

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA
BEFORE HIS LORDSHIP: HON. JUSTICE V.V.M VENDA.
ON THURSDAY 27TH JUNE, 2019**

SUIT NO FCT/HC/CV/573/2015

BETWEEN:

NATURE ASSETS LTD-----PLAINTIFF

AND

ASO SAVINGS & LOANS PLC----- DEFENDANT

JUDGMENT

By a writ dated the 22nd of December, 2015 and amended on the 4th day of July, 2017, the Plaintiff seeks the following reliefs thus:-

- (1) A declaration that the document described as Deed of Assignment between the Defendant and the Plaintiff in respect of the property in issue, speaks for itself.
- (2) A declaration that the Defendant is not entitled to deny the Plaintiff of possession of the property known and described as House No A6 Plot 3111, Cadastral Zone F04, Mpape Abuja FCT.
- (3) A declaration that the Defendant cannot lawfully evict or otherwise dispossess the Plaintiff of the property known

and described as House No A6 Plot 3111 Cadastral Zone F04, Mpape, Abuja FCT.

- (4) An Order of perpetual injunction restraining the Defendant acting by itself or through any agent or person or office from dispossessing the Plaintiff of the property known and described as House No A6 Plot 3111 Cadastral Zone F04, Mpape, Abuja FCT.
- (5) General damages of N500,000.00 for the harassment of the Plaintiff by the Defendant.
- (6) The cost of this action.
- (7) Further or other reliefs.

The Plaintiff filed a 16 paragraph witness statement on oath deposed to by **Maimuna Aliyu**, a former employee of the Defendant in this case.

She deposed that the Plaintiff is a Limited Liability Company whose registered office is No. 101, Old GRA Maiduguri, Borno State, while Defendant is a corporate entity involved in banking business and dealing in real estate in Nigeria.

That the Defendant has the policy of encouraging its employees and officers to source for customers for its products including real estate, and that in line with the aforementioned policy and practice, she introduced the Plaintiff to the Defendant for the purpose of purchasing the property known and described as

House No. A6 Plot 3111 Cadastral Zone F04, Mpape Abuja FCT whereof the Defendant and Plaintiff sealed a transaction with the execution of Deed of Assignment in favour of Plaintiff. After the execution of the Deed, the Plaintiff took possession of the property and has been in legal possession since June, 2013.

The Defendant is equally aware that the Plaintiff has renovated the house.

By a letter dated December 1st 2015 with reference number Aso/RMD/2015/551, the Defendant falsely claimed that the consideration for the property is N210,000,000.00 and purported to evict the Plaintiff from the property. In reaction, Plaintiff's solicitor wrote a letter dated December 4, 2015 to the Defendant demanding a retraction of the Defendant's letter of 1st December, 2015 which the Defendant ignored with the intention to evict the Plaintiff from the property.

The Defendant is a big corporate organisation which is trying to bully the Plaintiff and seize the property unlawfully, and at the same time frustrate the Plaintiff because she who introduced Plaintiff to Defendant resigned from the Defendant as executive Director as a result of her insistence on keeping proper record and cost analysis.

The Plaintiff also filed an additional witness statement on oath

deposed to by **Maimuna Aliyu**. She deposed that the Defendant is seeking to mislead the court by denying its transactions with the Plaintiff on House No. A6 Plot 3111 Cadastral Zone F04, Mpape, Abuja FCT. That when she was an employee of the Defendant, it sent several emails to her work email address, maimunaaliyu@asopl.com to direct her and other staff to source for customers for the Defendant's products, which emails were sent between April 1st, 2009 and September 30, 2013.

That **Hassan Usman** the Defendant's Managing Director at the material time approved the conveyance of the said property to Plaintiff through email to maimuna.aliyu@asopl.com in the second quarter of 2013. Apart from the approval to convey the property to Plaintiff, a total of about 10 similar approvals were given to various customers as approved by the Defendant's Board of Directors. Aside this, the Defendant classified certain customers as *high net worth individuals* who were allowed to transact business without physically visiting Defendant or any of its branches. Rather, Defendant allowed its staff to go between itself and such individuals.

That the property was part of the Defendant's Aso grove Estate, and virtually all the purchasers in that estate did not physically visit Defendant, Rather, they were assisted by staff of the Defendant on its behalf.

