSTICE, COURT OF APPEAL

APPEAL NO: CA/ABJ/CV/246/2022

BETWEEN:

ASABE WAZIRI ---------- **APPELLANT**

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MBAH CHIAMAKA BLESSING
HIGHER EXECUTIVE OFFICER
DATE 24-5-2024

AND

ABEH SIGNATURE LIMITED ------- **RESPONDENT**

JUDGMENT
DELIVERED BY HAMMA AKAWU BARKA, JCA

This is an appeal against the judgment of the High Court of the Federal Capital Territory sitting at Apo, Abuja in suit with number: ***FCT/HC/CV/2435/2021*** between ***Abeh Signature Ltd. Vs. Asabe Waziri*** which judgment was delivered on 17/2/2022, wherein the court held: -

> *"That in view of the way and manner or mode of payment employed by the defendant in the purchase of the two flats at Abeh Court, belonging*

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to the claimant, same has rendered the contract for the purchase of the properties void for violating money laundering laws. That the claimant was right in terminating the contract it had with the defendant, for the purchase of two flats at Abeh court and offering a refund of the money paid so far, for being void due to the contravention of the money laundering (prohibition) Act. That in the view of the termination of the contract for the purchase of the two flats at Abeh court by the claimant, the defendant can no longer claim or exercise ownership over the said two flats.

Consequently, this court ordered the claimant to immediately refund the entire monies paid to it by the defendant (including legal and agency fees) and further orders the defendant to immediately hand over possession of the two flats, being flats 3C and 3B at Abeh court to the claimant."

It should be recalled that Appellant herein as claimant before the lower court, (Asabe Waziri), on 23/9/2021 instituted the action leading to this appeal vide an originating summons seeking for the determination of the following questions: -

i. Whether having regards to sections 1, 14 and 15 of the **Money Laundering (prohibition) Act** and other relevant laws, the various payments made vide cash and sundry bank transfers made by the defendant in favour of the plaintiff in respect of the contract for the purchase of two flats at Abeh court is not legal and contrary to money laundering laws.

ii. Whether in view of the way and manner or mode of payments employed by the defendant in the purchase of the two flats at Abeh court belonging to the plaintiff, does not render the contract for the purchase of the properties void for violating money laundering laws.

iii. Whether the plaintiff was right in repudiating and, or terminating the contract it had with the defendant for the purchase of the two flats at Abeh court for being void due to the contravention of the Money Laundering (Prohibition) Act.

iv. Whether in the face of repudiation and/or termination of the contract for the purchase

of the two flats at Abey court belonging to the plaintiff, the defendant can still claim or exercise ownership right over the said two flats.

Should the questions be resolved in favour of the claimant, the following reliefs were prayed for: -

i. A DECLARATION that having regards to section 1, 14 and 15 of the Money Laundering (Prohibition) Act and other relevant laws, the various payments made vide cash and sundry bank transfers made by the defendant in favour of the plaintiff, in respect of the contract for the purchase of two flats at Abeh court is illegal and contrary to money laundering laws.

ii. A DECLARATION that in view of the way and manner or mode of payments employed by the defendant in the purchase of the two flats at Abeh court belonging to the plaintiff, seen has rendered the purchase of the property void for violating money laundering laws.

iii. A DECLARATION that the plaintiff was right in repudiating and/or terminating the contract it had with the defendant for the purchase of the two

flats at Abeh court and offering a refund of the money paid so far for being void due to the contravention of the the Money Laundering (Prohibition) Act.

iv. A DECLARATION that in the face of the repudiation and/or termination of the contract for the purchase of the two flats at Abeh court belonging to the plaintiff, the defendant can no longer claim or exercise ownership right over the said two flats.

v. An order directing the defendant to immediately hand over possession of the two flats at Abeh court to the plaintiff.

vi. An order of perpetual injunction restraining the defendant, her agents, privies, servants and assigns, or any person whosoever claiming through her from parading herself as the owner of the two flats at Abeh court or claiming any right in relation thereto.

