IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT MAITAMA COURT 4, FCT., ABUJA

BEFORE HIS LORDSHIP: HON. JUSTICE O. O. GOODLUCK

SUIT NO. FCT/HC/CV/0957/2018

B E T W E E N:

MRS. JULIET EFEMENA EDUGBO } **PLAINTIFF**

AND

1. LEKKI GARDENS ESTATE LTD.
2. THE LIFE CAMP PARADISE LTD. } **DEFENDANTS**

J U D G M E N T

The Defendants are the owners and developers of the residential Estate known as the Paradise Life Camp Estate, Abuja. Vide a letter of offer dated 12th October, 2015 the Defendants offered the Plaintiff the sale of a 4 Bedroom Semi Detached Duplex at the Paradise Life Camp Estate (hereinafter referred to as the Paradise Estate) for the sum of ₦26,000,000.00 (Twenty-Six Million Naira).

As at the 22nd January, 2016, Plaintiff had made an aggregate total deposit of ₦14,500,000.00 (Fourteen Million Five Hundred Thousand Naira) towards the purchase of the property. In acknowledgment of the

said sum. Plaintiff was allocated Block SQ6, Unit 1 of the 1st Defendant's Paradise Estate by the Defendant.

It was expected that the property will be vested in the Plaintiff upon full payment of the purchase price.

Plaintiff further made piece meal payments of the outstanding balance of the purchase price, albeit, outside the agreed layout plan period for the payment of the full purchase price. Thereafter, the Plaintiff requested for the handover of the property with the prospects of moving in by August 2018, however, she was told that the property will soon be completed.

Through an email correspondence of the 11th February, 2018, Plaintiff was notified by the Defendant in a letter dated 10th February, 2018 that SQ18, Unit 1 had been allocated to her pursuant to the sales agreement. Plaintiff stoutly rejected the Block SQ18, Unit 1 and insisted that her interest was in SQ6 Unit 1 of the Paradise Estate as conveyed to her by the Provisional Allocation letter dated 28th June, 2016.

Aggrieved by the conduct of the Defendant the Plaintiff has now instituted this action against the Defendants claiming inter alia for a declaration that she is entitled to SQ6, Unit 1 within the Paradise Camp and the restoration of her interest in SQ6 Unit 1 as well as an injunction

restraining the Defendants acting through their Directors, agents and privies from claiming through them the said property.

In reaction, the Defendants filed a Joint Defence and vehemently joined issues with the Plaintiff, contending that the Plaintiff applied for a 4 Bedroom Semi Detached Duplex Unit. The Defendants assert that the Plaintiff was only given a provisional allocation with the intention that the allocation will become permanent or will be replaced by an equivalent, Semi Detached Duplex within the Estate.

The Defendants insisted that there was no contract or agreement between them and Plaintiff that the Plaintiff will be conveyed Block SQ6, Unit 1, hence the Plaintiff was allocated House SQ18 since it was the property available at the time when Plaintiff completed full payment of the purchase price. At trial, both parties called a witness each.

Plaintiff testified in person as P.W.1. She adopted her 24 paragraph Witness Statement on Oath dated 16th October, 2018. The facts disclosed in the statement in summary are that the Plaintiff was by a letter of offer dated 12th October, 2015 offered the sale of 4 Bedroom Semi Detached Duplex, Exhibit P.W.1B[1-2] at a price of ₦26,500,000.00 (Twenty-Six Million Five Hundred Thousand Naira).

P.W.1 recounted that she paid a total deposit of ₦14,500,000.00 (Fourteen Million Five Hundred Thousand Naira) by the 22nd January,

2016. To this end, P.W.1 tendered, Exhibit P.W.1C, Defendants receipt in acknowledgment of the payment of ₦5,500,000.00 (Five Million Five Hundred Thousand Naira). Payment of the sum of ₦2,000,000.00 (Two Million Naira) evidenced by a receipt issued by the Defendant dated 30th April, 2012 admitted as Exhibit P.W.1E and Defendant's receipt dated 10th March, 2017 reflecting Plaintiff's payment of the sum of ₦5,000,000.00 (Five Million Naira) admitted as Exhibit P.W.1H. She recounted that in consideration of these payment a 4 Bedroom Semi Detached Duplex otherwise known as Block SQ6, Unit 1 was allocated to her by the Defendant at the Paradise Estate.

