IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDING AT MAITAMA-ABUJA
BEFORE HIS LORDSHIP: HON. JUSTICE H. B. YUSUF

SUIT NO: FCT/HC/CV/3189/12

BETWEEN:

AVEO GLOBAL RESOURCES LIMITED……PLAINTIFF

AND

1. INTERLAND SKILLS LIMITED)
2. ALHAJI AWAL TAHIR)……DEFENDANTS

JUDGMENT

The facts of this case as may be garnered from the evidence before the Court are that the Plaintiff Company entered into a *Memorandum of Understanding* with the 2nd Defendant to facilitate the allocation of Plot 26, DO2, Karsana South District, Abuja-FCT to the Plaintiff company. Under the M.O.U a consideration of N120 Million was mutually agreed by parties to be paid by the Plaintiff to the Defendants. The Plaintiff disbursed the sum of N10 million to the 2nd Defendant in the first instance and another sum of N90 million subsequently leaving an outstanding balance of N20 million. Parties also mutually agreed that the Plaintiff Company execute an *Irrevocable Power of Attorney* in favour of the 1st Defendant (where

the 2nd Defendant is the alter ego) as a mark of reassurance that the Plaintiff will not default in the payment of the consideration due to the 2nd Defendant. The Plaintiff has alleged that upon the completion of the payment of the entire consideration (i.e. N120million) to the Defendants it requested for the original allocation paper from the Defendants but was denied same. This according to Plaintiff was after it had invested about N100 million on the land apart from the sum of N120 million paid to the Defendants as aforesaid. At the end of the day the Defendants had informed the Plaintiff that the land had been sold to a third party because of the delay on the part of the Plaintiff in effecting the payment of the facilitation fee due to the Defendants. The Plaintiff is not happy with the conduct of the Defendants and by an amended Writ of summons filed on 30th February, 2012 seeks the following reliefs against the Defendants:

1. **A declaration of this honorable Court that the land located at Plot 26, DO2, Karsana South District, FCT, Abuja measuring about 8.29 hectares belongs to the Plaintiff by virtue of the Letter of allocation marked as exhibit B and attached to the Plaintiffs amended statement of claim.**
2. **An order of this Honorable Court declaring the purported sale of the above land by the Defendants to unknown persons as void and illegal.**

3. **An Order of this Honorable Court mandating the Defendants and all those who are claiming to have bought the said land to vacate same without further interruption, trespass and tempering with the Plaintiff's title thereof.**
4. **An order mandating the 1st and 2nd Defendant to handover the said original Letter of Allocation to the land to the Plaintiff without further delay.**
5. **The sum of N150,000,000.00(One hundred and fifty million naira) only being general damages for the emotional and psychological pains caused her by the defendants as well as loss of valuable time for which the Plaintiff would have proceeded with his business.**
6. **An order mandating the Defendant to pay the sum of N5, 000,000.00 (five million naira) only being the cost of procuring legal services to prosecute this suit.**
7. **Any other cost this honorable Court may deem fit to make in the circumstance.**

The Defendants with leave of Court filed a statement of defence of 41 paragraphs wherein they denied the claims of the Plaintiff. In

reaction to the statement of defence the Plaintiff filed a reply of 17 paragraphs on 23rd February, 2013.

At plenary both sides called one witness each. The witnesses were duly cross examined. Exhibit AR1 to AR10 were tendered by the Plaintiff while the Defendant tendered a lone exhibit marked as exhibit A1.

At the close of trial parties filed and exchanged final written addresses which were duly adopted in the open Court.

Mr. Iliya Ibo Aliyu identified two issues on behalf of the Defendants as arising for determination. They are:

1. **Whether the Defendants rightfully exercised their powers under the instruments entitling them to do so.**
2. **Whether from the totality of the evidence adduced by the Plaintiff, it can be said that, it successfully established its case so as to warrant the grant of the reliefs sought.**

On his part Mr. Peter Ozoagu of Counsel for the Plaintiff is of the view that the issues which are germane to the resolution of this matter are:

(a) Whether the Plaintiff has via credible evidence and exhibits tendered entitled to all the reliefs sought before the Court.

(b) Whether from the evidence before the Court, the Plaintiff satisfied the obligation of paying the facilitation fee for the land to the 1st Defendant, the subject matter of this suit.

