

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA
BEFORE HIS LORDSHIP HON. JUSTICE A.A.I. BANJOKO – JUDGE
DELIVERED ON THE 26TH OF JUNE 2019**

SUIT NO: FCT/HC/CV/714/09

BETWEEN:

MR. PAUL ENANG USANG.....CLAIMANT

AND

- 1. HON. MIN. OF THE
FEDERAL CAPITAL TERRITORY.....1ST DEFENDANT**
- 2. THE FED. CAPITAL DEVELOPMENT AUTHORITY.....2ND DEFENDANT**
- 3. THE AD- HOC COMMITTEE ON SALE OF
FEDERAL GOVERNMENT HOUSES..... 3RD DEFENDANT**
- 4. MR. ONUOHA VALENTINE.....4TH DEFENDANT**

**P.A. ACHUARA ESQ. FOR THE CLAIMANT
AKPATA DIDARA ABASI ESQ. FOR THE 1ST TO 3RD DEFENDANTS
EKWUEME NNENNA ESQ./ JOHN GODWIN ESQ. FOR THE 4TH DEFENDANT**

JUDGMENT

The Claimant commenced this action by a Writ of Summons dated and filed on the 22nd of December 2009 and by an Amended Statement of Claim dated the 15th of February 2012, he jointly and severally sought against the Defendants the following Reliefs, namely: -

- a. A Declaration that the actions of the 4th Defendant by forceful eviction and destruction of the Plaintiff's Apartment known as Block 17, Room 9, Zone A, Nyanya, Abuja is unlawful, null void and a Breach of his Right of Property.**

- b. A Declaration that the Plaintiff is the Lawful Allottee, Owner and Title Holder of the Apartment known as Block 17, Room 9, Area "A" Nyanya, Abuja.**
- c. An Order directing the 1st, 2nd and 3rd Defendants to accept the Plaintiff's Draft for the balance of N187, 000.00 (One Hundred and Eighty-Seven Naira), which they unlawfully rejected.**
- d. A Perpetual Injunction restraining the 4th Defendant, his Agents, Privies or any other Person whosoever claiming through him from further Trespass, Threats or Harassment of the Plaintiff in the Apartment known as Block 17, Room 9, Area "A" Nyanya, Abuja.**
- e. The Sum of N5, 000,000.00 (Five Million Naira) being General and Special Damages for Unlawful Trespass, Destruction of Personal Property and Interference with the Quiet Enjoyment and Possession of the Plaintiff of the Apartment known as Block 17, Room 9, Area "A" Nyanya, Abuja.**

The 4th Defendant counterclaimed against the Claimant, wherein he sought the following Reliefs, namely: -

- a. A Declaration that the 4th Defendant is the Lawful Allottee, Owner and Title Holder of the Apartment particularly described as Block 17, Room 9, Area "A" Nyanya, Abuja, having paid all the Requisite Fees in respect of same to the 1st, 2nd and 3rd Defendants.**
- b. A Declaration that the 4th Defendant/Counter-Claimant is entitled to Immediate Possession of the House known as Block 17, Room 9, Area "A" Nyanya, Abuja, presently occupied by the Plaintiff.**
- c. An Order directing the Plaintiff to immediately surrender the possession of the House to the 4th Defendant/Counter-Claimant.**
- d. An Order directing the Plaintiff to pay to the 4th Defendant/Claimant the Sum of N120, 000.00 (One Hundred and Twenty Thousand Naira) per annum from November 2007 that he paid the Final Sum of the House until Possession is given for Use and Occupation of the Apartment by the Plaintiff.**

e. Payment of the Sum of N5, 000,000.00 (Five Million Naira) only being General Damages for the hardship, embarrassment and psychological pains suffered as a result of the Plaintiff's acts.

OR IN THE ALTERNATIVE: -

a. An Order of Specific Performance directing the 1st, 2nd and 3rd Defendants to give possession of the House described as Block 17, Room 9, Area "A" Nyanya, Abuja, presently occupied by the Plaintiff to the 4th Defendant/Counter-Claimant.

OR

b. An Order directing the 1st, 2nd and 3rd Defendants to jointly and severally pay to the 4th Defendant/Counter-Claimant the sum of N460, 000.00 (Four Hundred and Sixty Thousand Naira) only being the Cost of the Apartment, which he had fully paid to the 2nd Defendant.

PARTICULARS OF PAYMENT

1. 4/12/2006.....	N46, 000
2. 16/4/2007.....	N69, 000
3. 27/11/2007.....	<u>N345, 000</u>
TOTAL	N460, 000

c. An Order directing the 1st, 2nd and 3rd Defendants to jointly and severally pay to the 4th Defendant/Counter-Claimant an Interest of 21% (Twenty-One percent) on the above Sum from 2007 until the Sum is finally and fully liquidated.

d. Payment jointly and severally by the 1st, 2nd and 3rd Defendants to the 4th Defendant/Claimant the sum of N50,000,000.00 (Fifty Million Naira) only as General Damages for the hardship, embarrassment and psychological pains suffered as a result of the Defendants Act of Breach of Contract.

At the Closing of Pleadings, the facts as settled by Contending Parties in their Respective Pleadings were as follows: -

The Claimant, a Civil Servant working with the Federal Ministry of Interior, was sometime on the 8th of December 2005, as highest bidder, offered a Premises known as Block 17 Room 19, Area "A" Nyanya (now referred to as "Apartment") at a Purchase Price of N250, 000.00 by the 1st Defendant through the 2nd Defendant. He paid the Initial Deposit of N10, 000 to the 3rd Defendant and subsequently paid 10% of Purchase Price in the Sum of N25, 000, whereupon an Acknowledgement Receipt was issued.

According to the Claimant, it was the Policy of the Federal Government on the Sale of Houses for Civil Servants to approach Mortgage Institutions for assistance with their Payment Plans.