It is her further testimony that her role in the Aso Grove Estate transaction was not marketing, rather, she liaised with the developer and the Federal Capital Territory Administration and helped Defendant save more than Five Billion Naira, and that by 2010 when the project commenced, she was Executive Director Retail Banking.

By the time the project was completed and handed over to the Plaintiff, it was an uncompleted building without doors, by which time she was no longer an employee of the Defendant.

Further, she deposed that prior to this transaction, the Defendant had a reward system for staff that performed excellently in their work and that at that material time, the Defendant had given out a bad load of about 2 billion naira to the Federal Capital Territory Administration before her employment. On assumption of office, and on the instruction of the Managing Director, **Hassan Usman**, she helped to liquidate the debt by negotiating with the FCT Administration to allocate a 5 hectares land worth 3 billion naira in settlement of the debt, thus making additional 1 billion naira profit for Defendant. These negotiations also led to the allocation of an adjoining land worth N600,000.000.00 which serves as an additional green area to the Aso Grove Estate which together metamorphosed into a 60 housing units, from where the house in dispute was given to her as a reward for her success in the transaction.

As a result of this development she requested Defendant to assign the said house to Plaintiff for a consideration of N200,000,000.00 she received from Plaintiff. Also, as a result of the successful work she did in the aforementioned transaction, other members of the Defendant received remunerative rewards. The Managing Director, **Hassan Usman** got two houses, while **John Olatunde Ayeni** in his capacity as vice chairman at the time got N250,000,000.00 cash. Thus, the Defendant owed her, she owed the Plaintiff and Defendant duly assigned what it owed her to the Plaintiff with her consent. She deposed further that the Deed of Assignment between the parties was duly executed by **Peter Longe** as Director and **Bilkisu Rimi** as company secretary to the Defendant, and that **Akachukwu Okechukwu** did not verify from these two before accusing her of procuring fake title documents, thereby giving false testimony on oath.

That this is part of a grand plan by the chairman of the Defendant and his loyalists to witch limit and rubbish her because while she was an employee of the Defendant, she stood against improper transactions, including refusing request for loan by the chairman she considered either reckless, illegal, inappropriate and unprofessional. As a result, the chairmen by passed her and went ahead with some of those transaction without her approval to the detriment of the Defendant which prompted her to resign from the Defendant. This is the reason why the Defendant decided to

frustrate and deny the transaction with the Plaintiff to spite her. She finally urged the court to grant the Plaintiff's claims and dismiss the counter claim in its entirety.

The Defendant on its part filed a statement of Defence/Counter claim dated the 30th of March, 2016. It admitted paragraph 2 of the statement of claim but denies paragraphs 3, 4, 5 and 6 and specifically stated in respect of paragraph 6 that it did not at any time whatsoever seal any transaction with Plaintiff in respect of House No. A6 Plot 3111 Cadastral Zone F04, Mpape Abuja. That the title document of the said house is still in possession of the Defendant, and that it did not at anytime execute a Deed of Assignment in favour of the Plaintiff over the said Plot. Furthermore that after the completion of the Estate, **Maimuna Aliyu**, sometime in 2013 whilst still an Executive Director with Defendant, indicated interest to acquire one of the units, subject matter of this suit for her son one **Aliyu Sanda** using Plaintiff of which her son is a promoter. **Maimuna Aliyu** thereafter abused her position as an Executive Director and fraudulently converted the said property to her personal use, by unlawfully procuring fake title documents to Plaintiff as proof of payment of the said house.

The Defendant further denies paragraphs 7, 8, 9 and 10 of the statement of claim and stated that the originals of any Deed of

Assignment with respect to the said property in favour of Plaintiff are not in its possession.

That the Plaintiff in conjunction with **Maimuna Aliyu** is in unlawful possession of Defendant's property and has illegally altered defaced and changed the structure of the said property.

However, the Defendant admitted paragraph 11 of the statement of claim to the extent that it wrote a letter to Plaintiff on the 1st of December, 2015 via **Maimuna Aliyu** for the purpose of investigating the sale of the houses in its Aso Groove Estate.

Upon the conclusion of investigation, it did not find any evidence that Plaintiff paid for the purchase of the house, and that it made several entreaties to **Maimuna Aliyu** with whom it transacted with respect to the property to furnish it with the details of the payment to no avail.

