

IN THE HIGH COURT OF JUSTICE
FEDERAL CAPITAL TERRITORY OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT LUGBE – ABUJA
ON, 11TH DAY OF DECEMBER, 2019.
BEFORE HIS LORDSHIP:- HON. JUSTICE A. O. OTALUKA.

SUIT NO.: -FCT/HC/CV/2010/2016

BETWEEN:

1) COLLINS EZECHUKWU
2) GREATEC NIGERIA LIMITED :.....CLAIMANTS
AND

1) FINBARR OKOYE
2) VICTOR AJAYI
3) CHUKWUDI ANI
4) RILWANI GIWA
5) EMMANUEL OKOCHA
6) NICHOLAS EKU
7) KELECHI OGBONNA
8) THE REGISTERED TRUSTEES
OF LANDLORDS AND TENANTS
ASSOCIATION OF CO-OPERATIVE
CITY GARDEN ESTATE, LUGBE. :.....DEFENDANTS

KenechukwuMaduka for the Claimants.
Defendants not represented for judgment.

JUDGMENT.

The Claimants by a writ of Summons dated 17th day of June, 2016, and filed on the 20th day of June, 2016, brought this suit against the Defendants claiming as follows;

1. An order of perpetual injunction, restraining the Defendants, their agents and privies from intimidating, harassing or in any way preventing the 1st Claimant from

going in or out and also gaining entrance into Co-operative City Garden estate Lugbe Abuja.

2. An order of perpetual injunction, restraining the Defendants, their agents and privies from harassing, intimidating and forcing the 1st Claimant to register with the association of landlords and tenants, Association of Co-operative City Garden Estate, Lugbe, or in any way mandating or persuading the 1st Claimant to make any payment into the account of the association in the name of the 7th Defendant.
3. A declaration that the act of the Defendants by enforcing any payments, levies in the name of the association is only applicable and enforceable to registered and card carrying members of the association which the Defendants represent.
4. A declaration that the 1st Claimant who is not a member of the association cannot be compelled by the 1st – 7th Defendants to register as a member of the association or compelled to make any payment to the association and cannot be restrained to move in and out of the Co-operative City Garden Estate, Lugbe, by the Defendants and their agents and privies.
5. The sum of 7 million naira being the loss of contract which the Defendants prevented the Claimant from getting from Calipak Nigeria Limited as a result of the Defendant's act.
6. A declaration that the constitution of the Defendants is only applicable to registered members/subscribers of the association and not the 1st Claimant who is not part of the association which the Defendants represent.
7. The sum of 1 million naira as General damages for public ridicule and embarrassment which the Defendants exposed the 1st Claimant as a result of their action.

From the averments in the statement of claim, which were also admitted by the Defendants in their joint statement of defence, the 1st Claimant is a resident of Co-operative City Garden Estate, Lugbe, Abuja, while the 2nd Claimant is a company belonging to the 1st Claimant.

The 1st – 7th Defendants are also residents of Co-operative City Garden Estate, Lugbe, Abuja and members as well as officials of the 8th Defendant.

The grouse of the Claimants against the Defendants as stated by the Claimants in their statement of claim, is that on the 11th day of May, 2016, while on his way at about 7:00am to pursue a contract with Calipak Nigeria limited in respect of which letter of award was to be issued to the 2nd Claimant after the scheduled meeting by 9:00am that day, the 1st Claimant was confronted at the gate of the Estate by the Defendants who demanded to see his registration card.

The Claimants averred that the 1st Claimant told the Defendants that he is neither a member of the 8th Defendant nor was he aware of its existence, whereupon the Defendants ordered the security they employed to man the gate to lock the gate and to not allow the 1st Claimant move out of the estate until he registered with the association and also pay what they called utility levy/payments. That on the 1st Claimant's insistence that he was not interested in joining the association and that nobody would force him to join a union or make payments to an organisation in which he is not a member, he was detained inside the estate and was restrained and prevented from going out of the estate from 7:00am until 1:20pm on that same day.

The Claimants stated that on being let out of the estate by 1:20pm, the 1st Claimant rushed down to Calipak Nigeria

Limited's office but was informed by the company secretary that the contract has been cancelled because the 1st Claimant failed to meet up with the time as agreed by the company and the Claimants. They averred that by reason of the foregoing, they suffered loss and damages which they particularised thus:

- a) Loss of 7 million naira worth contract which would have been awarded to the Claimants but for the acts of the Defendants.
- b) Reduction of the image and reputation of the 1st Claimant and subjection to public ridicule by the Defendants.

On the 20th day of February, 2017, the Claimants opened their case. Giving evidence for the Claimants as PW1, the 1st Claimant adopted his Witness Statement on Oath wherein he affirmed all the averments in the Statement of Claim. He tendered the following documents in evidence;

1. Re: Cancellation of Award/Contract to supply Building Material – Exhibits PW1A.
2. Constitution of Landlords and Tenants Association of Co-operative City Garden Estate – Exhibit PW1B.

On the 29th March, 2017, the PW1 was cross examined by the defence counsel during which he told the court that the 2nd Claimant has its office at Suite 26, Area 7 shopping Complex, Garki, Abuja, and as such, is not a resident of Co-operative City Garden Estate. He also admitted that he is not the only staff of the 2nd Claimant and that he has other people who could act on his behalf. The PW1 denied ever attending the meeting of the 8th Defendant.

Following the subsequent filing of Joint Statement of Defence and counter claim by the Defendants, the Claimants filed a reply to the statement of defence and defence to counter-claim

as well as a further affidavit wherein they averred that the Defendants embarked on the enforcement of levies on 11th May, 2016 and 12th May, 2016, being working days and that the action was sequel to a public notice to that effect signed by the chairman and secretary of the 8th Defendant. They stated that the 1st Claimant was molested and embarrassed by the Defendants just as they said they would in the said public notice.