In brief, the case of the claimant as can be gleaned from the affidavit filed in support of the originating summons filed before the lower court showed that, the claimant herein is a real estate firm and the owner of the property, being Abeh Court, situated at No. 1 Mekong close, Maitama, Abuja. That sometimes in February, 2021, the defendant approached the claimant,

introduced and presented herself as a business woman. Thereafter, defendant indicated her desire to purchase two of the apartments on the aforementioned property, and the parties negotiated and settled for the sum of one hundred and thirty million naira each for the two apartments, the parties then agreed that the purchase price should be paid in instalments and upon the completion of the payments, a deed of assignment and other relevant documents be executed between the parties and documents over the two apartments will be given to the defendant.

Claimant continued to state that the defendant made several payments to the claimant vide cash payments, bank transfers worth one hundred thousand dollars (100,000) and through bureau de change.

That the defendant made a cash payment of the sum of forty thousand dollars (40,000) to the claimant in one swoop, and has paid a total of one hundred and fifty million naira to the claimant.

That contrary to the impression given by the defendant that she was a business woman, the claimant later discovered that she is a staff of the Nigerian National Petroleum Corporation (NNPC).

That upon the discovery, the claimant consulted with her compliance officer and her lawyer who analysed the entire transaction, while considering the regulatory laws alongside the

mode of payment by the defendant and that the claimant was informed that same violated sections 1, 14 and 15 of the Money Laundering (Prohibition) Act and other related laws.

That in order to comply with SCUML requirement of rendition of statutory report, and to get further information, the claimant instructed her solicitor to write to the defendant to request to be furnished with certain information, and a copy of the letter was attached thereto as exhibit Abeh 1.

That the claimant further instructed her solicitor to write to the Defendant's solicitors, drawing their attention to the perceived infractions of the relevant laws and call for the parties to halt the transaction pending the investigation of the transaction by the Economic and Financial Crimes Commission (EFCC) and a copy of the letter was attached as exhibit Abeh 2.

That rather than supplying the needed information and clear any reasonable doubt revolving around the transaction, the Defendant's solicitor resorted to blackmail in the response dated 6/9/2021, and copy of the Defendant's solicitor's letter was attached as exhibit Abeh 3.

That as a law-abiding corporate entity, the claimant instructed her solicitor to petition the Economic and Financial Crimes Commission (EFCC), to investigate the source of the defendants' funds. The said petition was attached as exhibit Abeh 4.

That as a fact, the way and manner the defendant has made the various payments towards the purchase of the two apartments amount to money laundering and a violation of the **Money Laundering (Prohibition) Act**, and the transaction and/or contract for the sale of the apartment void by reason of illegality inherent in the process.

That upon realising the invalidity and illegality of the contract, the Claimant communicated the termination/repudiation of same to the defendant and offered to refund the entire sum paid by the defendant for the two apartments to her. Claimant further states that despite terminating the contract and offering to refund the funds paid by the defendant, she (appellant) has refused to conform and has resorted to blackmail. Claimant states further that the contract has not been executed or consummated since the defendant was yet to pay the purchase price in full, and claimant is within her right to terminate the contract in view of the supervening circumstances. That upon the community reading of **section 1, 14** and **15 the Money Laundering (Prohibition) Act**, it is clear beyond peradventure that the said contract is void ab initio.

Issues having been joined, parties filed and adopted their respective written addresses, leading to the vexed judgment delivered on 17/2/2022.

Aggrieved with the decision of the lower court, Appellant filed two notices of appeal, the original notice of appeal being that filed on the 11th of February, 2022. The extant notice of appeal is that filed on the 17th day of May, 2022 predicated on ten grounds of appeal. The appeal having been entered to this court on the 11th of March, 2022, Appellant filed the appellants brief on the 1st of July, 2022 deemed properly filed on the 9th of May, 2023. Appellant on receipt of the respondent's brief filed on the 13th of October, 2023, filed a reply brief on the 26th of September, 2023. On the scheduled hearing date being the 21st day of February, 2024, parties identified the processes filed, adopted the same and urged the court to grant their respective prayers.

In the brief settled by Henry K. Eni-Otu of counsel, for the Appellant, particularly at pages 7 thereof, the following issues were proposed for the determination of this appeal, thusly:

i. Whether from the surrounding circumstances of this case the trial court rightly granted the respondent' the declaratory reliefs without proving her entitlement to same.
ii. Whether the trial court by affidavit and without recourse to oral or documentary evidence sufficiently determine the allegation of crime made by the claimant/respondent against the appellant.
iii. Whether the trial court, can considering the inconsistencies of facts in the affidavit of

parties and the clear documentary evidence adduced by the appellant which in every way point to adverse position in the case validly determine the case via originating summons in favour of the respondent.