Based on this Policy, in his attempt to settle the outstanding balance, he instructed his Banker, Oceanic Bank Plc on the 12th of March 2008, to raise a Draft of N187, 500 in favour of the 2nd Defendant but the 3rd Defendant rejected the Draft on the basis that the Apartment was no longer for Sale. On the 2nd of June 2009, he wrote a Letter to the 3rd Defendant expressing his intention to pay off all the outstanding balance and had made overtures to the Secretary of the 3rd Defendant to allow him pay the outstanding balance, but both acts were bluntly refused.

Sometime on the 8th of November 2009, to his surprise, the 4th Defendant in company of thugs and hirelings broke into the Apartment and looted the Sum of N500, 000.00 belonging to him as well as the Sum of N250, 000.00 belonging to his wife, whilst the 3rd Defendant in company of her own thugs and hirelings, threw in the rain his remaining property that survived the loot. The Claimant then reported this incidence to the Police and took Photographs of his damaged property.

On the 5th of December 2009, the 4th Defendant surfaced again with thugs, hirelings and this time, with a Carpenter, threatening to remove the roof in

order to forcefully evict him and had it not been for neighbours' involvement, he would have been evicted. Further, on the 21st of November 2009, while he and his wife were away at their various offices, the 4th Defendant came to the Apartment, removed doors, windows, broke down a substantial part of the Apartment and threw out his belonging and in the process, the Sum of N400,000.00 was lost.

In the event the 4th Defendant was unrestrained, he would have carried out his sinister motive of using thugs to evict his family and himself out the Apartment. The Claimant stated that the Defendant did not challenge his ownership over the Apartment and the 4th Defendant has no Formal Letter evidencing his interest in the Apartment. Therefore, it would serve the interest of justice that the Defendants be restrained from carrying out their illegal action.

The 1st to 3rd Defendants, in response to the foregoing filed their Statement of Defence out of time wherein they alleged that the Approved Guidelines in the Federal Government Official Gazette No. 82 Volume 92 governed the Sale of Federal Government Houses.

According to them, concerning the payment for the Apartment, the Claimant was the highest bidder, but he breached one of the major conditions. They explained that the Claimant did bid and secured the winning bid for the Apartment. He then paid the Initial 10% Purchase Price but did not meet up with the Balance Payment deadline. He was expected to pay 15% within 90 days and then subsequently pay 75% in another 90 days.

Further, the Claimant's Letter dated the 2nd of June 2009 expressing his intention to pay all his outstanding balance was already in default of the Terms of the Agreement.

In addition, all the Letters written to them by the Claimant evidenced the non-fulfilment of the Conditions of Sale as spelt out in the Terms and Conditions for the bid and sale of Federal Government Houses.

The 1st to 3rd Defendants then contended that they acted perfectly within the Rules, Regulations and Powers conferred on them by the Approved Guidelines to cover Public Servants and for that reason, the Claimant's Claims were frivolous and ought to be dismissed with Substantial Cost.

In response, the Claimant filed a Reply to the 1st to 3rd Defendants' Statement of Defence where he alleged that he paid the Initial Deposit of N10, 000.00 and then paid the Sum of N25, 000 representing 10% of the value of the Apartment, which the Defendants acknowledged.

On the 28th of January 2008, he paid to the Defendants vide a Banker's Draft in the Sum of N37, 500 representing 15%, and was issued an Acknowledgement Receipt. However, the 3rd Defendant rejected the balance of N187, 500.00, which he instructed his Bank to raise in favour of the 2nd Defendant. This rejection was aimed at frustrating his efforts towards making full payment for the Apartment.

The Claimant then urged the Court to dismiss the Defendants Statement of Defence but uphold his Claims.

In response to the Claimant's pleadings, the 4th Defendant, a Civil Servant working with the Ministry of Labour and Productivity, on his own part entered appearance and filed his Pleadings out of time.

He admitted that all Civil Servants allocated houses under the Federal Government Policy for Sale of Houses, were to approach Mortgage Institutions for assistance with Payment Plans.

He stated that there were Adverts calling for bids from Civil Servants as well as to the General Public, to which he tendered a bid for the Apartment in Year 2006. According to him, he tendered a bid in the Sum of N460, 000.00 and paid to the 2nd Defendant the Initial 10% Deposit in the Sum of N46, 000 through a First Bank of Nigeria Draft on the 4th of December 2006 and Receipt NO. 45056 was issued to him. It was the practice of the 2nd and 3rd Defendants to receive payments and then issue Receipts.

Subsequently, he was offered the Apartment in the Sum of N460, 000.00 through a Letter of Offer dated 23rd of February 2007. He paid the Sum of N69, 000.00 on the 16th of April 2007 through another First Bank of Nigeria Draft, and a Receipt NO. 51418 was issued to him. On the 27th of November, he paid another N345, 000.00 through a Cheque representing the outstanding balance for the Apartment and was again issued a Receipt covering this Sum. The total money paid by him for the Apartment, was sourced through a Mortgage Loan at the Rate of 21% per annum.

The 4th Defendant denied bringing thugs and hirelings, who broke into the Apartment and looted monies. According to him, on the 2nd of September 2009, he received a phone call from the 3rd Defendant asking him to come over for an official Handing Over of the Apartment, having been confirmed the buyer by reason of his payment of the outstanding balance for the Apartment.

On the 3rd of September 2009, upon approaching the office of the 3rd Defendant, he was directed by one Mr. Joshua to go to the Apartment where he would meet with the Eviction Team that would evict the Occupant. At the Apartment, while waiting for the arrival of the Eviction Team, he decided to approach the Claimant and his wife but they were both absent.

Upon arrival of the Eviction Team, he prevailed on them not to carry out the eviction in the absence of the Claimant or his wife, as it would be improper. The Team conceded and left, while he dropped a Note stating his address and mobile number but the Claimant never responded to this Note.