Further, the Defendant admitted paragraph 12 of the statement of claim to the extent that it received a letter dated 4th December, 2015 from Plaintiff's solicitor, but denies paragraphs 13, 14 and 15 of the statement of claim. Defendant states that the Plaintiff is not entitled to any of its claims as set out in its statement of claim or any claim whatsoever with respect to House No. A6 Plot 3111 Cadastral Zone F04, Mpape Abuja. That the Plaintiff's case is bereft of all merit as same is frivolous and an abuse of the court

process. He urged the court to dismiss the Plaintiff's case in its entirety.

Accordingly, the Defendant counter-claims against the Plaintiff as follows:

- (1) A declaration that the counter claimant is the bonafide owner of the subject matter of this suit.
- (2) A declaration that the Defendant to the counter claim is a trespasser on the subject matter of this suit.
- (3) An order granting immediate possession of House No. A6 F04, Mpape Abuja.
- (4) An Order of mandatory and perpetual injunction restraining the Defendant to counter claim from further trespassing and/or interfering with the counter claimant's ownership over the said property.
- (5) Damages against Plaintiff/Defendant to counter claim in the sum of N100,000,000.00 for trespass on the said property.

In the alternative;

- (1) An order compelling the Plaintiff to pay the counter claimant the current market value of the said property in the sum of N250,000,000.00.
- (2) The cost of this suit in the sum of N50,000,000.00.
- (3) 10% interest on the judgment sum from the date of judgment till full liquidation.

The Defendant/counter claimant filed a witness statement on oath deposed to by **Akachukwu Okechukwu**, a legal officer of the Defendant bank in support of the statement of Defence/Counter claim.

He deposed that paragraph 3 of the Plaintiff's statement of claim is false, as the bank's products are available to members of the public, including it's interested staff. That contrary to paragraphs 4 and 5 of the Plaintiff's statement of claim, the Plaintiff is totally unknown to Defendant, and at all material times, the bank dealt and transacted with Maimuna Aliyu over House No. A6, Plot 3111 Cadastral Zone F04, Mpape Abuja- which forms part of the Housing units in the Aso Groove Estate and costs N210,000,000.00.

It is his further testimony that as the then Executive Director Products and Markets Division, **Maimuna Aliyu** who was in custody of the keys to the entire houses in the Estate of was in charge of marketing the properties to prospective customers and that she indicated interest to purchase one for her son one **Aliyu Sanda** using the Plaintiff which her said son was a promoter, shareholder and Director. That contrary to paragraph 6 of the statement of claim, Defendant did not seal a transaction with Plaintiff over the property in dispute, as the title documents of the said property are still in custody of Defendant, and that **Maimuna Aliyu** abused her position by fraudulently converting

the said property to her personal use by procuring fake title documents for that purpose. She never paid for the said house as she is still in illegal occupation of the house till date, and that the Plaintiff/Defendant to counter claim still owes the counter claimant the duty to account for its property in the sum of N250,000,000.00 being the current market value. He urged the court to dismiss the Plaintiff's case for lack of merit and uphold the counter claim.

In response to the statement of the statement of Defence/Counter the Plaintiff filed a reply to the statement of defence and defence to counter claim dated the 10th day of May, 2016 and also filed an additional witness statement on oath which is impair material with the Reply.

In the Reply, Plaintiff denied most of the paragraphs of the statement of defence but made clarifications to some.

The Plaintiff averred that the Defendant misled the court by denying it's transaction with the Plaintiff on the property in dispute. That Defendant indeed sent several emails to Maimuna Aliyu's email address, maimunaaliyu@asopl.com when she was in their employment to encourage her to source for customers for the Defendant's products, and that **Hassan Usman** the Defendant's Managing Director at the material time approved the conveyance of the property to the Plaintiff. A part from this

approval, a total of about 10 similar approvals were given to various persons by the Defendant's Board of Directors. Further, Plaintiff averred that there is no separate root of title for the property. Rather, the title in the Defendant's custody is for the large expanse of land consisting of the Aso Groove Estate in which the property is situate. That some of the properties in the Aso Groove Estate were less than N210,000,000.00, while some were more. Furthermore, the role of **Maimuna Aliyu** in the Aso Groove Estate transaction was not marketing. Rather, that role was performed by a staff of the Home Finance Division headed by one **Kudi Badmus**.