The Claimants averred that since moving into the estate in December, 2015, the 1st Claimant makes all payments in respect of maintenance of facilities in the estate to the developer in accordance with the agreement between the developer and the 1st Claimant. That when the Defendants approached the 1st Claimant in 11th May, 2016, to produce his receipt of payment of their levy and membership receipt, the 1st Claimant calmly informed the Defendant that he was not their member and that they could not compel him to be part of their association. That the 1st Claimant neither abused the Defendants nor made any inflammatory statement that was provocative to the Defendants and that the 1st Claimant has no business with any staff of the developer save as it pertains to payment of facility charges to the developer.

It was further averred by the Claimants that the Defendants are not responsible for the provision of security, waste disposal, repairs and maintenance of access and internal road. That they only know the developer, El-Salem Nigeria Limited as the provider of those services. That contrary to the averments of the Defendants, that the constitution of the 8th Defendant did not make all residents in the estate potential and automatic members of the association. Also, that the agreement between the subscribers and the developer never envisaged the formation of the 8th Defendant by the 1st -7th Defendants;

rather, that what it envisaged was the formation of Estate Owners Association only and not Estate owners with tenants.

In their defence to the counter-claim, the Claimants averred that the 1st Claimant began construction of his house in the estate sometime in January, 2015, and completed same and moved in, in December, 2015, with his family. That having not been resident in the Estate in 2013-2014, the 1st Claimant was not aware of the management of the estate or its maintenance in those years, but was only aware from the time he moved in, that the estate developer was the one in charge of facilities in the estate and that all payments in respect of the facilities go through the facility manager of the estate developer.

The Claimants stated further that the 1st Claimant was not part of the members of the 8th Defendant who agreed to contribute N20,000 for the rehabilitation of old and construction of new access road to the estate. That all the services which the 1st Claimant has benefited from in the estate since he moved into the estate, were exclusively provided by the estate developer and not the Defendants.

On the 14th of April, 2018, after the attempted out of Court settlement by the parties failed, the PW1 was recalled and he adopted his further witness statement on oath in support of the reply to the Joint Statement of defence and defence to counter-claim. He further tendered the following documents in evidence;

- a) Public Notice – Exhibit PW1C.
- b) El-Salem Nigeria Ltd Cash Receipt – Exh PW1D.

Under further cross examination by the learned defence counsel, the PW1 told the court that the Co-operative City Garden Estate has three exits but that on 11th May, 2016, the

Defendants locked two of the exits leaving only one where he was accosted by the Defendants.

He further told the Court that when the Defendants accosted him as he was taking his children to school, and refused to allow him to exit the gate despite his pleadings, he went back to his house with his children after staying with the Defendants for four hours. That it was around 1:20pm that he found out that the Defendants had all left.

In their defence to the suit of the Claimants, the Defendants filed a Joint Statement of Defence and counter-claim dated and filed on the 27th day of March, 2017. The Defendants in their defence averred that the 1st – 7th Defendants are gainfully employed individuals and professionals in different fields of endeavour, and had never embarked on enforcement of payment of estate levies on a working day, either prior to, or on the 11th of May, 2016, beyond the hours of between 6.30am – 9am. That the claim by the 1st Claimant that he was not allowed by the Defendants to drive out of the Estate until 1.20pm is fallacy intended to attract undeserved sympathy from the Honourable Court for the purported loss of a non-existing and fictitious contract of N7,000,000.00 by a faceless and unknown 2nd Claimant.

The Defendants stated that at no time in the course of the enforcement of the estate levy or dues for non-compliance, had they ever indulged in holding any resident hostage. That the enforcement was always carried out in a civil and cordial manner, as the whole essence is to serve as an opportunity to interface with most of the residents who hardly find time to attend the meetings of the 8th Defendant or pay their estate levies, and educate them on the importance and need for compliance with the payment, and to also extract commitments

of each resident to be punctual in paying their dues for the sustenance of the provisions of common essential services which were lacking in the estate. That the interaction is of less than two minutes after which the resident is allowed to drive out of the gate. They averred that it was with the same objective that they approached the 1st Claimant on the 11th May, 2016, but that instead of reciprocating the polite manner he was flagged down and asked to produce evidence of payment of estate dues, the Claimant flared up like a wounded lion in a pre-meditated antagonistic manner, and began to rain all manner of abuses on the Defendants and some other members of the 8th Defendant who had offered their time to engage in the exercise.

The Defendants stated that the 8th Defendant was a brainchild of some of the early subscribers/residents of the estate who were buoyant to have made outright and complete payment for their houses and were issued with a final letter of allocation wherein is contained terms permitting the establishment of an Association of the landlord and tenants, for the common good of all. That the residents of the estate, under the auspices of the 8th Defendant, took up the responsibilities of securing their own lives and properties, including managing the sub-standard facilities in the estate and providing all other necessary services for the benefit of all residents, through contributions and levies of the residents. That the 8th Defendant from December, 2014, has been responsible for the provision of security, waste disposal, repairs and maintenance of access and internal roads in the estate. That besides the qualification for membership, as stated in the constitution of the 8th Defendant, all residents are potential and automatic members of the 8th Defendant and are bound to contribute to the cost for the provisions of common essential services in the estate pursuant to clause 4(h), (i) & (k)

of the conditions for Property Sale and Occupation Agreement attached to the letter of Final Allocation for the purchase of a house at Co-operative City Garden, Estate. That the said clauses bind the 1st Defendant as automatic member.

In respect of their counter claim, the Defendants averred that the 1st Claimant/Defendant-to-counter-claim began the construction of his house in the estate in late 2013 and packed into the estate in early 2014. That following the failure of the estate developer, El-Salem Nig. Ltd to undertake the maintenance of most facilities in the estate at the material time, the 8th Defendant/counter claimant took up the responsibility for the maintenance of the estate facilities such as transformer, access and internal roads for which every resident made a monthly contribution of N1,000.00, which from January-November of 2014 amounted to N11,000.00, which sum, the 1st Claimant/Defendant-to-counter-claim failed and neglected to pay.