On the 6th of September 2009, the 4th Defendant paid another visit to the Apartment but met the Claimant's wife who demanded to see his Title Documents. He later returned with the Title Documents but now met the Claimant, who after perusing the Documents, threatened him that no person or authority had the power to evict him from the Apartment and that there would be bloodshed. To save his life and not to cause any public breach, he quietly vacated the premises.

On the 9th of November 2009, the 3rd Defendant summoned him to come over for the Handing Over Document, as the Apartment had been recovered from the Former Occupant.

Based on the foregoing, he proceeded to the Apartment but to his surprise, discovered that the Claimant was still occupying the Apartment. The 4th Defendant then put a call through to the 3rd Defendant and lodged a Complaint of Criminal Trespass with the Nyanya Police Station whereupon the Claimant was invited and interrogated. The Police advised both 4th Defendant and the Claimant to visit the 3rd Defendant for amiable settlement and on the agreed date, the Claimant failed to honour the agreement.

The 4th Defendant later got to know from one Mr. Joshua at the office of the 3rd Defendant that the Claimant arrived late to the meeting. He was also informed that the Eviction Team had carried out the eviction after reasonable and necessary verifications were conducted.

On the 25th of November 2009, the 3rd Defendant again informed the 4th Defendant that the Apartment has been finally secured but upon arrival, the Claimant was still in occupation. According to the 4th Defendant, since the day the Apartment was sold to him, the Claimant had remained in possession without paying any rent to him.

The Claimant in response to the foregoing contended that the 4th Defendant invaded his privacy by bringing thugs who looted the Sums of N500, 000.00, N250, 000.00, and who also threw away his belongings. He further stated that the 1st to 3rd Defendants never placed any advert calling for bids from Civil Servants and the General Public and the 4th Defendant is put to the strictest proof.

Now, the 4th Defendant counterclaimed against the Claimant and in his Counterclaim, he readopted his aforesaid facts adding that had he been in possession of the Apartment, he would have either put it up for personal use or

rented it out. According to him, the Going Rent Rate for that type of Apartment in the Area where it is situated since Year 2007 was N120, 000 per annum.

The Claimant in his Defence to Counterclaim readopted his averments contained in both his Statement of Claim and his Reply to the 4th Defendant's Statement of Defence.

With the foregoing facts, the Claimant opened his Case on the 4th of October 2012 and adopted his Witness Statement tendering into evidence **Exhibits A, B, C, D, E1, E2 and E3 to E11**.

Under Cross-Examination by Learned Counsel representing the 1st to 3rd Defendants, he stated he was a Sitting Tenant in the Apartment by virtue of an Allocation Letter given to him by the Ministry of Internal Affairs.

Shown **Exhibit A**, he was asked if this Exhibit showed he was a Sitting Tenant, he answered it was an Offer Letter to him, as a Bidder, and the Exhibit evidenced an Agreement between himself and the 1st to 3rd Defendants, which he signed.

Exhibit D, a Handwritten Letter dated the 2nd of June 2008 written by the Claimant to the Chairman of the Ad Hoc Committee was used to confront him with the fact that as a Bidder, he was not covered by the Directive of the 1st of June 2009.

On the Question of Payments for the Apartment, this witness stated that he initially paid 15% to the Bank but could not remember the date it was paid. When reminded that the date of the initial payment was on the 11th of November 2005, he replied that this payment was to have been paid within 90days. He then agreed that he paid the next instalment in the Sum of N37, 500 on the 28th of January 2008. When informed by Learned Counsel that as at April 2006, his 90days had expired, he simply replied that he complied with the Agreement.

This witness stated that the 3rd Defendant did not accept his Final Payment for the Apartment made on the 12th of March 2008 and by this date, his Final Payment was not in conformity with the Terms of the Agreement.

When asked to reconcile the N187, 500 Banker's Draft in **Exhibit C** with **Paragraph 6** of his Statement of Claim, all he could say was that the Draft was issued.

Under Cross-Examination by Learned Counsel representing the 4th Defendant, he stated that he initially paid a non-refundable Sum of N10, 000 and then the Sum of N25, 000 for which a Receipt was issued to him. According to him, Receipts were issued for every payment made to the FCDA. **Exhibit B** had evidenced Payment in the Sum of N37, 500 to Oceanic Bank before the Draft in the Sum of N187, 500 was released to him.

He agreed paying only the Sum of N25, 000 (representing 10% Bid for the Apartment), stating further that it was for his Bank to then pay up the remaining balance. He denied defaulting on any Payment and when told to reconcile this denial with **Paragraphs 3, 4, 5 and 7** of his Statement of Claim, he could not do so.

When referred to **Paragraph 6** of his Statement of Claim, he agreed he was evicted from the Apartment.

According to him, he knew the 4th Defendant and sometime on the 8th of November 2009, being a working day, he and his wife were in their respective offices while the children were in school. According to him, the 4th Defendant came to the Apartment in the company of Policemen and threatened to remove the roof, windows and doors. Again, on the 5th of December 2009, the 4th Defendant came to the Apartment to remove the doors and windows that were earlier removed.

When told that the 5th of December 2009 was a Saturday, he replied that on weekends, he does Caretaker Work for some Landlords. He stated that the sum of money the 4th Defendant looted when added up, totalled N1, 000,000 (One

Million Naira) with 10% of the Sum being his share, whilst the rest belonged to the Landlords.

Under Re-Examination, he stated that after this incident, he was scared of leaving money in his Apartment. With this statement, the Claimant closed his Case.

The 1st to 3rd Defendants upon a review of their Case, elected not to call any Witness, electing rather to rest their Case on that of the Claimant.

The 4th Defendant then opened his case and under Oath, he adopted his Witness Statement and tendered into evidence **Exhibits F, G, H, I, and J**.

He was not Cross-Examined by Learned Counsel representing the 1st to 3rd Defendants, which paved the way for Learned Counsel representing the Claimant to conduct his Cross- Examination.