The Respondent on the other hand, and in the brief settled by Tunde Falola Esq, similar three issues were distilled for resolution thusly: -

i. Whether from the surrounding circumstances of this case the trial court did not rightly grant the respondent's declaratory reliefs sought before him, the respondent having proved her entitlement to same.
ii. Whether the trial court was not right to have determined the case in favour of the respondent after considering affidavit evidence placed before it.
iii. Whether having regards to the nature of the reliefs sought by the respondent, the trial court was not right to have determined the matter by originating summons.

A close examination of the issues proposed by the parties do not appear to be in any way dissimilar, but for the language employed by the parties, seeking to gain an advantage. In the determination of the appeal therefore, it is my intention to adopt those issues formulated by the appellant, which in any case are not different from those put forward by the learned Respondents counsel in the determination of the appeal.

Issue One

Whether from the surrounding circumstances of this case the trial court rightly granted the respondent' the declaratory reliefs without proving her entitlement to same.

In urging the court to resolve this issue in its favour, Appellant argued that a party seeking declaratory reliefs must establish his entitlements to the reliefs sought on the strength of his own case, and not on the weakness of the other party. Counsel on this principle, cited the cases of Mohammed vs. Wamakko (2018) 7NWLR (pt. 16190 573 and Maja vs. Samouris (2002) 7NWLR (pt. 765) 78.

Learned counsel states that Respondents as claimants sought declaratory reliefs and other ancillary reliefs before the court of trial, with the Respondent merely adducing affidavit evidence at the trial without any documents to back it up. That Respondents case as claimant was predicated on a commercial transaction where monies were paid to the Respondent by the Appellant in instalments, with the Respondent alleging in the supporting affidavit that the sum of S40, 000 dollars (forty Thousand Dollars) was paid in cash by the Appellant in flagrant violation of sections 1, 14 and 15 of the Money laundering Act which prescribes a maximum sum of S10, 000 dollars in cash transactions within Nigeria. Responding to the issue, Appellant

in the counter affidavit deposed to the fact that she only made payment of S5, 000 dollars (five thousand dollars) only, which is permissible in law. It was submitted that the only exhibits attached to the affidavit in support of the originating summons are letters and correspondences exchanged between the parties and a petition written to EFCC, and at no point was the allegation with regards to the S40, 000.00 dollars mentioned therein. That the allegation arose from the deposition of the Respondent which Appellant denied. That in the same vein the allegation of false identity of the Appellant relied upon by the Respondent in vitiating the concluded transaction was unsubstantiated, while exhibit Abeh 3, had an attachment with the valid identification of the Appellant. He submits that Appellant not only controverted the evidence of the Respondent through credible evidence, but supplied information, through email exchanges and details of accounts where payments were made for the properties, thus contending that Respondent failed to adduce any evidence of note to warrant the trial court entering judgment on their behalf.

In further argument, it was submitted that the allegations against the defendant/Appellant on the face of the originating summons, carried allegations bordering on imputation of crime which requires proof beyond reasonable doubt, but that notwithstanding, the lower court granted the declaratory reliefs in-spite of the paucity of evidence on the issue. He leveraged on

the case of **Wema Bank Plc vs. Arison Trading & Engineering Co. Ltd (2015) LPELR – 40030** to the effect that the plaintiff must plead and prove his claim for declaratory reliefs on the evidence called by him without relying on the evidence called by the Respondent, further complaining that the issue of title upon which the lower court made a holding was not before the court, rather what was being disputed rested on rescission and cancellation of the contract of sale of property between the parties. He relied on **FCDA Staff Multi-Purpose (COOP) Society & ors vs. Samchi & ors (2008) LPELR – 44380** on the need for courts to only act on what is before it. On the holding by the court below that the contract was performed in an illegal manner, learned counsel argued that same was reached without evidence, and also on the holding by the lower court that Appellant had not completed payment for flat 3b, it was argued that, that issue was not before the court and even then, the court failed to take into consideration basic facts surrounding the transaction between the parties. He therefore urged the court to resolve the issue in favour of the Appellant.