Furthermore, that following the developer's withdrawal of its security apparatus from the estate in late November, 2014, by which reason the residents were exposed to frequent armed robbery attacks, burglary, rape and all manners of criminal activities, the 8th Defendant/counter claimant also took up the responsibility of providing security in the estate, for which it was agreed in the meeting of the 8th Defendant/counter claimant that the monthly levy of each resident be reviewed to N6,000.00. That following the increase in the number of residents, the 8th Defendant/counter claimant, at its general meeting in June, 2016, reduced the monthly levy to N5,000.00 per resident, which sum also covered payment for waste disposal.

The Defendants/Counter Claimants stated further, that in 2015, it was agreed at the meeting of the 8th Defendant/counter claimant that every resident should contribute the sum of N20,000 for the rehabilitation of the old access road and the construction of a new access road to the estate. That the 1st Claimant/Defendant-to-counter-claim benefited and has continued to benefit from the services made possible by the contributions of residents under the auspices of the 8th Defendant/counter claimant from January, 2014, till date, but has refused and failed to pay his own due levies on a mischievous excuse that he is not a registered member of the 8th Defendant/counter claimant. That the amount of levies due and unpaid by the 1st Claimant/Defendant to counter claim is N260,000.00, made up of:

- i) Infrastructure maintenance (Jan – Nov. 2014) – N11,000.00.
- ii) Infrastructure/Security (Nov. 2014 – June, 2016) – N114,000.00.
- iii) Infrastructure/Security/waste disposal (July – Dec. 2016) – N30,000.00.
- iv) Infrastructure/Security/waste disposal (Jan – March 2017) – N15,000.00.
- v) Access Road Construction levy – N90,000.00.
- Total - N260,000.00.

The Defendants/counter claimants thus counter-claimed against the Claimants/Defendants-to-counter-claim as follows:

- i) A declaration that the 1st Claimant/Defendant to the counter-claim, by virtue of clauses 4(h), (l) & (K) of the Conditions for Property Sale And Occupation Initial Agreement, contained in the Letter of Final Allocation for the Purchase of a House in Co-operative City

GardenEstate, is an automatic member of the 8th Defendant/Counter Claimant.

- ii) An Order that the Claimants pay into the 8th Defendant's account forthwith, the sum of N260,000.00 being estate levies due and unpaid by the Claimants/Defendants to the counter-claim from January, 2014 to March, 2017, and to pay all future estate levies as may be due henceforth.
- iii) Cost of this suit as the Honourable Court may assess.

The Defendants also filed Joint Reply to Claimant's Defence to the counter claim wherein they reiterated their assertion that the 1st Claimant packed into the estate in early 2014 and that he was aware of the services provided by the 8th Defendant in the estate owing to the neglect of the developer to provide same. They further stated that payment of levies and contributions for the maintenance or provision of common facilities in the estate was not based on membership of the 8th Defendant/counter claimant as same was an obligation of all residents who are bound to contribute to the cost of provisions of common facility in the estate by virtue of clause 4 (h) of the terms of purchase and occupation of houses in the estate.

Three witnesses gave evidence for the Defendants at the hearing of the defence. One IkechukwuOkoro testified as DW1 on 26th September, 2018. FinbarOkoye, testified as DW2 on the 6th day of May, 2019, while one Adekunle Paradise Agunbiade testified on the 17th June, 2019 as DW3.

They all adopted their respective witness statements on oath wherein they affirmed the averments in the Defendants' Joint Statement of Defence and counter claim. They also tendered in evidence, the following document;

1. Notice of Meeting dated 30th September, 2016 – Exh DW2A.
2. Complaint of Security Breaches dated 2nd June, 2016 – Exh DW2B.
3. Facility Management Services – Exh DW2C.
4. Agreement Form – Exh DW2D.
5. Contract Agreement –Exhibit DW2E.
6. Temporary Contract for Provision of Security – Exh DW2F.
7. A bundle of Invoices –Exhibit DW2G.
8. A bundle of Cash Receipts – Exh Dw2H.
9. Complaints of Threat to Life _ Exhibit DW2J.
10. Letter of Final Allocation – Exhibit DW3A.

The DW1 under cross examination, while stating that the 8th Defendant is an association for all the landlords and tenants in the estate, admitted that it is not compulsory for all landlords and tenants to be members of the association.

He further stated that by the agreement between the developer, El-Salem Nig Ltd and the house owners, El-Salem was to provide infrastructures in the estate. He admitted that by the said agreement, it is not the duty of the 8th Defendant to provide infrastructures.

The DW1 told the court that he believes the 1st Claimant is a member of the 8th Defendant but that he has no records to show that 1st Claimant is a member of the association. He admitted that the Defendants have no agreement with the 1st Claimant to provide security for him.

On his part, the DW2 told the court that the constitution of the 8th Defendant is not meant to bind everybody in the estate. DW2 also maintained that the 1st Claimant, though not registered with the association, is nonetheless, a member of

the association. He however stated that he has no evidence of 1st Claimant's membership of the 8th Defendant association.

The DW2 admitted that by the contract of house allocation, the Defendants were required to obtain the consent of the developer before embarking on any construction in the estate. He stated that no such consent was obtained by the 8th Defendant before constructing the access roads, save only that the developer was aware of their activities.

He admitted that the Defendants carried out enforcement for payment of dues on the date complained of by the Claimant but denied preventing the 1st Claimant from moving out of the estate.

The DW3 was equally cross examined by the Claimant's counsel during which he told the court that there was no agreement with the estate developers to the effect that residents would provide facilities for themselves. He further told the court that although the Defendants are not the owners of the estate, they have, in his opinion, the right to stop people to ask them for payment for the facilities they enjoy together.