Under Cross-Examination, he stated that by the 23rd of February 2007, he was not residing and neither was he officially allocated the Apartment in contention. Shown **Exhibit A**, the Claimant's Offer Letter, he stated that the Claimant was a Bidder, who was awarded the Property 2 years before it was subsequently allocated to him.

Before he commenced payments for the Apartment as informed by **Exhibits F, G, H and I**, he had read a Newspaper Advertisement and based on the publication, he then applied. Therefore, it was untrue that the 2nd Defendant personally wrote to him.

According to him, the 3rd Defendant summoned him to their Office for physical Handing Over and whilst in their Office, he met the Eviction Team, who later carried out the eviction by removing the Claimant's property from the Apartment.

There was no Re-Examination and the 4th Defendant closed his Case and Parties were ordered to file their Final Written Addresses.

On Record, the 1st to 3rd Defendants did not file any Final Written Address, whilst the 4th Defendant and the Claimant, filed their Addresses and adopted same.

The Issues for Determination as formulated by the Learned Counsel representing the 4th Defendant are: -

- 1. Whether there is a Contract between the Claimant and the 2nd Defendant and whether the Contract (if any) is binding.**
- 2. Whether the Claimant's failure to comply with the Term in the Letter of Offer could determine the Contract.**
- 3. Whether the Claimant has proved a Case of Trespass to entitle him to Damages.**
- 4. Whether the 4th Defendant has proved his Counterclaim.**

As regards the Claimant, Learned Counsel equally formulated Four Issues for determination, which is as follows: -

- 1. Whether there is a Contract between the Claimant and the 2nd Defendant and whether the Contract (if any) is binding.**
- 2. Whether the Payment of N25, 000 (Twenty-Five Thousand Naira) only by the Claimant to the 2nd Defendant in this Case as Part Consideration constitutes Part Payment or Deposit for the house in question and what is the effect of same in the case of Breach of Contract for the Sale of Land/Property.**
- 3. Whether the Claimant sufficiently complied with the Terms in the Letter of Offer as to entitle him to his Claim and whether the 4th Defendant not being Privy to the Agreement between the Claimant and the 2nd Defendant can use the Terms of Agreement against the Claimant.**

4. Whether the Claimant has established a Case of Trespass to entitle him to Damages.

Now, after a careful consideration of all the facts and foregoing formulated Issues, which are on Record, the Court finds the Issues hereunder, germane for the just determination of this Suit, namely: -

- 1. Whether the accepted Offer by the Claimant, constituted a Binding Contract; and if so, whether the Claimant had complied with the Terms and Conditions thereof, as to entitle him to Claims of Ownership/Possession of the Property, Damages for Trespass (to Land and Chattel) as well as Special and General Damages.**
- 2. Whether the accepted Offer by the 4th Defendant/Counterclaimant, constituted a Binding Contract; and if so, whether as Counterclaimant, he has complied with the Terms and Conditions thereof, as to entitle him to the Claims of Ownership/Possession of the Property, Rents for unlawful use and occupation as well as General Damages.**

From the foregoing Issues, it can be seen that they are almost identical except for the Ancillary Claims that accompanied their Principal Claims, which revolved on the Question of Ownership/Possession to Block 17 Room 9 Area A, Nyanya, known as the Apartment. The Two Issues can be conveniently considered together and after dealing with the Principal Claims, the Ancillary Claims can be easily be dispensed with.

Now, from the Evidence on Record, both Contending Parties traced Ownership/Possession to **Exhibits A and G**, the Offer Letters issued to them by the 1st Defendant.

From these Offer Letters it can be seen that both Parties did bid for and win the Bid, resulting in Offers being addressed to them. It can also be seen that the

Offers were exact same in terms of Content, Composition and Expectations. The logical presumption from both Exhibits is that, both Contending Parties were Winning Bidders and not Sitting Tenants of the 1st and 2nd Defendants and both needed to have gone through some form of Bidding Process before the Offers were addressed to them.

Further, each Winning Bidder was expected to indicate Acceptance by Executing and Dating the Offer in the Space provided and to communicate Acceptance within 14 Days from the Date of Issuance.

Time was of the essence for communicating the acceptance; as it brooked no extension of time whatsoever upon the Issuance of the Offer.

The Offer further stipulated that upon Acceptance and return of Duplicate Copy of the Offer, the Winning Bidder was bound by the Terms and Conditions of the Offer. The Offer then goes on to state that both the Offer and Acceptance, constituted a Binding Agreement, in **Commitment to fulfilling the Conditions Precedent**.

The Offer Letter in **Subparagraph 3 of the 2nd Paragraph** spelt out the Conditions Precedent to the Formation of a Contractual Agreement by spelling out certain Terms and Conditions. It is to be noted that Two Paths of Payment Procedure for the Purchase Price for the Property was expressly stated.

The Default Payment Procedure Path, was for a Winning Bidder to pay for the Property in Two Instalments, by first paying the Initial Deposit or Bid Bond of 10%, then paying the Initial Instalment of 15% within 90 Days and finally, the Subsequent Instalment of 75% within another 90 Days.

The Second Payment Procedure Path was for the Winning Bidder to make Full Payment of 90% in one swoop after paying the Initial Deposit or Bid Bond of 10%.

Whichever Procedure was eventually adopted, Payment(s) was to be made in Banker's Draft.

From both Oral and Documentary Evidence before the Court, it is clear both Contending Parties elected the Default Payment Procedure Path for the purposes of paying off the Purchase Price of the Apartment in contention.

The Entire Transaction for the Apartment had a Gestation Period of One Hundred and Ninety-Four (194) days from the Date of Issuance of the Offer, inclusive of the Date of Acceptance and Communication of same to the 1st Defendant.

Now, having consider the Contents of the Offer together with its Terms and Conditions, a Valid and Binding Contract had not began to run unless and until there had been an Acceptance and Communication of that Acceptance to the 1st Defendant.