With respect to issue two, the learned Appellant's counsel argued that where the commission of crime is alleged by a party in any proceedings, that aspect of criminality must be proved beyond reasonable doubt. The case of **Chiduluo & ors vs. Attanssey**

& anor (2019) LPELR – 48243 (CA) per Abundaga Jca was relied upon. He argued that in ascertaining whether crime is in issue, it is the allegation contained in the originating process that should be considered, and that criminal cases cannot be determined by affidavit evidence. He also urged the court to resolve the issue in favour of the Appellant.

Responding to the two issues, the learned counsel for the Respondent contended that the depositions contained in the affidavit deposed in support of the originating summons is as significant as the suit itself being the strength of the plaintiff's case, and the case of **Ekeng & anor vs. Polaris Bank Ltd & ors (2020) LPELR – 51386** cited in that regard. He argued that all the necessary facts were adduced before the trial court and all documents attached relevant. He alluded to the exhibits attached to the originating summons titled exhibits Abeh 1 – 4, contending that it is the quality of evidence that matters and not quantity. The case of **Zubairu vs. The State (2015) LPELR – 4035,** was cited on the point. Learned counsel further relied on the case of **FBIR vs. Integrated data services Ltd (2009) LPELR – 8191** to argue that uncontroverted averments in an affidavit will be deemed admitted, and in that regard, the mode of payment was not denied by the Appellant, and the lower court did not act ultra vires in the consideration of the totality of the evidence in resorting to the holding that defendant failed to

produce or present any title documents. He posits that the court is enjoined to look at the contract entered in a narrow manner for its interpretation in ascertaining whether there is even a valid contract. On whether the Plaintiffs claim was criminal in nature, and that which must be proved beyond reasonable doubt, counsel argued that the case before the lower court was based on the illegality of the contract and therefore not a criminal action as alleged. He urged the court to uphold the decision of the lower court and to resolve the two issues against the Appellant.

The learned counsel for the Appellant replied to the Respondents submission in the reply brief filed, which will be referred to in the body of the judgment.

The germane facts that germinated the instant appeal are not in contest. It is clear as asserted by the Respondent, as claimant before the lower court, that being a real estate firm and owner of the property being Apeh Court situate at No.1 Mekong Close, Maitama Abuja, Appellant did approach the firm, introduced herself as a business woman and indicated her desire to purchase two of the apartments on the said Abeh Court. Thereafter parties identified and negotiated for the sum of N130 million Naira for each of the apartments, with parties agreeing for payment to be done instalment ally, and upon completion of

payment, a deed of assignment and other sundry documents shall be executed between the parties and given to Appellant. The Respondent concedes to the fact that Appellant made payments totalling N150 million naira vide cash payment and bank transfers worth 100, 000.00 dollars through the Bureau de Change, and a further 40, 000.00 dollars. He complained that contrary to the impression given by the Appellant that she was a business woman, it was later discovered that she was a staff of the NNPC, and convinced that the transaction violated sections 1, 14 and 15 of the Money Laundering (prohibition) Act and other related Acts, Respondent communicated to the Appellant the termination and repudiation of the entire contract, offering to return the entire sums paid by the appellant, which the Appellant refused to accept, culminating to the action before the lower court seeking for declaratory reliefs and sundry orders.

It is Evident therefore from the originating processes filed, that the Plaintiffs claim before the lower court are declaratory in nature, being that declaratory reliefs were sought for. It is trite law as contended that a party seeking declaratory reliefs, must establish his entitlement to such reliefs based on the strength of the case which he makes out, and is not entitled to rely on the weakness of the case of the Respondent, unless such weakness aids his case. Nweze JSC, of blessed memory made the point in

Mohammed vs. Wamakko (2018) 7 NWLR (pt. 1619) 573, having held that:

> "With respect, I entirely, endorse the submission of the learned senior counsel for the first and second respondents that, since the appellant sought for declaratory reliefs, he had an obligation to advance evidence in proof thereof. The reason is not far fetched. Courts have the discretion either to grant or to refuse declaratory reliefs. Indeed, their success, largely, depends on the strength of the plaintiff's case. It does not depend on the defendant's defence, **Maja Vs. Samouris (2002) 7 NWLR (Pt. 765) 78; CPC Vs. INEC (2012) 1 NWLR (Pt. 1280) 106, 131.** This must be so for the burden on the plaintiff in establishing declaratory reliefs is, often, quite heavy."