At the close of evidence, the parties filed and exchanged final written addresses.

In his final written address dated and filed on 23rd July, 2019, learned counsel for the Defendant, Emmanuel Ejiofor, Esq, raised two issues for determination, to wit;

- I) Whether the evidence of the Claimants before the Honourable Court is cogent and credible to ground any of the reliefs sought by the Claimants in this case?
- II) Whether the 1st Claimant and, albeit all residents of Cooperative City Garden Estate, by the combined Reading of Clauses 4(h),(i) & (k) of the Condition for

Property Sale and Occupation Initial Agreement of Co-operative City Garden, contained in the letter of Final Allocation, for the purchase of a house at Co-operative City Garden, Pyakassa, Abuja, Exhibit DW3A, issued to Purchasers of Houses by the Estate Developer, is not under an obligation to pay for the services been (sic) provided by the 8th Defendant, whether or not he, and or any other resident of the estate, is a member of the 8th Defendant within the contemplation of the 8th Defendant's constitution to entitle the Defendants to their counter claim against the Claimants?

Proffering arguments on issue one, learned counsel posited that the evidence led by the Claimants before the court is neither credible nor sufficient to warrant the grant of the reliefs sought by the Claimants.

Placing reliance on **Sokwo v. Kpongbo 33 NSCQR (Pt 1) 612** and **Ayanru v. Mandilasvol 30 NSCQR (Pt 1) 85 at 100-101**, he submitted that the law is trite that he who alleges or asserts a particular fact must prove same by cogent and credible evidence in order to succeed in his claim, and that a Claimant in a civil suit can only succeed on the strength of his own case and not on the weakness of the defence.

Learned counsel argued that beside the evidence of PW1 and Exhibit PW1C, the Claimant failed to call any other evidence to prove his allegation of embarrassment and molestation by the Defendant. He contended that Exhibit PW1C is not sufficient to debunk the contrary evidence by the defence witnesses as words on paper are not action to prove actual molestation, embarrassment and the alleged hostage of the 1st Claimant by the Defendants. That the 1st Claimant must, of necessity, be able to describe all that was said to him by the 1st –

7th Defendants when he was flagged down like many other residents on the day in question, that constituted molestation and embarrassment.

Learned counsel conceded that a Claimant can prove his case with a single witness; except where the evidence needed corroboration. He however, argued that given all the circumstances of the case, a sole witness of the Claimant must be believed by the court for his evidence to prove the claims of the Claimant. He referred to **Goodness Agbi v. AuduOgbeh 26 NSCQR (Pt.2) 1257.**

He argued that in the instant case, given all the circumstances of the case, that the evidence of the PW1 cannot be believed. That the PW1 is not a witness of truth, as in one breath he stated that the estate developer is in charge of the provision of security in the estate and yet in another breath, he stated that the security men employed by the Defendants held him hostage at the gate of the estate.

He argued that the claim by the PW1 that the security men deployed at the gate by the Defendants held him hostage, is an admission of the fact stated by the Defendants that the 8th Defendant, through the contribution of the residents, had been in charge of provisions of security in the estate.

Learned counsel further argued to the effect that the Defendants cannot be held liable for the alleged loss of the 2nd Claimant who is both a distinct legal personality from the 1st Claimant, and also not a resident of the Estate. He argued that following the admission of PW1 under cross examination that he is not the only one in the employment of the 2nd Claimant, that nothing stopped him from placing a call to another staff of the 2nd Claimant to represent him at the alleged meeting where the 2nd Claimant was to be awarded a contract.

Furthermore, he contended to the effect that the claim for N7m is for all intents and purposes, a claim for special damages and that the failure by the Claimant to particularize the expected or anticipated profit that would have accrued to the 2nd Claimant after the execution of the contract, entails that the Claimants are not entitled to an award of special damages by the court.

He argued that to be entitled to the relief of loss of the alleged contract, the Claimant must go beyond averring and tendering the alleged letter of cancelation of the contract, to giving particulars of the cost of execution and the expected profit accruable therefrom, to form the basis of the award of damages by the court. He referred to **Akinkugbe v. Ewulum, 34 NSCQR (Pt 2) 780.**

He urged the court to resolve issue one in favour of the Defendants and to dismiss the claimants' claim in its entirety with substantial cost to the Defendants.

On issue two, learned counsel argued that the 1st Claimant, like all residents of Co-operative City Garden Estate, by the combined reading of clauses 4(h), (i) and (k) of the Condition for Property Sales and Occupation Initial Agreement of Co-operative City Garden, contained in the letter of Final Allocation for the purchase of a house at Co-operative City Garden, Pyakassa, Abuja, is under an obligation to pay for the provision of the services the 8th Defendant is rendering in the estate. That this obligation subsists irrespective of whether or not the resident is a member of the 8th Defendant within the contemplation of the latter's constitution.

He argued that Exhibit DW3A, in which the above clauses are set out as one of the conditions for the purchase of house and for residing in the estate is a collective agreement binding on all residents, and that the obligation to pay for services provided in

the estate by the 1st Claimant, as well as all residents, is implied in the unambiguous wordings of clause 4(k) of Exhibit DW3A.

He contended that the criteria for qualification to be bound by the obligation to pay for services provided in the estate, is being a resident of the estate and not being a member of the 8th Defendant within the contemplation of its constitution.

While conceding that the 1st Claimant has the constitutional right to freedom of association and cannot be compelled to become a member of any association, learned counsel contended that it is mandatory for the 1st Claimant, from the terms of Exhibit DW3A, to comply with payment of levies, as other residents, for the provision of security, waste disposal and maintenance of roads as same are common services for the maintenance of the estate as envisaged by clause 4(h) of Exhibit DW3A.

He further urged the court to resolve issue two in favour of the Defendants and to grant the counter claim of the Defendants.