The Court can see in **Exhibits A** and **G**, that both Contending Parties, as Winning Bidders, executed the Column Spaces of the Offer Letter, indicating their acceptance of the Offer and from their subsequent acts of fulfilling the Terms and Conditions of Payment for the Apartment, their Acceptance can be deemed to have been communicated to the 1st Defendant within the 14Days window allowable by the Offer.

A Valid, Binding and Subsisting Contract can therefore be said to have occurred between the Contending Parties and the 1st Defendant and the Law is Trite that Parties thereto, had created legal relations that are recognisable and enforceable by Law. See the Cases of **LAMOUREU VS BURRILLVILLE RACING ASSOCIATION 91 R.1 94, 161 A, 2 d 213 AT 215; YARO V. AREWA CONSTRUCTION LTD (2007) 16 NWLR (PT. 1063) 333 AT 377-378.**

The Court must therefore treat as sacrosanct, the Terms and Conditions freely entered into by the Contending Parties by interpreting their Manifest Intentions. It is not the place of the Court to rewrite the Contract for them. Further, the Terms and Conditions are clothed with some degree of Sanctity and if any question should arise with regard to the Contract, the Terms and Conditions therein, which constitute the Contract, and will invariably Guide its

interpretation. Reference is made to the Cases of **BFI GROUP CORP VS BPE (2012) 18 NWLR PART 1332 PAGE 209; AFRO TECH SERVICES NIG LTD VS M.I.A.& SONS LTD (2000) 15 NWLR PART 692 PAGE 730; OMEGA BANK NIG PLC VS O.B.C. LTD (2005) 9 NWLR PART 928 PAGE 547**

Now, since both Contending Parties had communicated their Acceptance within the 14Days windows, each had barely 180Days within which to make Full Payment of the Two Instalments by purchasing Two Banker's Drafts, in favour of the 1st to 3rd Defendants, otherwise the Entire Transaction **SHALLBE AVOIDED.**

Upon Acceptance of the Offer, Time was a crucial factor that played throughout every stage of their Contract. In the case of **N.B.C.I. V. INTEGRATED GAS (NIG.) LTD (2005) 4 NWLR (PT. 916) 617 AT 649-650 (SC)**, His Lordship **EDOZIE JSC**, referring to the Case of **BRICKLES VS SMALL (1916) AC 599**, held that Time is said to be of the essence of the Contract, where the Parties have expressly stipulated in their Contract that the time fixed for performance must be exactly complied with. Reinforcing this Proposition, His Lordship **ADEKEYE JSC** (as she then was) held in the Case of **NWAOLISAH VS NWABUFOH (2011) LPELR-2115 (SC)** that the Law is that Time is of essence where the Parties have expressly made it so. The failure to perform the Contract within the time limit will constitute a Breach. Reference is made to the Cases of **CASTLEGATE STEAMSHIP CO. LTD VS DEMPSEY (1892) 1 QB 854; NIGER INSURANCE VS ABED BROS. (1976) 7 SC 35; MAZIN ENG. LTD VS TOWER ALUMINIUM (1993) 5 NWLR (PT.295) 526 AT 528.**

Both Contending Parties on Record are deemed to have Personal Knowledge of the Time factor, as they are presumed to have read the Contents of the Offer before expressly endorsing and then communicating their Acceptance to the 1st Defendant. They also knew the implication of not fulfilling their financial commitment within the time stipulated in the Accepted Offer.

Now, even though there existed a Valid and Binding Contract between each Contending Party with the 1st Defendant, that Contract was **suspended** until the

happening of a specific event. This Suspension was not indefinite but a definite one. From the language and tone of the Accepted Offer, the Suspended Contract was for a definite period of time in the future, and even the Accepted Offer, had by itself, described the fulfilment of the financial commitment to be “**CONDITIONS PRECEDENT**”.

Therefore, the Contract was not at Sea. It was not for anyone of the Contending Parties to rest on his oars in a make believe that the Contract would perpetuate indefinitely. Had the Contract not been time bound and had it not had a life expectancy, definitely a situation of a Second Contender over the Ownership/Possession of the Apartment would not have arisen in the first place.

In this instant case, it did arise and the determination of the circumstances of the entry of a Second Contender into the field is the Main Issue before the Court. By the logical scheme of things, there should be only one Buyer over the same One Property sold by One Seller.

Therefore, why did this present situation arise?

Before the Court, are Two Accepted Offers, as informed by **Exhibits A** and **G**, and by the Dates they were issued, it can be seen that the Offers were **CONSECUTIVELY** and not **CONCURRENTLY** made. The Two Offers were not contemporaneously addressed to each Contending Party on the Same Day or Date. In-between the Initial Offer in **Exhibit A** and the Subsequent Offer in **Exhibit G**, there was approximately a Year and Few Months’ Gap, which explained away the Latent Difference in terms of the Total Bid Sum each Contender was expected to pay for the Apartment.

Now, Exhibit A is titled “Letter of Offer to Winning Bidder”, and was the Initial Offer for the Bid Sum of N250, 000, dated the 8th of December 2005 and it was addressed to the Claimant.

Exhibit G, was also titled “Letter of Offer to Winning Bidder”, dated the 23rd of February 2007, it was a Subsequent Offer for the Bid Sum of N460, 000, and it was addressed to the 4th Defendant.

By the Dates in these Exhibits, the Claimant’s Offer was first in time and he had the First Opportunity at attempting the Bull’s Eye.

The Claimant identified the 3rd Defendant’s Receipt dated 19th of November 2005, showing that he paid the Initial Deposit or Bid Bond representing the 10% required of him as stipulated in the Terms and Conditions in the Offer. This Receipt evidenced Actual Collection of the Amount therein as well as demonstrated the Claimant’s effort towards fulfilling the Conditions Precedent. However, this Receipt was not tendered and admitted into evidence as an Exhibit.

