

IN THE SUPERIOR COURT OF JUDICATURE IN THE COMMERCIAL DIVISION
(COURT 1) OF THE HIGH COURT OF JUSTICE ACCRA, HELD ON FRIDAY THE
12TH DAY OF APRIL, 2024 BEFORE
HER LADYSHIP JUSTICE SHEILA MINTA

SUIT NO. CM/RPC/0207/2024

1. FREDERICK NSOBILA ABAYETA - PLAINTIFFS
2. RICHMOND NTI NYARKO

VRS.

SUCASA PROPERTIES GHANA LTD. - DEFENDANT

PARTIES: PLAINTIFFS REPRESENTED BY DERRICK NOI
DEFENDANT – ABSENT

COUNSEL: SETH LAWRENCE AKOTO, ESQ., FOR PLAINTIFFS –
PRESENT

COUNSEL FOR DEFENDANT – ABSENT

COUNSEL FOR PLAINTIFFS:

My Lady, I have before a motion on notice for summary judgment against the Defendant under Order 14 of C.I.47. I move in terms of the motion paper, the supporting affidavit, the supplementary affidavit and the annexures. It may interest you to know that we are

moving this application because the Defendant/Respondent, per their pleadings have demonstrably no defence in law on the available facts such as will justify their being granted leave to defend the claims of the Plaintiffs. They state among others in their statement of defence that in the course of time there was an oral agreement for them to refund the amount in six (6) months' time, besides the fact that they did not indicate the reference for the counting of the six months.

It is clear, per paragraph 12 of the Sales and Purchase Agreement (SPA) between the parties, that any notice or communication in connection with the said agreement shall be in writing and in English. It is surprising therefore for Counsel for Defendant to be heard as saying there was an oral agreement between the parties.

Also, they argued in their statement of defence that because economic circumstances things went bad. That is not a defence enough, in the sense that, both parties are all equally exposed to economic circumstances. In fact, the Defendant gained more advantage than the Plaintiffs by mitigating its risk against any economic circumstances by obtaining payments in foreign currency. *In Sam Jonah vrs. Duodu Kumi [2003/2004] 1 SCGLR, 50 at page 54*, the Supreme Court per Akuffo JSC, had the cause to pronounce on the essence of summary judgment as "the objective of Order 14 is to facilitate the early conclusion of an action, where it is clear from the pleadings that the Defendant has no cogent defence".

In fine, we will like to submit that the impression given by the Defendant to this Court that the Plaintiff knew of any agreement which they have relied on it to their detriment is incorrect. I therefore submit that the application be granted in our favour. Humbly submitted, my Lady.

FINAL JUDGMENT

1. This is an application of the Plaintiffs/Applicants filed on 20th February, 2024 praying the Court to enter Summary Judgment in favour of the Plaintiffs against the Defendant per the reliefs endorsed on the claim of the Plaintiffs. The said application and supplementary affidavit of the Plaintiffs have been duly served on Counsel for the Defendant per the record.
2. It was at the instance of the Counsel for the Defendant that the case was adjourned to today per Counsel's letter dated 25th March, 2024 to the Registry of this Court. Unfortunately, Counsel for Defendant has failed to appear before the Court today and has also not filed any affidavit to oppose the current application at the time of determination today. The Court notes however that Counsel for the Defendant has filed statement of defence which has been duly considered by this Court.
3. I have reviewed the motion, the affidavits in support and the annexures attached. I have also heard the submissions of Counsel for the Plaintiffs and further considered the case of *Sam Jonah vrs. Duodu Kumi* cited by Counsel. The Defendant has not disputed receiving the said sums of money from the Plaintiffs, and has agreed in its statement of defence filed on 6th February, 2024 to refund the said sums of money to the Plaintiffs. According to the Defendant in its pleadings, it has agreed to refund same within six months, and that the six months expires in June, 2024 and therefore this action is premature.
4. I have also seen Exhibit 'D' attached to the Plaintiffs' supplementary affidavit a letter dated 7th July, 2023 written by the Defendant to Plaintiffs which stated that "the refund process may take a period of 60 days". Clearly, considering all the processes before the Court, there is no defence in law or possibility of a real defence on facts that will warrant a full trial in this matter.

5. The Defendant has not set forth any triable issues, and it is therefore the considered opinion of the Court that final judgment be entered in favour of the Plaintiffs against the Defendant as follows:
- a. Recovery of the sum of US\$33,639.00 in favour of the 1st Plaintiff against the Defendant together with interest thereon at the prevailing commercial bank rate from 1st August, 2022 till date of Judgment.
 - b. Recovery of the sum of GHS154,000.00 against the Defendant in favour of the 1st Plaintiff and interest on the said sum at the prevailing commercial bank rate from December, 2022 till date of Judgment.
 - c. Recovery of the sum of GHS460,000.00 in favour of the 2nd Plaintiff against the Defendant together with interest thereon from December, 2022 till date of Judgment.
 - d. I award cost of Twenty-Five Thousand Ghana Cedis (GHS25,000.00) is awarded in favour of the Plaintiffs against the Defendant.

(SGD.)

SHEILA MINTA, J.

JUSTICE OF THE HIGH COURT