P.W.1 further recounted that in furtherance of the agreement she made another payment of ₦2,000,000.00 (two Million Naira) on the 3rd April, 2017 which receipt was acknowledged by the Defendant vide Exhibit P.W.1D.

P.W.1 disclosed that vide her letter of the 13th December, 2017 she requested for an extension of time till January, 2018 to conclude payment. She recalled that she paid ₦5,000,000.00 (Five Million Naira), the first in the sum of N1,000,000.00 (One Million Naira) and thereafter she paid ₦4,000,000.00 (Four Million Naira) which were respectively acknowledged by the Defendants vide Exhibit P.W.1K[1-2].

Following the complete payment of ₦26,500,000.00 (Twenty-Six Million Five Hundred Thousand Naira) the Defendant notified the Plaintiff that she has been reallocated a 4 Bedroom Detached Unit, specifically SQ18 Unit 1. P.W.1 asserts that she out rightly rejected the allocation and conveyed her rejection vide her letter of the 12th February, 2018, Exhibit P.W.1N and insisted that the 4 Bedroom Unit SQ6 Unit 1 be delivered to her by the Defendants.

Under cross examination, P.W.1 maintained that she ought to be given the SQ6 Unit 1 since that was the property specified by the Defendant that had been allocated to her.

The Defendant's Witness, Sunny Ekos Aisosa, Defendant's Legal Officer, testified as D.W.1. He adopted his 28 paragraph Witness Statement on Oath dated 10th May, 2018. His testimony is substantially the same as that of P.W.1 save to state that the offer of the 4 Bedroom Semi Detached duplex was on a Pay and Pack in plan. He recounted that by the terms of the Letter of Offer the purchase price is to be paid in 3 instalments. The first instalment in the sum of ₦8,700,000.00 (Eight Million Seven Hundred Thousand Naira) is to be pay upon acceptance of offer, second instalment of ₦5,800,000.00 (Five Million Eight Hundred Thousand Naira) is payable within 90 days from the date of first payment

whilst the third and final instalment of ₦12,000,000.00 (Twelve Million Naira) is to be paid within 12 months of initial payment.

D.W.1 contends that contrary to the terms of purchase, P.W.1 paid the first instalment in three tranches on the 14th October, 2015 and 25th November, 2015. He recalled that by a letter of provisional allocation dated June 28th 2016 Plaintiff was provisionally allotted a 4 Bedroom Semi Detached Duplex numbered as Block SQ6, Unit 1, which was admitted as Exhibit P.W.1CC. He asserts that the allocation being provisional was temporary *"...with the intention of eventually becoming permanent or being replaced by a permanent equivalent where certain conditions are met..."*

D.W.1 further disclosed that due to unanticipated astronomical increase in the price of materials, the Plaintiff and other subscribers were notified to pay the outstanding within 45 days vide a letter dated June 9th, 2017 to enable Defendant complete the project.

D.W.1 asserted that P.W.1 neither completed payment as demanded nor did she pay within the period specified in the letter of offer. Upon completion of the houses, SQ6 Unit 1 inclusive, the Defendant notified the Plaintiff in November, 2017 of the handing over procedures and payment of the outstanding sum to which the Plaintiff in response confessed she didn't have the required funds vide her

handwritten letter dated 13th December, 2017 Exhibit P.W.1J. D.W.1 noted that the completed houses inclusive of House SQ6 were allocated to subscribers who paid upon delivery, hence the Plaintiff was provisionally allocated a Unit of 4 Bedroom, Semi Detached Duplex described as Block SQ18 Unit 1.

He reiterated that the pay and pack in model subscribed to by the Plaintiff requires that a subscriber should pay the outstanding sum once the house is ready for pack in delivery. D.W.1 further maintained that by the terms of Exhibit P.W.1B[1-2] the Defendant offered a unit of 4 Bedroom Semi Detached Duplex at ₦26,500,000.00 (Twenty-Six Million Five Hundred Thousand Naira) unit inclusive of all external finishing.

In effect, he asserts that the Plaintiff was never given an allocation but was given a provisional allocation.