It must be noted from the evidence before the Court that the Payment of this Initial Deposit or Bid Bond of 10% was not in issue. What was in issue, were the Two Instalment Payments, the Claimant was mandatorily required to fulfil. It must be remembered that the Remaining 90% Balance of the Purchase Price needed to be paid within 180Days. The Initial Instalment of 15%, that is, N37, 500 as set out in the Offer, needed to be paid within 90Days whilst the Subsequent Instalment of 75%, representing the Sum of N187, 500 needed to be also paid within another 90Days and both were required to be by Banker’s Drafts.

Now, the Court had during the Trial suspended the Admissibility Considerations of Two Exhibits to this Judgment and will now proceed to determine the issues arising.

These Exhibits are **Exhibits B and C**, the Banker’s Drafts, which were objected to by the Defence.

Learned Counsel representing the Claimant had tagged **Exhibits B and C**, i.e. Banker’s Drafts for the Sums of N37, 500 and 187, 500, as Certified True Copies but the Court, upon a careful perusal, notes that these Exhibits stated otherwise.

They were simply Photocopies. These Exhibits showed that Oceanic Bank issued them out. There were no questions asked or answers proffered about whether the Copies emanated from the Bank or even from the Claimant himself, as a Custodian of documentation relating to his person. The fact that the Bank, as Issuer, affixed its Stamp on the Photocopied Drafts is neither here nor there to the question of where these Drafts emanated from.

The Records show that the Claimant was copiously questioned on the Drafts during his Cross-Examination and the consequence is that all those answers elicited by the Defence therefrom, would become irrelevant and not useful for their Defence.

Therefore, in the absence of this dearth of information, the Court will not start conjecturing on whose custody the Document was produced from, and as a result, the Court is satisfied that they remain admissible in evidence, with the necessary probative weight to be attached to them, for the purposes of determining the issues in controversy in this Suit.

In this instance, the Claimant in a bid to satisfy the Payment of the Two Instalments, tendered into evidence **Exhibits B and C**, the Banker's Drafts covering the 90% balance of the Purchase Price of the Apartment.

These Exhibits gives rise to Two Crucial Questions that must be determined one way or another, as they tend to affect the Claim(s) of the Claimant and these are: - (1) Did the 3rd Defendant acknowledge and issue Receipts for the Two Drafts in the Exhibits? And (2) Were the Drafts issued within the stipulated 180 Days in the Claimant's Accepted Offer?

In answer to the First Question, the Modus Operandi as seen from Documentary Evidence before the Court, and from the subsequent acts/relationships between the Contending Parties as well as the 1st to 3rd Defendants and further, from the admissions of the Contending Parties before the Court, it was clear that the 3rd Defendant was responsible for issuing Receipt for each Payment of the Initial

and Subsequent Instalments, anytime Banker's Drafts are drawn and issued in their Name.

According to the Claimant, he had purchased **Exhibit B** in the Sum of N37, 500 from Oceanic Bank, as a precondition by his Bank for the Release to him of the Sum of N187, 500, evidenced in **Exhibit C**.

It is in evidence that the Original Copy of **Exhibit B**, which he initially purchased for the benefit of the 3rd Defendant, was later returned to his Bank. The return of that Draft in **Exhibit B** to his Bank, presupposes that the purpose for which it was issued in the first place was not achievable and logically, the 3rd Defendant, as beneficiary of the Draft never received it and when recognized it as received, promptly returned it as improper and belated.

The Claimant admitted this fact of non-receipt of the outstanding balance by the 3rd Defendant but premised this non-receipt on the basis that the Apartment was sold to a 3rd party. The Court finds that this was not the only basis for non-receipt of his balance by the 3rd Defendant, as it is clear that he defaulted in paying up the balance within 180Days from the date he communicated his acceptance of the Offer in **Exhibit A**. The 3rd Defendant needed as a matter of necessity, to receive and acknowledge the 90% outstanding balance from the Claimant, within the prescribed timeframe and not after it. Therefore, the probative evidential worth of both **Exhibits B** and **Crest** squarely on the acceptance of the payments by the 1st to the 3rd Defendants within the 180Days timeframe.

From the dates in the Two Drafts in **Exhibits B and C**, they were issued long after the Offer had elapsed and therefore, the 3rd Defendant was not obligated to receive and then issue any Receipt whatsoever or even entertain his Plea Letter in **Exhibit D**.

The issuance of Receipt by the 3rd Defendant acknowledging the payment of the 90% balance was a prerequisite to a subsequent issuance of a Handing Over Note in respect of the Apartment. But the Claimant failed to meet up with the

Condition of Payment, which may explain his failure to tender any Documentation showing that the 3rd Defendant had issued him with Two Receipts for the Sums in the Banker's Drafts as contained in **Exhibits B and C**.

It was one thing to raise the two Drafts in **Exhibit B and C** but their acknowledgment and issuance of a Receipt by the 3rd Defendant was another thing altogether.

This now leads to the Second Question.

From the Claimant's Accepted Offer in **Exhibit A**, dated the **8th December 2005**, it was expected of him to pay off the remaining balance of 90% within 180 days therefrom. By a simple calculation, he had till sometime in **April 2006**, within which to perfect the FULL PAYMENT.

Before this Court is **Exhibit B**, a Draft covering the Sum of N37, 500, and this was for the Initial Instalment of 15% that was to be paid within 90Days. However, the Claimant's Banker raised this Exhibit on his behalf on the **28th of January 2008**.

This Exhibit certainly fell out of the 90Days within which he was expected to have made the payment. It also clearly missed the mark. It was contrary to the Terms and Conditions of the Accepted Offer, as the Claimant sought to make this payment, approximately 2years later from the Stipulated Period of 90Days.

Further, two Months down the line, precisely on the **12th of March 2008**, the Claimant then caused to be raised, the Second Draft in the Sum of N187, 500, being the Subsequent Instalment of 75% of the Purchase Price.