Learned counsel for the Claimants, Chinwendu Clifford (Miss), in his own final written address dated 4th September, 2019 and filed on 5th September, 2019, also raised two issues for determination, namely;

1. Whether the Defendants have the right to compel the 1st Claimant to join and register with their association and also to mandate the 1st Claimant to make payments in respect of any fees, which include registration fees, into the association's accounts?
2. Whether the evidence of the Claimants before the court is cogent and credible to ground the reliefs being sought by the Claimants against the Defendants?

Arguing issue one, learned counsel relied on Section 40 and 41(1) of the Constitution of the Federal Republic of Nigeria, 1990 Constitution of the Federal Republic of Nigeria, 1990 (as amended) to contend that nobody has the power to compel or mandate any person against his will, to join or to register with an organisation/association which is against his interest/principle. He argued that non-members of an association owe no responsibilities to the association in respect of payment of fees or dues as may be determined by the association.

He contended that the Defendants' restrictions by not allowing the 1st Claimant out of the Co-operative City Garden Estate in the morning of 11th day of May, 2016, is in total breach of the 1st Claimant's constitutional rights – even if the breach occurred for only seconds as alleged by the Defendants who admitted that they conducted enforcement and restrictions from 6:30am to 9:00am. He referred to **Bureau of Public Enterprises v. National Union of Electricity Employees & Anor. (2003) 13 NWLR (Pt 837) 382 at 410.**

Learned counsel contended that by Article 4 (1) & (4) of Exhibit PW1B, the 8th Defendant's constitution made it clear that membership of the association is not mandatory for everyone who resides in Co-operative City Garden Estate, and that all the Defendants' witnesses admitted that their association is not mandatory for every resident in the estate.

He referred to **Okereke v. State (2016) All FWLR (Pt 828) 910 at 925** on the point that admitted facts need no further proof.

Relying on **Afribank (Nigeria) PLC v. Alde (2000) 13 NWLR (Pt 685) 591 at 602 and Olafisoye v. FRN (2004) 4 NWLR (Pt 864) 580 at 653-654,** he contended that the constitution of the 8th Defendant is very clear on the eligibility of the membership

of the association, and that same cannot be countered by the oral testimonies of the Defendants' witnesses.

Learned counsel contended that Exhibit DW3A cannot be read to impliedly bind the 1st Claimant or to direct him to make payments to the Defendants' association. He argued to the effect that Exhibit DW3A was specifically made between the Estate developer and the allottees of the estate. That same did not confer on the Defendants the responsibility to provide facilities in the estate, or the powers to collect fees for maintenance of facilities in the estate.

He further argued that the Defendants were on illegal assignment having not obtained written consent of the developer in line with Article 4(a) & (f) of Exhibit DW3A before embarking on infrastructural developments and enforcement of levies.

Relying on **Union Bank of Nigeria PLC v. Oflagbe Farms Limited & 3 Ors (2002) 14 NWLR (Pt.787) 242 at 261-262**, he contended that the Defendants not being agents of the developer, El-Salem Nigeria Limited, have no rights in any guise to collect fees from the residents of the estate, particularly the 1st Claimant and that they cannot restrain him from moving in and out of the estate. That even if such rights exist under their association, they cannot enforce such rights on non-members of the association.

In conclusion on issue one, learned counsel contended that the clause in Exhibit DW3A directing allottees to **"join estate home owners' association, as may be formed for the good of the estate"**, did not make it automatic or compulsory for every home owner in the estate to join the association, and that even if same was mandatory, it cannot vitiate, override, or supersede Section 40 of the constitution of the Federal Republic of

Nigeria, 1999 which guarantees citizens right to freedom of association.

In arguing issue two, on “**whether the evidence of the Claimant before the court is cogent and credible to ground the reliefs being sought by the Claimants**”, learned counsel placed reliance on **Sokwo v. Kpongbo 33 NSCQR (Pt 1) 612 at 636** to posit that the law is clear that for the Claimant to succeed in his case, he must place enough material evidence before the court in order to get the favour of the court. He contended that the Claimants have by the pieces of evidence led before the court, proved their case as to be entitled to the claims before the court.

He argued that by Exhibit PW1A, the Claimants proved how a contract that was to be awarded to the 2nd Claimant was terminated by the company due to the Defendants’ restriction of the 1st Claimant from attending the scheduled meeting on 11th day of May, 2016. He contended that the 1st Claimant as the alter ego of the 2nd Claimant, and having been appointed by the 2nd Claimant to represent it at the said meeting, could not delegate another staff to attend the meeting based on the principle of *delegatus non potest delegare*.

He contended further, that the Defendants having admitted that they conducted enforcement on the said date from 6:30pm to 9:00am, the claimants needed not call any other witness to corroborate his evidence that he was restricted from going out of the estate on 11th May, 2016. He relied on **Goodness Agbi v. Audu Ogbah 26 NSCQR (PT 2) 125** to submit that a party can prove its case with a single witness.

Learned counsel further argued that the Claimants proved vide Exhibit PW1C, that the Defendants embarrassed any person who failed to pay for registration fee and security levies of their association. He made reference to paragraphs 11 and 12 of the Witness Statement on Oath of DW1; paragraphs 22 and 23 of that of DW2 and paragraph 11 and 12 DW3's Witness Statement on Oath where the Defendants' witnesses admitted that they enforced payment of levies and that the enforcement was meant to inconvenience people. He submitted, with reliance on **Nwarata v. Egboka (2005) 10 NWLR (Pt 933) 241 at 273**, that facts admitted need no further proof. He urged the court to rely on the exhibits tendered and circumstantial evidence in the case, to enter judgment for the Claimants.