Under cross examination D.W.1 said the Plaintiff was consulted by the Defendant before issuing her with the 2nd provisional allocation. He insisted that the letter of offer does not have provision for allocation or reallocation of any specific unit to a client on the offer letter. D.W.1 also stated that the Plaintiff had not complied with the terms of the offer at the time the 1st provisional letter of allocation was issued. He said that Exhibit P.W.1L supersedes the offer letter. He recounted that at the time

P.W.1L was issued P.W.1 had paid ₦21,500,000.00 (Twenty-One Million, Five Hundred Thousand Naira).

Both Counsel filed and exchanged final written addresses.

Amaitem Etuk, Esq. Counsel for the 1st and 2nd Defendants in his final written address dated the 21st January, 2019 formulated two issues for determination as follows;

1. Whether the Plaintiff has a cause of action
2. Whether the Plaintiff has established her case against the Defendants to be entitled to the reliefs.

Plaintiff's Counsel, Chima Henry Ebere Esq., in his written address dated 18th January, 2019 formulated a lone issue for determination that is whether the Claimant has established her case to be entitled to all the reliefs sought.

On the 1st issue for determination canvassed by the Defendant's Counsel, to wit: whether the Plaintiff has a cause of action, Defendants' Counsel has argued that there is no agreement between the Plaintiff and the Defendant to deliver Block SQ6 Unit 1 rather the one and only contract between the parties as evidenced from Exhibit P.W.1B is for the delivery of a 4 Bedroom Semi detached Duplex by the Defendant.

Defendant's Counsel reason that the Plaintiff's claim would have been justifiable had the Defendant contracted with the Plaintiff for the delivery of a 4 Bedroom Semi detached Duplex known as SQ6 Unit 1. He went on to submit that there is no agreement between the Plaintiff and the Defendants requiring the Defendant to deliver a specific Block SQ6 Unit 1.

He went on to commend this Court to the case of **AMOPE v. GAMBARI (2013) L.P.E.L.R. 22096 (CA) page para. F,** where the Court of Appeal per Muktar JSC held that: *"cause of action entails the fact or combination of facts from wherein the right to sue accrues"*

He went on to submit that the facts and circumstances of this case has not established a cause of action to maintain this suit. Defendants' Counsel has submitted that it is only when a particular unit or a type of house has been delivered to a subscriber and the title transferred in line with the letter of offer that a subscriber can make the kind of claim the Plaintiff is making before this Honourable Court.

Learned Counsel also drew this Court's attention to the fact that the offer of Block SQ6, Unit 1 is a provisional allocation and this was clearly stated in Exhibit P.W.1CC. He then recoursed to the Black Law Dictionary (8th Edition) which defines "provisional" as temporary or conditional and commended this Court to **JAMB v. ORJI (208) 2**

N.W.L.R. (PART 1072) page 552 at page 568 para. C per Fabiyi JCA when he held thus: *"The word "provisional" means temporary. Preliminary, tentative; provided for a present service or temporary necessary, adopted tentatively"*

The Defendants' Counsel went on to submit that a provisional allocation of a Unit of 4 Bedroom Semi Detached Duplex to a subscriber and the reallocation to the same unit of 4 bedroom Semi Detached Duplex certainly cannot be the basis of the current action because as shown in this case, such an action is completely baseless and unfounded.

A. Etuk Esq. then urged this Court to consider the effect of the offer letter (Exhibit P.w.1B) and provisional letters Exhibit P.W.1C. besides he submitted that Exhibit P.W.1C clearly refers to a unit of 4 Bedroom Semi Detached Duplex whilst Exhibit P.W.1C reflects letter of "Provisional Allocation"

Chima Ebere Esq., Counsel for the Plaintiff in his reply to the Defendant's address posits that Exhibit P.W.1C, the Provisional Letter dated 28th June, 2018 constitutes an appendage to Exhibit P.W.1B, the offer letter and argues that both letters are inseparable. He submitted that whilst Exhibit P.W.1B described the kind of property to be allotted, Exhibit P.W.1CC identified the property as Block SQ6 Unit 1.