The Court finds that this Draft equally fell out of the 90Days within which the Claimant was expected to have paid this Sum, as the Terms required the Final Instalment to be effected within or after the expiration of the 90Days period.

Now, Exhibits Band C, were a great departure from the Payment Structure outlined by the 1st Defendant, which the Claimant upon his Express Acceptance,

had promised to fulfil but failed to satisfy the Terms and Conditions of his Offer and naturally, he missed the Bull's Eye.

The Claimant in his Witness Statement on Oath, in an attempt to remove time as a major factor for his rejection, had stated that the 1st to 3rd Defendants had granted an extension of time within which to pay for the Apartment. However, according to the Defendants, that extension as per Directive of 1st June 2009 did not apply in the instance of the Claimant.

Their back and forth on this point, presupposes the existence of a Document showing there was an extension of time within which to make full payment of the Purchase Price of the Apartment. Whether or not this extension included the Claimant and whether or not it was within or outside Public Domain, its Production was very Relevant.

The Question is, who had the duty to have Produce that fact in Evidence? In other words, on whom lay the burden of proof to lead evidence on the existence of time? The Law is Trite that the burden lies on that person who would fail if no evidence at all were given on either side. See **Section 132 of the Evidence Act 2011 (As Amended)** and the Cases of **CALABAR CENTRAL CO-OPERATIVE THRIFT & CREDIT SOCIETY LTD & ORS VS BASSEY EBONG EKPO (2008) 5 NWLR (PT. 1083) 362; NNADOZIE VS MBAGWU (2008) 3 NWLR (PT. 1074) 363; PETER OBIAKU VS IGNATIUS EKESIOBI (2003) FWLR (PT. 166) 661; TSOKWA VS UBN (1996) 12 SCNJ 445**

In light of the above provision of Law and Case Law, the Claimant's failure to comply with Payment Structure as set out in the Accepted Offer, showed that he had something to lose. The burden of proof rested on him to produce or adduce Credible and Cogent Evidence on the existence of that extension of time. It is only till then that the 1st to 3rd Defendants would be required to give an explanation on why they considered the Claimant was not included in the Extension Period.

But as it stands, no Evidence whatsoever was led in this regard and the Court can only logically presume and conclude that there was no extension of time. Therefore, the Terms and Conditions in the Offer Letter maintained its Sanctity and there was no admissible evidence showing an approved departure from the Terms.

Furthermore, the Court finds that the Terms and Conditions in the Offer, dated the 8th of December 2005, which formed the basis of the Claimant's acceptance, had a terminal period of April 2006 for the performance by the Claimant, but the Claimant failed to perform. It is clear that he absolutely did nothing till 2 years had elapsed before he began to re-commence performance in a bid to satisfy the Conditions Precedent that initially had only 180 Days to complete. The Claimant with his own hands shot himself on the foot and consequently, had put himself in a precarious state.

By his non-performance, the 1st to 3rd Defendants had a legitimate right to believe that the Apartment was still up for Sale to another Bidder, who would comply with their Terms. Clearly, there was no formation of a Contractual Relationship with the Claimant and they cannot be restricted from trying to seek another Buyer, through another Auction Bid.

At the time of the Second Auction Bid, the Apartment remained unencumbered by the First Auction Bid.

It is not in doubt that since April 2006 and up and until when the 3rd Defendant put up another Bid for the Apartment, the Claimant had been enjoying quiet possession of the Apartment. During this time, he was a Guest in the Apartment at the expense of the 1st to 3rd Defendants. He definitely should have been sleeping in that Apartment with one eye open and should not have been surprised at the occurrence of any eventuality.

He went to the Apartment and slept and slumbered only to wake-up to reality, that the 1st to 3rd Defendant had given away the Apartment to a 3rd Party.

Within the period of his sleeping and slumbering, Opportunity beckoned the 4th Defendant to make his attempt at the Bull's Eye.

The 4th Defendant/ Counterclaimant on his own part, as a Winning Bidder tendered into evidence, Receipts issued by the 3rd Defendant and these included: - **Exhibit F** as proof that his 10% Bid Bond, and the Initial Instalment in the Sum of N69, 000 representing 15% in **Exhibit H** and then the Final Subsequent Instalment in the Sum of N345, 000 representing 75% in **Exhibit I**. These Payments were in consonance with the 4th Defendant's Accepted Offer in **Exhibit G**.

Further, he was also issued with a Handing Over Note to the Apartment as seen in **Exhibit J**.

The 4th Defendant had clearly satisfied the Contractual Terms and Conditions and the Law secures his Title to the Apartment. He was therefore entitled to immediate possession of his property.

It remains unchallenged that despite the Claimant's knowledge that the Apartment had been sold with Title handed over to the 4th Defendant, had doggedly remained in the Apartment since April 2006 till date, denying the 4th Defendant rents for his use and occupation of the Apartment.

The Claimant has not established any Cognizable Right of Ownership or Possession over the Apartment and had remained in the Apartment since the day the Transaction between him and 3rd Defendant had been declared **avoided**.

Since the Claimant was not a Sitting Tenant, he stayed in the Apartment at the pleasure and will of the 1st and 2nd Defendants. Upon the 4th Defendant being issued with the Handover Note in **Exhibit J**, the Claimant's residence at the Apartment extinguished automatically, thereby rendering him answerable to the 4th Defendant, who was now vested the Ownership and Title to the Apartment. By reason of the Claimant breaching the Conditions Precedent, his

Rights and Interests over the Apartment, were extinguished and he certainly has no Claim for Trespass that would have ensued to his benefit.

The Court can see that efforts were made at evicting the Claimant and an eviction actually took place as seen in **Exhibits E1 to E11**. But the Claimant remained defiant by continuing to remain in the Apartment till date. The Claimant owes the 4th Defendant Rents commencing from the Period of the issuance of the Handing Over Note.