The supreme court further gave vent to the above legal principle in the case of **Andrew Anor Vs. INEC & Ors. (2017) LPELR – 48518 (AC) Per Kekere – Ekun JSC**, where it was held that: -

> "Equally important is the fact that the relief sought by the appellants before the tribunal are declaratory in nature, the significance of this is, that in a claim for declaratory reliefs the plaintiff must succeed on the strength of his own case and not on the weakness of the defence, if any. He would not be entitled to judgment even on admission". See also

Akande Vs. Adisa (2012) LPELR – 7807 (SC) where the supreme court held: -

> "It needs be restated that the plaintiff has to succeed on the strength of his own case and not by the weakness of the defence and the exception to that rule is that the rule changes if the plaintiff finds in the evidence of the defence, facts which strengthen his own case, that exception has not happened and the appellants case not saved".

Looking at the case at hand, the facts forming the respondent's case before the lower court were contained in the affidavit in support of the originating summons. The appellant as defendant filed a counter affidavit and therein sought to clarify all the material allegations made by the respondent in his affidavit in support to the originating summons. In particular with respect to the allegation that cash payments of forty thousand dollars was part of the cost of the building, thus offending the provisions of the Money Laundering (Prohibition) Act, Respondent vehemently denied the averment positing further that the only money she paid in dollars was five thousand dollars in cash made to the alter ego of the respondent on request. Surprisingly, on all the exhibits attached to the affidavit in support of the originating summons, none mentioned the fact of the payment of the sum of forty thousand dollars in cash in satisfaction of the sale agreement. In the same vein, as argued, the allegation of the identity of the appellant which the respondent relied upon as

a ground to vitiate the concluded transaction was not substantiated and appellant having joined issues on those facts, it behoves the respondents to lay facts of proof in support of those allegations.

Appellants counsel pointed out that through out exhibits Abeh 1 – 4, being the exhibits attached to the Originating Summons, no mention was made of the payment of the sum of 40, 000 dollars allegedly paid in cash. That the only time the issue was muted was in the affidavit evidence deposed by the alter ego of the Respondent, which allegation was roundly denied, further stating that the only sums paid in cash was the sum of 5, 000 paid to the said Alter ego, which still remains uncontroverted. I have carefully examined the processes mentioned above, the affidavit filed in support of the originating process as well as the exhibits attached thereto, and I tend to agree with the submission made by the learned Appellants counsel that indeed, the issue of forty thousand dollars is not borne on the processes mentioned, but only in the deposition filed by the alter ego of the Respondent as a witness. Similarly, the allegation bordering on false identification or identity which the Respondent relied on for seeking to vitiate the transaction between the parties is not only porous but unsubstantiated. The Respondent apart from the mere allegation made, failed to sustain it by producing tangible evidence to back up the assertion. On the contrary, Appellant not

only controverted the allegation but went further to supply evidence through the email exchanges, details of accounts and evidence of payment to debunk the allegation pertaining to her identity. From all that was placed before the trial court, and fully guided by eminent decided authorities, see **Wema Bank Plc vs. Arisaon Trading Engineering Co. Ltd (2015) LPELR – 40030 (CA)** per Tsammani JCA, now JSC, the lower court cannot justify his decision, having jettisoned all known established legal principles in arriving at the perverted decision. Unfortunately, learned counsel for the respondent misapplied the decision of the apex court on **Sodipo vs. Lemminkeinen (1986) 1NWLR (pt. 15) 220** to state that the affidavit in support of the originating summons which specifically pleaded illegality to a contract, is a magic principle which takes away the burden of proof on the Respondent. The concept of evidential law still remains that he who asserts bears the evidential burden, and this is more so, where declaratory reliefs are being asked for.