Counsel for the Defendants further referred to paragraph 3 of Exhibit P.W.1CC which provides thus:

"Kindly ensure your outstanding balance to complete for the allocation not be withdrawn"

Plaintiff's Counsel has submitted that a compound reading of Exhibit P.W.1B and P.W.1CC are to the effect that Block SQ6 Unit 1 was offered until payment is completes otherwise the allocation will be withdrawn. The Plaintiff's Counsel has further argued that the Plaintiff cause of action is founded on the fact that the Defendants' intention caused or permitted the Plaintiff to believe that once she completed payment, Block SQ6 Unit 1 would be delivered to her. He further submitted that Plaintiff acted in the belief that by the completion of full purchase price the property will be delivered to her, however, contrary to her belief, the Defendant reneged by allocating a different property to her.

I have considered the submissions of both Counsel on whether the Defendants has a reasonable cause of action I have read the letter of offer, Exhibit P.W.1B[1-2] and P.W.1CC for the umpteenth time and I am of the view and will so hold that a contract for the sale of a Unit of 4 Bedroom Semi Detached Duplex evolved with the offer on the terms contained in Exhibit P.W.1B[1-2] which terms of offer was duly accepted by

the Plaintiff when she endorsed her signature under the words "I hereby accept the above terms" I am not able to allude to the submission of the Plaintiff's Counsel in his reply on point of law that Exhibit P.W.1CC is a term of the contract entered into by parties in Exhibit P.W.1B[1-2]. I am unpersuaded that the Defendant knowingly or unknowingly led the Plaintiff to enter into the contract of sale of the property with the belief that she was buying Block SQ6, Unit 1. It must be noted that the letter of offer Exhibit P.W.1B[1-2] predates Exhibit P.W.1CC by over 8 months.

In effect, parties had commonly agreed on the sale of "a Unit 4 Bedroom Sami Detached Duplex at Paradise Life Camp.

Block SQ6, Unit 1 cannot by any stretch of imagination be said to have been the incentive for entering into the contract which had crystallized by Exhibit P.W.1B[1-2] nor can it be said that it was envisaged as the allotted unit as at the 12th October, 2015. I am therefore disinclined to endorse the submission of the Plaintiff's Counsel that the Defendants provisional letter of allocation of Block SQ6, Unit 1 is inseparable from the letter of offer.

I find the submission of Counsel for Defendant more persuasive which is to the effect that parties at the time the agreement was reached were committed to the delivery of a Unit 4 Bedroom Sami Detached Duplex. The agreement to sell had already come to fruition in October

whilst the provisional allocation of Block SQ6, Unit 1 was communicated to the Plaintiff eight months later.

A careful reading of Exhibit P.W.1B[1-2] shows that parties were clearly exhaustive on the terms and conditions for the sale of the property without the contemplation of any further terms to the agreement. The ingenious argument that Exhibit P.W.1C gave the description of the property being offered for sale cannot fly in view of the fact that Exhibit P.W.1B[1-2] did not indicate that such description would be provided in subsequent appendage or addendum to the letter of offer by the vendor.

I find it needful to restate here the Court's definition of what constitutes an offer. In **OJO v. ABT ASSOCIATES, INCORP. (2017) 9 N.W.L.R. (PART 1570) page 167 at 188 paras. E – F** it was held:

"An offer is an expression of willingness or readiness to contract made with the intention that it shall become binding on the person making it as soon as it is accepted by the person to whom it is addressed"

Flowing from the foregoing, I hold that a contract had evolved between parties with the Plaintiff's acceptance of the Defendant's offer to sell a Duplex without any appendages to be imported into the contract.

On the submission of the Plaintiff's Counsel that the Plaintiff acted on the belief that she was paying for Block SQ6 Unit 1 hence the Defendant reneged on the provisional allocation and went on allocate to a different property, this contention cannot hold in so far that the Plaintiff had fully paid her initial deposit in the expectation that a Unit of 4 Bedroom Duplex would be allocated to her. She was obligated under the terms and conditions of the sale noted in Exhibit P.W.1B[1-2] to pay the balance of the purchase price irrespective of subsequent provisional allocation referred to as Block SQ6 Unit 1.

The meaning of the word "provisional" has been noted in this Judgment and it calls for consideration in the manner it is used in this case, specifically in Exhibit P.W.1C.

It is to the effect that the allocation will be withdrawn in the event the balance is not completed. Even where the amount is completed as hitherto been held in this Judgment, the terms of the contract did not specify Block SQ6, Unit 1. Indeed, the Plaintiff has made payments representing deposits at a time when parties did not contemplate the allocation of Block SQ6, Unit 1.