In conclusion, Plaintiff averred that **Maimuna Aliyu** became entitled to the property subject matter of this suit as a reward for work done while she was Executive Director Retail Banking in the Defendant which she transferred to Plaintiff for a consideration of the sum of N200,000,000.00

In her Defence to counter claim, Plaintiff maintains all the statements, averments and claims in the Writ of Summons and statement of claim.

It urged the court to dismiss the counter-claim in its entirety.

At the hearing of the suit, **Maimuna Aliyu**, a business woman who lives at Plot 3058, Isma Mohammed Street, Asokoro testified as PW1. She adopted her witness statement on oath and

additional statement on oath as her evidence in this case. She also tendered the following documents as exhibits – which were admitted in evidence.

- (1) The Deed of Assignment between Aso Savings & Loans and Nature Assets Ltd was admitted in evidence as exhibit 1.
- (2) Letter dated 1st September, 2014 is exhibit 2.
- (3) Letter dated 25th September, 2014 is exhibit 3.
- (4) Letter dated 29th January, 2015 is exhibit 3.
- (5) Document titled service charge payment for the year 2014 Aso Groove Estate Plot 3111 Mpape, Abuja Acknowledgement copy is exhibit 5.
- (6) The mail of 22nd September, 2011 produced on 10th May, 2016 is exhibit 6.
- (7) That of 6th March, 2012 produced and dated 22nd December, 2015 is exhibit 7.
- (8) Letter dated 1st December, 2015 titled revocation of offer to House A6, Aso Groove Estate offered to Messers Nature Assets limited is exhibit 8.
- (9) Letter dated 4th December, 2015 acknowledged on 7th December, 2015 from **Toyin Okebukola & Co** is exhibit 9.

In addition, she referred to emails she received on her e-mail address from the Defendant and urged the court to grant the Plaintiff's claim and dismiss the counter claim.

Under cross examination, PW1 admitted working with the Defendant as a salaried employee but not a Director. She also admitted witnessing all the transactions to some extent before her resignation, and also admitted that the transaction leading to the Deed of Assignment was concluded before she resigned. Further, she re-affirmed that exhibit 1 is the evidence of payment of the sum of N200,000,000.00 which was not transferred. She also admitted that exhibit 6 contains an attachment which is the summary of investment in respect of the property, Plot A6.

She stated that the Houses in the estate were sold for different prices, but the most expensive was N200,000,000.00. (Two Hundred Million Naira).

PW 2 is **Tanimu Musa Usman**, a chartered accountant who lives at No. 124, Ebitu Ukiwe Street, Jabi, Abuja. He stated that he worked for Aso Savings & Loans Plc from January 2006 to September, 2015.

He was involved in the Aso Groove Estate project of the Defendant and was at one time the Managing Director of Aso Savings Plc. That the project started around mid – 2011 and ended late 2014. During this period he communicates with his colleagues via e-mails and verbal method.

That the role of the S.P.D.C which was engaged by Aso saving as the main contractor to the project included Architecture,

structural drawings, Assisting Aso Savings secure developmental approval, construction of the Housing Units and development of the adjoining recreational parks.

SPDC constructed 56 Housing Units out of which one was granted to him and another granted to **Mainuna Aliyu**. To the best of his knowledge, **Maimuna Aliyu** did not take the house by force, as it was granted to her by Defendant as a reward for work done, but that he cannot remember the number of the house.

Under cross examination, he admitted that the sharing of the houses was not done with the consent of the Board.

That the Board declined to ratify the sharing but instead gave all the allottees an option to either pay in full for the houses or return them to the bank. As a result, he returned his allocation to the bank. Abdul Mukta also returned his own. **Tony Ayeni** paid for his own, perm sec returned his allocation, Minister of FCT also returned his own but **Maimuna Aliyu** did not return hers. He is not also aware whether **Maimuna Aliyu** or SPSUDO company paid N200,000,000.00 in consideration for the house.

It is his further testimony that the Board refused to ratify the allocation because it was of the view that the housing units were allocated on estimated targeted profit which was not met.