Learned counsel referred severally to **Anigboqu v. Ucheigbo (2002) 10 NWLR (Pt 776) 472 at 489, A.G. Federation v. A.I.C. Ltd (2000) 10 NWLR (Pt 675) 293 at 306**, inter alia, on the proposition that a non-member of an association cannot be forced to pay dues and levies payable by members of the association and that a stranger to a contract cannot sue or be sued on the contract even if same was made for his benefit.

He further argued that there is no contradiction in the averments of the PW1 in his witness statement on oath as alleged by the learned defence counsel. That the PW1 was clear on the fact that the developer of the estate was responsible for providing security at the estate and that how the Defendants came about the security men at the gate, is basically the business of the Defendants and their members.

On the Claimants' entitlement to general damages, he referred to **Andrew v. MTN (Nigeria) Comm. Limited (2017) All FWLR (Pt 900) 518 at 530**.

He concluded that the Claimants have proved their case and are entitled to all the reliefs sought for in the case. He urged the court to enter judgment for the Claimants and to dismiss the Defendants' counter-claim.

To arrive at a just and complete determination of the disputes between the parties in this case, the court co-opts the two issues for determination raised by the Defendant's counsel to wit:-

1. Whether the Defendants have the right to compel the 1st Claimant to join and register with their association and also to mandate the 1st Claimant to make payments in respect of any fees, which include registration fees, into the association's accounts?
2. Whether the evidence of the Claimants before the court is cogent and credible to ground the reliefs being sought by the Claimants against the Defendants?

In considering the issues for determination, the following questions are raised: -

- 1. Effect of the right of the 1st Claimant to freedom of association and was the 1st Claimant restrained from leaving the estate on the 11th day of May, 2016 by the Defendants?**
- 2. If the answer to the above is yes; was the 1st Claimant's restraint by the Defendants justifiable?**

The answer to the above questions will determine whether the Claimants will be entitled to any or all of their claims or whether the Defendants will be entitled to their counter claims.

The first question is **whether the 1st Claimant can exercise his right to freedom of association and was he restrained**

from leaving the estate on the 11th day of May, 2016 by the Defendants?

By virtue of Section 40 of the 1999 Constitution (as amended)

“Every person shall be entitled to assemble freely and associate with other persons, and in particular he may form or belong to any political party, trade union or any other association for the protection of his interests:

Provided that the provisions of this section shall not derogate from the powers conferred by this Constitution on the Independent National Electoral Commission with respect to political parties to which that Commission does not accord recognition”.

It means that this right does not place any duty on any person to associate with any other persons or group. In other words no person should compel another to join any association that is not of his choice and willingness to join. See **Emeka v. Rev. Dr. Chidi Okoroafor & Ors (2017) LPELR-41738 (SC).**

The evidence before the court from both Claimant and Defendant is that the 1st Claimant was not a registered member of the association consequently, he could not be compelled to join the Defendants association. The fact that he attended the meeting once without showing interest in registration does not make him a member. A constitution of a voluntary association is created by agreement of persons involved and are bound by it. Art. 4 of Exh PW1B on membership of the defendants association expressed the openness to all manner of people ***“who are ready to abide by the principles..and who are particularly interested...”***. In other words the provision of the article 4 is very clear and unambiguous that persons are not

compelled to join the association. In keeping with the provisions of the constitution (Exh PW1B), the membership of the members are not compulsive. Therefore, 1st Claimant is not compelled by reason of being an occupant to be a member.

From the state of pleadings and evidence before the court, it is clear, and the parties are *ad idem* on the fact that there was some sort of restraint on the movement of the Claimant out of the estate wherein, they reside on the 11th day of May, 2016, by the Defendants.

While the Claimant asserted that he was restrained and prevented from going out of the estate by the Defendants from 7:00am to 1:20pm, the Defendants contended that the restraint was only for a few moments. It is the evidence of the defence witnesses that the Defendants enforced payment of dues and levies between the hours of 6:30am and 9:00am.

The evidence of DW1 and DW3 in paragraph 13 of their respective witness statements on oath to the effect that the 1st Claimant was allowed to go his way by the intervention of many residents who were coming behind him, go to prove that there was a restraint on his movement before the said intervention. Restraint in its legal parlance involves unlawful or illegal device that retards or constrains a person or limits a person's motion or liberty to move freely. It is immaterial whether the restraint was only for a few minutes.

Right away, the first question is answered in the affirmative that there was a restraint on the movement of the 1st Claimant by the Defendants on the 11th day of May, 2016.

The law is trite that facts admitted need no further proof. See **Umeh v. Ejike (2013) LPELR-23506 (CA).**

In answer to the second question; the parties are also in agreement that the payments which the Defendants were out to enforce on the said 11th May, 2016 were dues and levies payable to the 8th Defendant, 'The Registered Trustees of Landlords and Tenants Association of Co-operative City Garden Estate, Lugbe'.

The case of the Claimants is that they are not members of the said association and are therefore, not liable to pay levies and dues to the association. The Defendants on their part, assert that the 1st Claimant, though not a registered member of the 8th Defendant Association, is an automatic member by virtue of his being a resident of Co-operative City Garden Estate, Lugbe. For this assertion, they placed reliance on Clause 4(h), (i) and (k) of the Letter of Final Allocation for the Purchase of a House at Co-operative City Garden Pyakasa, Abuja (Exhibit DW3A).

The said letter of allocation was signed by one Ben GbadeOjo, Managing Director/CEO on behalf of El-Salem Nigeria Limited and specifically addresses to AgunbiadeAdekunle Paradise, the DW3.

There is no mention of the name of the 1st Claimant in the said letter and by specifically addressing the letter to the DW3, it is implied that the contents therein, relate specifically to the DW3.

The Defendants have however, argued that the same letter was given to all house owners in the estate, including the 1st Claimant, but there is no evidence before this court to show that the 1st Claimant, who denied receiving the said letter, was indeed given the letter.

But supposing that the 1st Claimant indeed was given a copy of Exhibit DW3A, does that suffice as a basis to make him liable to pay levies and dues to the 8th Defendant?