Learned Counsel for the Defendants in urging this Court to hold that a reasonable cause of action has not been established by the Plaintiff's claim commended this Court to the decision in **ADEPOJU v.**

AFUNJ (1994) 8 N.W.L.R. (PART 363) page 437 at 453 where the Court held thus:

"A bundle of aggregate of facts which the law will recognise as giving the Plaintiff substantive right to make the claim against the relief or remedy being sought. Thus, the factual situation on which the Plaintiff relies to support his claim must be recognised by law as giving rise to a substantive right capable of being claimed or enforced against the Defendant. In other words, the factual situation relied upon must constitute the essential ingredients of an enforceable right"

When the foregoing reasoning is applied as a test to determine whether a reasonable cause of action has been disclosed. I am unable to discern any right accruable to the Plaintiff that is calling for the claim or relief being sought against the Defendants.

The facts as I see it are that parties in this suit are commonly agreed on the sale of a Unit 1 of 4 Bedroom Duplex within the Defendants' Estate. The contract does not specify the exact property upon which the contract was predicated. Another important fact to this case is that parties are agreed that payment should be made by instalments which must be fully paid at the time the property is delivered to the Plaintiff. After payment of the initial deposit, SQ6 Unit 1 was provisionally allotted to the Plaintiff with a rider that the offer will be

withdrawn if full payment is not made. The Plaintiff completed payment after the time mutually agreed in the sales agreement by which time SQ6 Unit 1 had been sold. Defendant in lieu of SQ6 Unit 1 allocated Block SQ18, Unit 1. How does these bundle of fact entitle the Plaintiff to a legal right to claim the provisional allocation of SQ6 Unit 1? Having failed to pay within the prescribed period, her rights at best under Exhibit P.W.1B[1-2] is to a refund or the recession of the sales agreement.

This Court's answer to Defendants' issue one is answered in the affirmative, i hold that the Plaintiff has not disclosed a reasonable cause of action.

Ordinarily having held that the Plaintiff has failed to disclose a reasonable cause of action, it is needless to consider the other issues raised in their respective written address but i will consider it for what it is worth.

On Defendant's issue two, that is, whether the Plaintiff has established her case against the Defendants to be entitled to the relief sought. Counsel for the Defendant has submitted that there is no doubt in Exhibit P.W.1CC that the subject matter of the offer is a Unit of 4 Bedroom Semi Detached Duplex.

It is not also in dispute that SQ6, Unit 1 was based on a provisional allocation. Defendants' Counsel has submitted that where there is a

valid contract agreement, parties must be bound by the agreement and its terms and conditions. See **ENEMCHUKWU v. OKOYE & ANOR. (2016) L.P.E.L.R. 40027.**

Similarly, Counsel rightly referred to the decision in **ADETORO v. UNION BANK OF NIG. PLC (2007) L.P.E.L.R. 8991 CA**. There, the Court of Appeal further held, *"it is trite that parties are bound by the terms of their agreement and the Court will certainly not step into the arena to dictate new terms and conditions for them"* Instead, the Court as an impartial umpire exists only to interpret strictly the terms of such contracts or agreements as entered into between the parties Sankey JCA.

This Court finds merit in the submission of the Defendants' Counsel that the basic elements of contract, offer, acceptance consideration and intention to create legal relationship are all premised on the Defendants delivery of a 4 Bedroom Semi Detached Duplex and not the delivery of SQ6 Unit 1. This being the case the Plaintiff did not enter the agreement with the believe (or has not shown) that she entered the sales agreement on the understanding that Block SQ6, Unit 1 was to be sold to her. From inception, from offer up to the execution of the agreement inclusive of part payment of the consideration, there is no

doubt that the Plaintiff was entitled to the delivery of a 4 Bedroom Duplex.