On re-examination, he stated that **Maimuna Aliyu** was the head of the team for the project, and that she met the bank's target.

In defending the suit on 13/03/18 one **Akachukwu Okechukwu** a legal officer with the Defendant, testified as DW 1. He adopted his witness statement on oath dated 30/03/16 as his evidence in this case. He also tendered three documents which were admitted in evidence as follows:

- (1) Forms CAC 7 and CAC 2 are exhibits D1 and D2 respectively.
- (2) Letter dated 1st December, 2015 from Defendant to Plaintiff is exhibit D 8 (a).

He urged the court to dismiss Plaintiff's claims in its entirety and grant Defendant's reliefs in the counter claim.

Under cross examination, he stated that he started working with the Defendant in 2006. He is no longer part of the management of the Defendant. He was not also part of the management in 2009, 2013 and 2015. That presently, the Managing Director of the Defendant is **Adekunle Adedigba**, but before him was **Mr. Hassan Usman**, who was Managing Director in 2013. He neither attended management meetings nor played any personal role in the Aso Groove Estate transactions, but he had access to the records and transaction.

He knows **Peter Longe** and **Bilkisu Rimi** who were former Executive Director and former company secretary/legal adviser to the Defendant in 2013 respectively. He did not interview **Hassan Usman, Bilkisu Rimi** or **Peter Longe** before deposing to his witness statement on oath but extensively recourse from the records. He neither read official emails exchanged between the management and staff relating to the Aso Groof transaction nor interviewed **Hassan Usman** as regards the genuiness of exhibit 1.

He did not also interview Peter Long for the same purpose. He is not aware whether Plaintiff pay service charge in relation to the property and is not also aware how long it took the Plaintiff to change the structure of the house.

On re-examination, he stated that he did not transfer title to Plaintiff in the letter of offer referred to in exhibit 8.

Parties were ordered to file their final written addresses.

The Defendant's written address is dated the 13th day of April, 2018. It formulated three issues for determination thus:

- (1) Whether the Plaintiff/Defendant has proved its case before this Honourable Court to entitle it to the reliefs sought.
- (2) Whether the Defendant's counter claim was denied.
- (3) Whether the Defendant established its claim.

On issue one; counsel on behalf of Defendant submitted that the gamut of Plaintiff's claim is anchored on the propriety of exhibit 1, same being an evidence of transfer of title of the property from Defendant to Plaintiff.

The Plaintiff's evidence does not support this claim as there is nowhere in exhibit 1, where it is contained that the disputed property was assigned to PW1 as a gift from the Defendant in exchange or reward for her hard work and diligent service to Defendant. Exhibit 1 clearly states that the assignment of the disputed property was in exchange for N200,000,000.00 (Two Hundred Million Naira) paid to Defendant by the Plaintiff. He argued that evidence not supported by pleadings goes to no issue, and the courts can only rely on the evidence and facts presented by the parties and nothing more.

He cited the case of **BOB EMMANUEL VS ATTORNEY GENERAL RIVERS STATE (2016) 11 NWLR (pt. 1523) 365 at 384-385** paragraphs H – A.

On issue two and three, counsel submitted that the Plaintiff's defence to the counter claim offends the rule of pleadings, amounts to insufficient general traverse and is incapable of placing any burden of proof on the counter claimant.

He argued that where the material facts pleaded by a party are not properly and sufficiently traversed, no issue is joined, and the

onus of proof is discharged. He cited the case of **MANDILAS & KARABERIES LTD VS APENA(1969) 2 SCNLR 293**, and urged the court to hold that the Plaintiff's defence to counter-claim did not join issues with the counter claimant and the assertions contained therein are deemed admitted to the extent that the counter claimant is without more entitled to judgment.

The Plaintiff's final written address is dated the 2nd day of July, 2018.

It formulated 3 issues for determination thus:

- (1) Whether exhibit 1 (Deed of Assignment between the parties) was forged or not.
- (2) Whether the Plaintiff is entitled to the reliefs sought.
- (3) Whether the Defendant is entitled to the reliefs claimed.