The Clause 4(h), (i) and (k) of the said Exhibit DW3A provide thus;

“(h) You are to pay jointly with other occupants the cost (of) providing common facilities and services for the maintenance of the estate as may be determined from time to time.

(i) You are to join estate home owners association as may be formed for the good of the estate.

(k) All house owners and estate occupiers are deemed to have agreed to all these conditions and future conditions as may be reviewed.”

From the above, there is nothing in paragraph (h) that states that payments for cost of providing common facilities and maintaining the estate should be paid to the 8th Defendant or any such association that would be formed.

All the defence witnesses admitted under cross examination that by Exhibit DW3A, that it is the duty of the estate developer to provide infrastructures in the estate. Invariably the payment for such services would go to the developer. The 1st Claimant maintained that he made payment for facility services to the developer, El-Salem Nigeria Limited and in proof of this claim, he tendered a receipt of such payments, Exhibit PW1D.

In their evidence before the court, the defence witnesses stated that the 8th Defendant took it upon itself to provide facilities in the estate when the developer failed in its duty to provide the said facilities. There is however, no evidence before this court that the 8th Defendant entered into any agreement with the Claimants or residents of the estate to provide facilities for them.

On the imposition of dues and levies on the residents the Defendants averred that the decision was reached at the general meeting of the 8th Defendant. Evidently, such decision will only bind members of the Association who are expected to be in attendance at its general meetings.

Paragraph (i) of Clause 4 under consideration requires the addressee to join estate home owners association that may be formed for the good of the estate. The Defendants asserted that the inspiration for the formation of the 8th Defendant was drawn from this paragraph. The said paragraph did not however state that every resident of the estate becomes automatic member of the association when formed. Not even paragraph (k) which states that all house owners and estate occupiers are deemed to have agreed to all the conditions stipulated in the letter, contemplates automatic membership of any association formed in the estate. By using the phrase “you are to join...” implies that the addressee would take steps to join the association, and until such steps are taken, such a person cannot be deemed a member of the association.

The constitution of the 8th Defendant, Exhibit PW1B, also did not make membership of the Association automatic for all residents of the estate. What is more, a mere letter of allocation cannot derogate from the provisions of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) which in its Section 40, guarantees every citizen of the country the right to freedom of association.

On the second issue of whether the Claimant had led credible evidence to ground the reliefs.

Members of a constituted association are bound by the provisions of their constitution to the exclusion of non-members. No amount of harassment or intimidation can be used

to compel the admission of a person to the association. The evidence is very clear that the Defendants were indulging in all manner of harassment and intimidation to enrol members to the 8th defendant. This contravenes Section 40 of the 1999 Constitution (as amended) which gives any citizen the right to choose an association and cannot be mandated to belong to one against his choice. Abiru, JCA says in **Abdullahi v. GamboSabuwa&Ors (2015) LPELR 25954** that such right cannot be derogated from any one and I totally agree with his lordship.

Therefore, having not shown that the 1st Claimant is a member of the 8th Defendant association, and having not shown the existence of any contract for provisions of services between the 8th Defendant and the Claimants, it follows that the Claimants are not liable to pay dues and or levies to the 8th Defendant. Accordingly, in so far as the dues and levies imposed by the 8th Defendant is the basis for requiring payments by the Defendants, it is my finding that the 1st Claimant is not indebted to the Defendants as to justify the act of the Defendants in restraining his movement in a bid to enforce the payment of any debt/due. I so hold.

The Claimants asserted that the restriction of the 1st Claimant from leaving the estate in the morning of 11th May, 2016, by the Defendants made the 2nd Claimant to lose a contract that would have been awarded to it in a meeting scheduled for 9:00am on the said date. The alleged contract is said to be worth N7,000,000.00 and the Claimants therefore, claims the said sum from the Defendants.

I agree with the learned defence counsel that the said claim for N7,000,000 is in the nature of special damages which must be specially pleaded and particularised by the Claimants. The sum

of N7m is the alleged contract sum. No particulars were given as per the cost of executing the contract and what the specific earning of the Claimants from the contract would have been.

In **Kosile v. Folarin (1989) 3 NWLR (Pt 107) 1 at 13**, the Supreme Court held, per Obaseki JSC, that;

“What is required of special damages is that the person claiming should establish his entitlement to the type of damages by credible evidence that would convince the Judge that he is entitled to award under that head.”

In the instant case, the Claimants have not placed before this Court the type of credible evidence that would convince this court that they are entitled to the sum of N7m claimed by them.

Regarding the claim for general damages, the law is trite that same need not be specifically pleaded and specifically proved. Thus the Court of Appeal in **EFCC v. Inuwa & Ors (2014) LPELR-23597 (CA)**, held per Akeju, J.C.A that;

“General damages is the kind of damages which the law presumes to be the consequence of the act complained of and unlike special damages, a claimant for general damages does not need to specifically plead and specially prove it by evidence, it is sufficient if the facts thereof are generally averred.”

This court has made a finding that the acts of the Defendants in restraining the 1st Claimant from moving out of the estate (for however slight a period it may be) on the 11th day of May, 2016, is unjustified as the 1st Claimant is neither a member of the 8th Defendant nor indebted to the Defendants.

The 1st Claimant averred that the action of the Defendants on the said date caused him public ridicule and embarrassment. The Claimant tendered Exhibit PW1C wherein, the Defendants had threatened to embarrass any defaulters to prove that the Defendants indeed, in line with their threat, caused him embarrassment.

The DW2 in paragraph 23 of his witness statement on oath averred that the method of enforcement they adopted was to cause ***“a little inconvenience to the residents at the estate gate on their way to work”***. From the above pieces of evidence, it is deducible that the Defendants indeed caused public ridicule and embarrassment to the 1st Claimant, and worst so, without any justification.