Further still is the holding of the lower court in seeking to fortify his decision, by offering the opinion that the inability of the defendant now appellant to produce title documents in respect of the flats showed that the defendant cannot prove legal ownership of the flats, and that all the defendant had was equitable interest in the flats which cannot override the legal

interest reposed in the Respondent. I agree with the learned counsel for the Appellant, that the trial court's reasoning in the circumstance veered off track. This is because, all parties are on common ground that the Respondent's case before the lower court bordered on the illegality of the mode of payment for the flats under consideration, with regards to the payment of 40, 000 dollars allegedly paid in cash by Appellant thus running foul of the provisions of the Money laundering Act, which in itself is a criminal offence. The learned counsel for the Appellant is justified in his argument that the issue of title of the flats was never made an issue, and in any case, a court of trial is expected to act only on what was presented before it for determination by the parties, and must avoid the temptation of pronouncing outside the case brought before it. The case of **Abubakar vs. Yar'adua (2009) FWLR (pt. 457) 1** is apposite on the legal principle. Unfortunately, that temptation was not avoided by the trial court, which occasioned a miscarriage of justice. It is undisputable and clear from the record, that the issue of contract of sale of the two apartments was what was agreed upon by the parties with the mode of payment and conditions thereto attached, and the title documents alluded to the bye product of the agreement for the sale of the two flats, as can be seen from the agreement entered. It was wrong for the court to depart therefrom, and to make a different case as to the ownership of

the two flats. The lower court in my view failed to fully appreciate the case of the Respondent, and accordingly rendered a misconceived decision which cannot be supported.

Further still, can the imputation of criminality be said to be correct as to render the proof thereof beyond reasonable doubt? I have no hesitation answering the question posed in the affirmative. I am unable to see with the learned counsel for the respondent that having pleaded that the contract was illegal and ought to be vitiated on the ground that provisions of the Money Laundering Act, which amounts to a criminal offence, was breached, not qualifying as an assertion bordering on the criminality of the acts of the appellant, transacting against the tenets of the law, and in particular the Money Laundering Act, which if proved that Appellant breached the provisions of the money laundering prohibition Act, would have been met with punitive sanctions. This court rightly in my view had occasion to hold that an allegation of crime can be made in a civil action, and where made, the court must make a finding on it, after it has been subjected to proof which must be beyond reasonable doubt. See, **Chiduluo & ors vs. Attanssey & anor (2019) LPELR – 48243 (CA)** per Abundaga Jca. I still fail to see any scintilla of evidence with regards to whether the provisions of the Money Laundering Act had been breached, not to talk of proving the breach beyond doubt. I wonder how the lower court

was unable to appreciate this simple legal principle. I see immense merit in these grounds of appeal and accordingly resolve issues 1 and 2 in favour of the Appellant.

Lastly, on whether this case could have been validly determined via originating summons in favour of the Respondent the case of the **Executive Governor of Nassarawa State & anor vs. Ukpo (2017) LPELR – 42445 (CA)**, cited by the Appellants has thrown light on the issue. Therein this court held that:

> "it is well settled that in actions where there is likely to be substantial dispute of facts, or where the relief or reliefs sought by the claimant are declaratory in nature, originating summons procedure that admits only affidavit evidence ought not be employed."

The Apex court in **Zakirai vs. Dan Azumi Mohammed & ors (2017) LPELR – 42349 (SC)**, the Apex court restated the issue thus:

> "In effect originating summons is a procedure wherein the evidence is mainly by way of documents and there is no serious dispute as to their existence in the pleadings. .....in originating summons, facts do not have pride of place in the proceedings. The cynosure is the applicable law and its construction by the court. The situation is different in a trial by writ of summons where facts are regarded as holding a

pride of place and the fountain head of the law in the sense that the facts lead to a legal decision on the matter".

See also, **Conoil Plc vs. Dutse (2016) LPELR – 40236 (CA), Tejuoso & ors vs. Egba Traditional Council & ors (2016) 41941 (CA).**

Learned counsel for the Respondent rightly submits that the originating summons procedure is employed where what is to be determined is the construction of documents or statutes, and where the facts are not hostile and contentious and relied on **DSS vs. Agbakoba (1999) 3NWLR (pt. 595) 314.** He further argued that from the affidavit evidence adduced in support of the originating summons, the case made out by the Respondent was that the contract entered between the parties was illegal and qualifies to be set aside. Further still counsel argued that the documents attached to the counter affidavit were inadmissible and the case of **Olly vs. Tunji & ors (2012) LPELR – 7911,** relied upon. I think the learned counsel got it wrong on the two premises. Firstly, a document attached or exhibited with an affidavit forms part of the evidence adduced by the deponent and does not need any certification, once it is credible. See the case of **Irimagha vs. Brown & ors (2018) LPELR – 44623 (CA)** amongst others. The holding of the trial court on the issue therefore clearly runs against the principles of

law. Secondly, Respondent having initiated the action praying for declaratory reliefs, must swim with the strength of the case made by him. The affidavit upon which his case was predicated upon having been adequately countered, the facts now in dispute can only be resolved by oral evidence. In any case, Respondent having alleged an illegality, specifically that Appellant was in breach of sections of the money laundering Act, has the burden of proving that allegation beyond reasonable doubt as commanded in the case of **Chiduluo & ors vs. Attanssey & anor (supra).** Having failed to do so, Respondents case ought to have crumbled.