On issue one; counsel submitted that the accusation of Defendant that exhibit 1 was forged is unfounded, as Plaintiff took lawful possession of the premises in issue on the authority of exhibit 1. He referred the court to the testimony of PW1 that exhibit 1 was signed on behalf of Defendant by **Bilkisu Rimi** in her capacity as company secretary/legal adviser and **Peter Longe** in his capacity as Executive Director Finance. He argued that the Defendant is not a natural person who can act for itself but acts through others. He therefore urged the court to hold that the Defendant is bound by the actions of its company secretary/legal adviser and

Executive Director Finance who signed exhibit 1 on its behalf. He cited the case of **INTERDRIL NIGERIA LTD VS U.B.A PLC (2017) 13 NWLR (pt. 1581) 52, (2017) LPELR.**

He also cited the case of **PATRICK IZUAGBE OKOLO VS UNION BANK OF NIGERIA LTD (2004) 1 SC (pt. 1) 1.**

On issue 2, counsel submitted that the Plaintiff is entitled to possession of the premises covered by exhibit 1 which speaks for itself.

He cited the case of **UDO VS STATE (2016) 2 - 3 SC pt. 111 29** paragraph 12 where the Supreme Court held that the best evidence of the contents of a document is the document itself, produced for the inspection of the court. He also cited Section 128 of the Evidence Act 2011 which provides for the exclusion of oral by documentary evidence. Further, he submitted that since the right to be enforced is an equitable one, an unregistered conveyance is enough to establish the equitable right of possession.

For this, he cited the case of **OBIENU VS OKEKE (2006) 16 NWLR) pt. 1005 at 239 - 240.**

On issue 3, counsel submitted that it is trite law that he who asserts must prove. The Defendant has woefully failed to prove that the Plaintiff took possession of the property through forged

documents, as this assertion has been thoroughly discredited by evidence adduced during the trial. He cited the case of **OROJA & ORS VS ADENIYI & ORS (2017) ALL FWLR (pt. 883) 1433** and urged the court to discountenance this assertion and dismiss the counter claim.

In this suit, while the Plaintiff prays this court to declare that exhibit 1, being a Deed of Assignment, executed between the parties, as speaks for itself. Therefore the Defendant cannot deny or should not be allowed to deny the Plaintiff of possession of the subject property in this suit, neither can the Defendant lawfully evict or otherwise dispossesses, the Plaintiff of the said property.

The court is also called upon to make and order restraining the Defendant, either by itself or through its agents, office or interested person, from dispossession the Plaintiff of the said subject property.

The Defendant counter claims and prays the court to declare that the Defendant/counter claimant is the bonafide owner of the subject property in this suit while declaring the Plaintiff/Defendant to counter claim a trespasser.

Counter claimant also prays the court to order the vacant possession of the said property in favour of the counter claimant and a perpetual injunction restraining the Plaintiff from further

trespassing and/or interfering with the same said subject property in this suit.

The court is called upon, in the alternative, to compel the Plaintiff/Defendant to counter claim to pay the current market value of the said property in the sum of N250,000,000.00, the sum of N50,000,000.00 and 10% interest on the judgment sum from the date of judgment.

The two parties tendered exhibits. This suit is therefore premised so much on documentary evidence.

The Plaintiff relies mostly on exhibit 1 in which is contained facts showing that Plaintiff and the Defendant executed a Deed of assignment and the Plaintiff paid N200,000,000.00 to the Defendant for the subject property. Without wasting any time I want to look at the exhibits and particularly exhibit 1.

Exhibit 8 is a letter from the Defendant to the Plaintiff titled Revocation Of Offer To House A6, Aso Groove Estate, Offered to MESSER.

Nature Assets Limited while exhibit 9 is a reply to exhibit 8. These two exhibits are not denied. They themselves tendered this letter as exhibit D8 (a).

Though the offer letter itself is not before the court, exhibit 8 is a confirmation that there was an offer to the Plaintiff to purchase the said property. The opening paragraph of exhibit 8 reads.

Please refer to the letter of offer granted to you **by the Bank** for the purchase of one unit of five bedroom duplex at Aso Groove Estate for the sum of N210,000,000.00 Million.

There can be no denial that the Defendant made an offer to the Plaintiff, for the Plaintiff to purchase the one unit of five bedroom duplex at Aso Groove Estate for the sum there in stated. In my opinion, it is based on this offer that the Plaintiff and the Defendant Drafted a Deed of Assignment tendered in this proceeding as exhibit 1.