It is a fundamental principle of law that where there is a wrong, there would be a remedy, expressed in the Latin maxim, *ubi jus, ibi remedium*.

A wrong has been meted to the 1st Claimant by the Defendants and justice demands that his feelings be assuaged in damages. I so hold.

Flowing from the totality of the foregoing, the Claimants' case succeeds in part and the court enters judgment for the Claimant as follows;

1. An order of perpetual injunction is made, restraining the Defendants, their agents and privies from intimidating, harassing or in any way preventing the 1st Claimant from going in or out and also gaining entrance into Co-operative City Garden estate Lugbe Abuja.
2. An order of perpetual injunction is made, restraining the Defendants, their agents and privies from harassing, intimidating and forcing the 1st Claimant to register with

the Landlords and Tenants Association of Co-operative City Garden Estate, Lugbe, or in any way mandating or persuading the 1st Claimant to make any payment into the account of the association in the name of the 7th Defendant.

3. It is declared that the payment of levies can only be enforced by the Defendants against the registered members of the Association which the Defendants represent.
4. It is declared that the 1st Claimant who is not a member of the association cannot be compelled by the 1st – 7th Defendants to register as a member of the Association or compelled to make any payment to the Association and cannot be restrained to move in and out of the Co-operative City Garden Estate, Lugbe, by the Defendants and their agents and privies.
5. Relief 5 fails for lack of prove. The same is accordingly dismissed.
6. It is declared that the constitution of the Defendants is only applicable to registered members/subscribers of the Association and not the 1st Claimant who is not part of the Association which the Defendants represent.
7. The sum of N400,000.00 is awarded against the Defendants and in favour of the 1st Claimant as General damages for public ridicule and embarrassment which the Defendants exposed the 1st Claimant as a result of their action.

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HON. JUSTICE A. O. OTALUKA

Now to the counter-claim; the Defendants, on the premise that every resident of Co-operative City Garden Estate, Lugbe, Abuja by that token, becomes automatic member of the 8th Defendant Association and is thereby liable to pay dues and levies determined and imposed by the Defendants, counter-claimed against the 1st Claimant as follows;

- i) A declaration that the 1st Claimant/Defendant to the counter-claim, by virtue of clauses 4(h), (i) & (k) of the Conditions for Sale and Occupation Initial Agreement, contained in the Letter of Final Allocation for the Purchase of a House in Co-operative City Garden Estate, is an automatic member of the 8th Defendant/Counter Claimant and bound to pay cost of providing common facilities and services for the maintenance of the estate as levied by the 8th Defendant/Counter Claimant.
- ii) An Order that the Claimants pay into the 8th Defendant's account forthwith, the sum of N260,000.00 being estate levies due and unpaid by the Claimants/Defendants to the counter-claim from January, 2014 to March, 2017, and to pay all future estate levies as may be due henceforth.
- iii) Cost of this suit as the Honourable Court may assess.

A counter claim, though joined to the substantive suit for ease and convenience of adjudication, is a distinct action on its own, and the counter-claimant, like other claimants in an action, is duty bound to prove his claims by credible evidence, to be entitled to judgment in his counter claim. See **Jeric (Nigeria) Ltd v. UBN PLC (2000) LPELR-1607 (SC).**

In the instant case, the Defendants' counter-claim herein is premised on the assumption that Clause 4(h), (i) and (k) of Exhibit DW3A, makes every resident of the estate an automatic member of the 8th Defendant association. This court has made a finding in the substantive suit to the effect that the said assumption is misconceived and contrary to the Section 40 of the 1999 Constitution (as amended). The said Clause 4(h), (i) and (k) of Exhibit DW3A does not contemplate an automatic membership of residents in either the 8th Defendant or any other association formed or to be formed in the estate. The 8th Defendant's constitution provides for conditions to be fulfilled by an intending member and it is the fulfilment of those conditions that confers membership on any applicant.

This court has also made a finding that the 1st Claimant is not a member of the 8th Defendant Association, and there is no evidence before this court to the contrary. As a corollary, the court also found that the 1st Claimant, not being a member of the 8th Defendant, is not bound to pay dues and levies the 8th Defendant.

Relief (i) of the counter claim, evidently, fails.

As natural consequence of the failure of relief (i), relief (ii) equally fails. There is nothing before this court that establishes privity of contract between the Claimants and the 8th Defendant as to ground the grant of the sum claimed in relief (ii). Neither the Agreement Form, Exhibit DW2D, (the Contract Agreements), Exhibits DW2E and DW2F, nor the Invoices, Exhibit DW2G and Cash Receipts, Exhibit DW2H, establish the 1st Claimant as a party thereto.

Whatever dispute that exists between the estate developer and the Defendants either as a result of or the cause of the 8th Defendant taking up the contractual obligation of the developer

to provide services in the estate, is not a subject before this court. This court will not therefore comment on same.

The 1st Claimant cannot be bound by a contract in which he is not a privy to.

In **Ogundare & Anor v. Ogunlowo & Ors (1997) LPELR-2326 (SC)**, the Supreme Court, per Onu, JSC held that;

“In law, there is privity of contract. It is always between the contracting parties who must stand or fall, benefit or lose from the provisions of their contract. Their contract cannot bind third parties nor can third parties take or accept liabilities under it, nor benefit thereunder.”

If the 8th Defendant on its volition, without the consent or authorization of the residents, takes upon itself the provisions of services for the residents of the estate; that to my mind, is a voluntary assumption of risk, and the law is trite that *volenti non fit injuria*.

The Defendants/counter claimants are also, not entitled to cost of this suit as it was their unlawful action that necessitated the institution of the suit in the first place. Accordingly, relief (iii) of the counter claim equally fails.

From the foregoing, the Defendants/counter claimants' counter claim fails in its entirety. The same is accordingly dismissed. No cost awarded.

HON. JUSTICE A. O. OTALUKA
11/12/2019.