In any case, it is a principle of law, that where both parties are at fault, the condition of the defendant is better. Meaning, if Appellant had actually breached the provisions of the Money laundering Act, a breach which the Respondents have gleefully accepted, the condition of the Respondents will be viewed in worse light than the act posed by the Appellant. See, **Fashina vs. Odedina (1957) WRNLR 45.**

Curiously, and as stated in **Min of Agric & Natural Resource's & anor vs. Gokini Ind. Ltd,** Respondent had benefitted from the contract arrangement entered between them. He has not only received sums of money in fulfilment of the contract entered, he has failed to state that he indeed refused to accept

the sums of money made in breach of the money laundering Act. It is clear therefore that what he intends to do, having benefitted more from the transaction, is to turn round to seek for the vitiation of the contract, possibly so as to further benefit therefrom.

I agree with the learned Appellants counsel, that this appeal is destined for success, and ought to be allowed. Hence having resolved all the issues in favour of the Appellant, this appeal succeeds and it is hereby allowed. The judgment of the High Court of the Federal capital Territory Abuja in suit with No. CV/2435/2021, delivered on the 17th of February, 2022 is hereby set aside, and all actions taken consequent upon the said judgment also stands vacated. Appellant is entitled to costs accessed at N500, 000. (Five Hundred Thousand Naira only)

Appeal Allowed.

HAMMA AKAWU BARKA
JUSTICE, COURT OF APPEAL

REPRESENTATION.

Joe Agi with Henry K. Eni-Oju, Sunday Adebayo Maryam El-Yakub for the Appellant.

Deborah Okonna for the Respondent.

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MBAH CHIAMAKA BLESSING
HIGHER EXECUTIVE OFFICER
DATE 24-5-2024

CA/ABJ/CV/246/2022
ABBA BELLO MOHAMMED, JCA

I had read a draft of the leading judgment delivered by my learned brother HAMMA AKAWU BARKA, JCA. My lord has exhaustively considered and resolved the issues in this appeal. I entirely agree with and adopt his reasons and conclusions in also finding this appeal meritorious.

The Respondent, who instituted the suit before the trial court, sought for declaratory reliefs. The settled law is that a party seeking declaratory reliefs has the burden of establishing his entitlement to such relief with cogent and credible evidence. He succeeds only on the strength of his case and not on the weakness of the Defendant's case or even on admission by the Defendant. He can only rely on the Defendant's case where it supports his own case. See: **A-G CROSS RIVER STATE v A-G FEDERATION & ANOR (2012) LPELR-9335(SC) at 72, paras. B – E; and AMOBI v OGIDI UNION (NIG) & ORS (2021) LPELR-57337(SC) at 25 – 26, paras. A – C.**

As succinctly shown in the leading judgment, the Respondent had not only failed to adduce cogent and credible evidence to prove his entitlement to the declaratory reliefs which he sought, he hinged his case on criminal allegation, the proof beyond reasonable doubt of which he could not establish with the controverted affidavit evidence which he supported his originating summons. Clearly, the judgment of the trial court in favour of the Respondent was not supported by any credible evidence. Hence, I also allow this appeal and abide by all the consequential orders made in the leading judgment.

ABBA BELLO MOHAMMED
JUSTICE, COURT OF APPEAL

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OKON EFRETI ABANG, JCA.

I read in advance the draft judgment of my learned brother **Hamma Akawu Barka, PJCA,** which was made available to me before now. I am in complete agreement that my lord exhaustively considered and resolved all the issues in the appeal. I agree with his reasoning and conclusions made therein. I think the appeal deserves to succeed and it is accordingly allowed by me. I abide by the consequential order as to cost.

OKON EFRETI ABANG
JUSTICE, COURT OF APPEAL

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