Defendant's vehemently contest this document inferring it to have been forged without satisfying the court of forgery.

Exhibit 1 appears to me to be (and I believe it is) an agreement between two parties with recitals which states in recital 2 thus:

The assignor is now desirous of assigning its title in the said property to the Assignee free from encumbrance for a consideration of N200,000,000.00 (Two Million Naira) only.

The Deed went further to witness that in consideration of N200,000,000.00 Million, the Assignor hereby assigns unto the Assignee all its interest and rights in the property lying and situate at House No A6, Plot 3111 Cadastral Zone F04, Mpape,

Abuja FCT. It goes further to state that, the assignor is **desirous** of assigning its title in the property for the sum of N200,000,000.00 (Two Hundred Million Naira) only being the total purchase price.

The first thing I observe on this document is the fact that the Assignor is desirous of assigning but the phrase “the assignor hereby assigns is absent.” A desire to do something is different from the actual doing of the thing. I find that the Assignor though desirous to assign has not actually assigned.

Where the desire is actualised the agreement goes further to state that the Assignee has paid and the Assignor acknowledges receipt of payment. The fact of payment and acknowledgment of receipt is also missing.

The deed also states that the Assignor shall hand over the originals of all documents in respect of the said property, to the assignee.

It is in evidence that the Assignor has not yet handed the said property documents over to the Assignee.

This gives me the impression that the consideration has not been paid having not so stated in the said Deed. This coupled with the absence of a declaration that the Assignor acknowledges receipt of same, which, in practice, excuses the actual issuance of a

receipt without which the Assignee is required to produce the receipt of payment.

The document is also not registered. An unregistered registrable instrument remains in effect until it is registered without which it cannot be used to prove title to land. See **OGUNLAYE VS SAFEJO (2009) LPELR 8081 (CA)**.

I am also of the view that although a party to a case is not bound to call all the witnesses in the world before he can prove his case, the witnesses produced in any given case must be such that even one credible witness should suffice. In the instant case, I see **BILKISU**, the company secretary a very necessary witness who signed the purported deed of assignment on behalf of the Defendant to either affirm or deny the document and to say how and when the money was paid.

In the face of an allegation that the Deed of Assignment was forged, I see the testimony of either the Director or the company secretary as necessary in this case who signed the document on behalf of the Bank. The law firm or individual that prepared the Deed is not stated. This could have been a possible witness to clear the question of who briefed him to prepare the document and executed same.

In the body of the Deed it is written signed sealed and delivered. But only signing has been done. There is no sealing and no

delivery. The Plaintiff's PW1 insists that the original Deed of Assignment is with the Defendant, meaning no delivery has taken place. Therefore the document has not been sealed and delivered.

I have read the prayers or reliefs sought by the Plaintiff over and over again; I have not seen where the Plaintiff prays the court to compel the Defendant to hand over or deliver to the Plaintiff, the original copy of the Deed, and all the title documents for that matter.

Lastly the Plaintiff failed to inform the court by what means the payment of N200,000,000.00 (Two Hundred Thousand Naira) only, was made to the Defendant. By this I mean, whether same was paid by check, Bank transfer or cash payment. Mere assertion that the sum of N200 M has been paid to someone or organisation is not enough to prove same.

For all the reasons I have enumerated above, I find that there was an offer of allocation of the house, now known as House A6 Aso Grove Estate, Plot 3111 Cadastral Zone F04, Mpape, Abuja FCT, made to the Plaintiff. The Plaintiff PW1 who was at that time a director in the Defendant company, though did not make a formal letter of acceptance, has since moved into the house. There is however no evidence that she paid the N200,000,000.00 before or after moving into the house.

The document, exhibit 1 speaks for itself loud and clear that

payment and acknowledgment of receipt of same has not been made. The Plaintiff's claim that she has paid for the house hereby fails.

In the circumstance, her prayer for reliefs 5, 6 and 7 being prayers for perpetual injunction, general damages of N500,000,000.00 m and cost of this suit also fail.

As for prayers 2, 3 and 4 of the claim, I agree with the Plaintiff that the Defendant cannot and should not deny the Plaintiff entitlement to or possession of the subject property neither is the Defendant allowed to forcefully evict or otherwise dispossess the Plaintiff from the said property.