I cannot flaw with the submission of the Defendants' Counsel that since the sale was not tied to a specific duplex the rejection of a one unit of 4 Bedroom Semi Detached Duplex without any legal basis amounts to an attempt by the Plaintiff to rewrite the agreement duly entered into by the parties and the Court will decline such attempt. See **CHUKWUMAH v. SHELL PETROLEUM (2003) 4 N.W.L.R. (PART 289) PAGE 512 SC at 560.**

Besides, this Court cannot discountenance the fact that Exhibit P.W.1CC dated 26th June, 2016 convey a rider thus: *"kindly ensure your outstanding balance is completed for the allocation not to be withdrawn"* Notwithstanding the warning dated 9th June, 2017, Plaintiff delayed full payment until January, 2018, 18th months after the issuance of Exhibit P.W.1CC.

Again, I am in agreement with the Defendants' Counsel that the evidential burden of proof was on the Plaintiff to prove that there was a specific contract between her and the Defendant to sell and deliver SQ6, Unit 1 to her failing which the Defendants are in breach or she is claiming specific performance of the SQ6, Unit 1.

In the case of **MAKAAN v. HANGEM & ORS. (2018) L.P.E.L.R. 44401 CA** it was held:

"That if a party is unable to prove his case as asserted in his pleadings, then the trial Court would have no option in that regard. The only order to make when a Plaintiff has failed to prove his case is one of dismissal"

I am unable to hold that the Plaintiff has reasonably proved her case against the Defendants.

That said, I will consider the submission of the Plaintiff on the only issue formulated by her Counsel.

Learned Counsel for the Plaintiff has submitted that upon the payment of the deposit of ₦14,500,000.00 (Fourteen Million Five Hundred Thousand Naira) Block SQ6 Unit 1 was allocated to the Plaintiff. He reiterated the fact that the Defendants' witness said under cross examination thus "No, we did deliver Block SQ6, Unit 1 the payment of ₦14,500,000.00 (Fourteen Million Five Hundred Thousand Naira)" Therefore the Plaintiff had established an existing contract based on Exhibit P.W.1B[1-2]. The Plaintiff's Counsel as this Court sees it seems to be selective in the choice of the evidence before this Court. The evidence both oral and documentary must be considered in its entirety.

In effect, it will not suffice to take the statement of D.W.1 in isolation without the uncontroverted evidence that the allocation was provisional, subject to payment of the balance of the purchase price. It was subject to the payment of the outstanding balance failing which the allocation is to be withdrawn which was what happened in this case. It must be recounted that the payment plan was "pay and pack in (outright) see Exhibit P.W.1B[1-2], consequently, unless payment is made in full, the Plaintiff is disentitled to Block SQ6 Unit 1.

The Plaintiff's Counsel has submitted that funds were still accepted by the Defendants even after the duration stipulated in Exhibit P.W.1B[1-2] instead of the Defendants refunding the deposit to her. Notwithstanding the default the Defendants issued the Plaintiff with Exhibit P.W.1CC leaving her with the impression that she would take delivery of Block SQ6 Unit 1. Counsel for the Plaintiff has submitted that the Defendants having failed to withdraw from the contract when they observed the breach in Exhibit P.W.1B[1-2] cannot turn round to insist on the terms of Exhibit P.W.1B[1-2]. This Court's view is that Exhibit P.W.1CC is not a counter offer nor is it an addendum to the Exhibit P.W.1B[1-2].

Indeed, Exhibit P.W.1CC still refers to the terms of the agreement which provides that the Plaintiff must pay within 12 months after the 2nd instalmental payment. It is recounted that the Plaintiff had paid and

completed payment on the 22nd January, 2016 hence she was still within time as at the 16th June, 2016 when Exhibit P.W.1CC dated 28th June, 2016 was written by the Defendant. I am of the view that the Defendant were still within their rights to demand that the Plaintiff should complete payment lest the allocation will be withdrawn. The waiver principle could only have been applicable to the delayed deposits and not the outstanding balance.

In sum, I am of the view and I will so hold that the Defendants were not in breach of the agreement to sell the property to the Plaintiff. I am not left in doubt that parties commonly entered into an agreement to sell a 1 Unit of 4 Bedroom Duplex and the Defendants fulfilled its obligations to the Plaintiff when it delivered 1 Unit SQ18 4 Bedroom Duplex.

Plaintiff's case fails and is accordingly dismissed.

O.O. Goodluck,
Hon. Judge.
29th October, 2019.

APPEARANCES

Parties absent

Chima Henry Ebere Esq.: For the Plaintiff.

Amaitem Etuk Esq.: For the 1st and 2nd Defendants.