It is on Record that the Claimant had queried his eviction and the threats that spewed therefrom by the Defendants and their cohorts but his narration of events is lopsided and hard to believe. The Claimant's narration, if true, had in fact, exonerated the 4th Defendant and his Thugs of any wrongdoing in relation to that eviction that occurred at the Apartment, as his *Pleadings* attributed the eviction to the 3rd Defendant and their Thugs.

The only accusation he levied against the 4th Defendant was that of breaking-ins, removal of doors, windows and destroying substantial part of the Apartment as well as looting.

The act of Looting and breaking-in, which is synonymous with Burglary, both connote a Crime. In this instance, there is nothing on Record evidencing these Crimes were reported to the Nyanya Police Station, nor were these criminal allegations substantiated by Proof beyond reasonable doubt. Therefore, in the absence of Credible Proof, the Court finds this leg of accusation unfounded.

Further, the Claimant had accused the 4th Defendant of resorting to self-help by removing doors and windows and destroying substantial part of the Apartment when he and his wife were in their respective Offices on the 21st of November 2009. When confronted with the fact that the 21st of November 2009 was a Saturday, and not a Working Day, the Claimant did not bat an eyelid.

It was therefore expected of the Claimant that since he and the wife did not witness this event, he was required to call or summon Eye-witness (es), either his Neighbours or a willing Passers-by, who saw the 4th Defendant

singlehandedly carry out the self-help. In this instance, however, not a Single Eye-witness was called or summoned to testify in proof of the Claimant's assertion.

The Court takes judicial notice of the 21st of November 2009, being a Saturday and not Working day, particularly as the Claimant claims to be a Civil Servant. It is not on Record that he and the wife where at their Scheduled Duty Post doing Overtime. The Claimant had orally testified that he was engaging in Paid Caretaker Work on behalf of Landlords on that fateful Saturday, but his Pleadings indicated otherwise, when he said he was at work. Surely, in the absence of any logical explanation on his whereabouts on that day, he cannot be in two places at the same time.

In any event, he needed to have summoned his wife as to their activities on that day and for her to testify with specific regard, as to the self-help moves of the 4th Defendant.

The Court finds his oral evidence irreconcilable with his Pleadings in this regard. The absence of proof, only demonstrated lack of good faith or malice towards the 4th Defendant. The Claimant simply speculated the culprit to be none other than the 4th Defendant with whom he had controversy over the Disputed Apartment. It is good to remind the Claimant that this Court does not act on speculations, and is it not a forum where an aggrieved party can ventilate misgivings. Courts of Law, only deal with hard facts and hard evidence and therefore, any Claim bordering on speculation or malice of any manner, is bound to fail.

Apart from that, from the adopted Witness Statement on Oath of the Claimant, he claimed that the 4th Defendant looted the Sums of N500, 000 and N400, 000 belonging to him and the Sum of N250, 000 belonging to his wife. Under Cross-Examination, he flipped by stating that only 10% of the looted sum belonged to him whilst the Remainder belonged to the Landlords. He had emphasised that he was acting as their Caretaker.

It is expected that a Report of the two looting incidences allegedly committed by the 4th Defendant and his company of thugs, would have been made to the Nyanya Police Station but there is no evidence of any such Report before the Court.

As a matter of fact, the Claimant had abandoned the issue of looting when setting out his reliefs in his Amended Claims, and the Court wonders why this fact of lootings were set in his Pleadings. The Claimant embellished his pleadings but he alone, fell for it.

In Conclusion and without further ado, the Court finds as follows: -

- a. A Declaration will not be made that the actions of the 4th Defendant by forceful eviction and destruction of the Claimant's Apartment known as Block 17, Room 9, Zone A, Nyanya, Abuja was unlawful, null void and a Breach of the Claimant's Right of Property.**
- b. A Declaration will also not be made that the Claimant is the Lawful Allottee, Owner and Title Holder of the Apartment known as Block 17, Room 9, Area "A" Nyanya, Abuja.**
- c. The Court declines to make an Order directing the 1st, 2nd and 3rd Defendants to accept the Claimant's Draft for the balance of N187, 000.00 (One Hundred and Eighty-Seven Naira).**
- d. A Perpetual Injunction will certainly not be granted restraining the 4th Defendant, his Agents, Privies or any other Person whosoever claiming through him, from possessing his lawfully acquired Apartment known as Block 17, Room 9, Area "A" Nyanya, Abuja.**
- e. As regards the Claim for the Sum of N5, 000,000.00 (Five Million Naira), as General and Special Damages, the Court is more than satisfied that this Claim was unproved and unmeritorious and is accordingly refused and dismissed.**

As regards the 4th Defendant/Counterclaimant, the Court finds as follows: -

- a. A Declaration of Court is made that the 4th Defendant is the Lawful Allottee, Owner and Title Holder of the Apartment particularly described**

as Block 17, Room 9, Area "A" Nyanya, Abuja, having paid all the Requisite Fees in respect of same to the 1st, 2nd and 3rd Defendants.

- b. A Declaration of Court is also made that the 4th Defendant/Counterclaimant is entitled to Immediate Possession of the House known as Block 17, Room 9, Area "A" Nyanya, Abuja, presently occupied by the Claimant.
- c. An Order of Court directing the Claimant to surrender the possession of the House to the 4th Defendant/Claimant and this is to take effect forthwith.
- d. An Order of Court is made directing the Claimant to pay to the 4th Defendant the Sum of N120, 000.00 (One Hundred and Twenty Thousand Naira) per annum from November 2007, when he paid the Final Sum for the Apartment until when Possession is given up.
- e. An Order for Payment of the Sum of N1, 000,000.00 (One Million Naira) as General Damages for the deprivation of the use by the Lawful and Rightful Owner of the Apartment who had to endure the length of this Trial to claim his lawful rights, as a result of the Claimant's actions.

Judgment is entered in favour of the Counter-Claimant and the Claim of the Claimant is found unmeritorious and dismissed in its entirety.

HON. JUSTICE A.A.I. BANJOKO
JUDGE