The Defendant's counterclaim in the alternative is that the Plaintiff be ordered to pay for the property at the current purchase price of same, which is N250,000,000.00 Million.

The Plaintiff was not allotted the property just yesterday. The property was allocated to her years ago.

The reason for subjecting her to pay for the now, is not presented to the court, even the claim that the property was offered to the Plaintiff for a consideration of N210,000,000.00 Million is not substantiated.

The purported letter of revocation marked exhibit 8 and D8 (a) in this proceedings was properly responded to by exhibit 9 – a letter

in response thereto, in which the Defendant, through her solicitors re-stated that the property was for a consideration of N200,000,000.00 Million, which letter was not disputed, neither is it contradicted nor challenged. The court held in **KAYILI VS YILBUK (2015) LPELR - 24323 (SC)** thus:

“The law is trite and enjoins a court to act on unchallenged evidence.”

At trial, the Defendant did not produce evidence that they allocated the property to the Plaintiff for the cost of N210,000,000.00 Million.

I find therefore that the Defendant has not proved this head of claim.

The Defendant also alleged fraud against the Plaintiff's PW1 whom, the Defendant alleges that she used her position as an Executive Director with the Defendant Bank in charge of products and Marketing Division to fraudulently release the keys to the property to her son, **Aliyu Sanda**.

Defendant enumerated acts or particulars of fraud in their statement of defence and in paragraph 8 thereto listed (i) – (v).

It is also alleged in paragraph 8 (iv) that the said PW1, **Maimuna Aliyu Sanda**, in Criminal Breach of trust, committed this fraud.

Both fraud and Criminal Breach of Trust are Criminal Offences and the standard of proof is that beyond reasonable doubt. The evidence before the court is a far cry of an attempt to prove a criminal allegation. These allegations of fraud and criminal breach of trust are therefore not proved.

It is in evidence that the Plaintiff is already in occupation of the subject property. By exhibit 8 I find that even if the Plaintiff entered into the property illegally, exhibit 8 has ratified her entry, in that the exhibit states that the offer is now revoked which means there was an offer.

In view of all my findings above, I hold that both the Plaintiff and the Defendant have succeeded in part, thus:

I order the Plaintiff to pay to the Defendant within 30 days the sum of N200,000,000.00 being the purchase price of the subject property, House A6 Plot 3111 Cadastral Zone F04 Mpape, Abuja FCT which she ought to have paid for long before now.

The Defendant is hereby restrained from forcefully evicting or otherwise dispossessing the Plaintiff of the subject property.

The Plaintiff is ordered to pay to the Defendant the sum of N5,000,000.00 (Five Million Naira) only, as cost of this suit.

I make no further orders.

Singed
Hon. Judge
27/06/19

APPEARANCES

- 1. DR. ELIJA OKEBUKOLA RAYMOND UMARU ESQ and REUBEN CHAKU for the Plaintiff.**
- 2. BONIFACE BASSEY, SAMUEL OGUNTUYI and UCHE ALAGAWU for the Defendant.**

AUTHORITIES

- 1. BOB EMMANUEL VS ATTORNEY GENERAL RIVERS STATE (2016) 11 NWLR (pt. 1523) 365 at 384-385 paragraphs H – A.**
- 2. MANDILAS & KARABERIES LTD VS APENA(1969) 2 SCNLR 293.**
- 3. INTERDRIL NIGERIA LTD VS U.B.A PLC (2017) 13 NWLR (pt. 1581) 52, (2017) LPELR.**
- 4. PATRICK IZUAGBE OKOLO VS UNION BANK OF NIGERIA LTD (2004) 1 SC (pt. 1) 1.**
- 5. UDO VS STATE (2016) 2 – 3 SC pt. 111 29 paragraph 12**
- 6. OBIENU VS OKEKE (2006) 16 NWLR) pt. 1005 at 239 – 240.**
- 7. OROJA & ORS VS ADENIYI & ORS (2017) ALL FWLR (pt. 883) 1433.**
- 8. OGUNLAYE VS SAFEJO (2009) LPELR 8081 (CA).**
- 9. KAYILI VS YILBUK (2015) LPELR – 24323 (SC).**