Upon a calm and painstaking perusal of the state of pleadings and issues formulated by parties I form the view that the Defendants' issues when properly synchronized are apt and sufficient for the determination of this matter. Consequently, I adopt the issues with necessary modification to read as follows:

1. **Whether the sale of Plaintiff's land by the Defendants pursuant to exhibit AR9 (i.e. Power of Attorney) is legally justifiable given the facts and circumstances of this case.**
2. **Depending on the answer to the above question whether the Plaintiff has satisfactorily discharged the onus of proof imposed by law on it so as to warrant the grant of its claims.**

However, I find it opposite at this point to say that what is in dispute between parties is very narrow. This is because parties are in agreement on several issues. I therefore take the liberty to set out areas not in dispute:

1. Parties are in agreement that the Plaintiff engaged the 2nd Defendant in his personal capacity to facilitate the allocation to the Plaintiff of Plot 26, DO2, Karsana South District, FCT, Abuja measuring about 8.29 hectares for a mutually agreed consideration of N120 million. (See exhibit AR1).

2. Parties are also agreed that the renegotiated facilitation fees in the sum of N120 million was paid by the Plaintiff to the Defendants.

3. Parties are agreed that the Plaintiff Company donated a Power of Attorney to the 1st Defendant on the request of the 2nd Defendant who is the alter ego of the 1st Defendant. (See exhibit AR9).

4. Parties are agreed that the Defendants upon the conclusion of their assignment under exhibit AR1 did not release the allocation paper to the Plaintiff.

5. Parties are agreed that the Defendant sold the disputed land to a third party without the knowledge or approval of the Plaintiff Company.

Having set out the area of agreement between parties, I must say that the critical issue is whether the sale of the Plaintiff's land by the

Defendant is in order. This now leads me to the substantive issues for determination.

DETERMINATION OF ISSUES

ISSUE 1

Whether the sale of Plaintiff's land by the Defendants pursuant to exhibit AR9 (i.e. Power of Attorney) is legally justifiable given the facts and circumstances of this case.

It is now trite law even without reference to any authority that the burden of proof lies on the Plaintiff. In **UZOKWE V. DENSY IND. (NIG) LTD (2002) 2 NWLR (PT.752) 528** the apex Court (Per Ogwuegbu, JSC) stated that:

> **"In civil cases, the ultimate burden of establishing a case is as disclosed on the pleadings. The person who would lose the case if on completion of pleadings and no evidence is led on either side has the general burden of proof. See Elemo & Ors V. Omolade & Ors (1968) NMLR 359"**

His Lordship went further to say that:

> **"It is only when the Plaintiff has made out a prima facie case that the onus of proof shifts from Plaintiff to defendant and vice versa, from**

time to time as the case progress and it rests on that party who would fail if no more evidence were given on either side."

In arguing issue 1 set out above the learned Counsel to the Defendants submitted that by virtue of exhibit AR9 (Power of Attorney) the defendants have become the agents of the Plaintiff and thus legally empowered to perform on behalf of the Plaintiff those acts listed on the face of the exhibit. Counsel called in aid the case of **ABUBAKAR V. WAZIRI (2008) 14 NWLR (PT. 110) 507 at 511**. He urges the Court to hold that contractual obligations such as the one spelt out on the face of exhibit AR1 (Memorandum of Understanding) are binding on parties while placing reliance on the case of **A-G, RIVERS STATE V. A-G, AKWA-IBOM STATE (2011) 8 NWLR (PT.1248) 31 at 50 and YADIS (NIG) LTD V. G.N.L.C. LTD (2007) 14 NWLR (PT. 1055) 584 AT 590**.

Learned Counsel to the Defendants further submitted that the Defendants have led evidence to show that they borrowed money to facilitate the allocation of the disputed land to the Plaintiff and that the delay caused by the Plaintiff in paying the facilitation fee due to the Defendants led the Defendant to sell the land pursuant to exhibit AR9 especially as their creditors pressed for the repayment of the fund taken on loan to facilitate the Plaintiff's allocation paper. That

in such circumstance the right of sale was rightly exercise by the Defendants. On this point the Court was referred to the case of **UKPANAH V. AYAYA (2011) 1 NWLR (PT. 1227) 61 AT 67**. It was finally submitted on behalf of the Defendants that since exhibit AR9 was given for valuable consideration and made irrevocable the Defendants are at liberty to exercise and enforce those rights listed therein.

The learned Counsel to the Plaintiff's reaction to this issue is very brief. He submitted that a Power of Attorney is not one of the instruments recognized by law for alienation of interest in landed property. Counsel cited the case of **GILBERT EZEIGWE V. AWAWA AWUDU (2008) 11 NWLR (PT.1097) 158 AT 163** and **GREGORY OBI UDE V. CLEMENT NWARA & ORS (1993) 2 NWLR (PT. 278) 638 at 651** to support this proposition of law.

He further submitted that the Power of Attorney (exhibit AR9) under reference was donated to the 1st Defendant on demand and that it was meant to be used as a shield not a sword. That the Power of Attorney was simply to give the Defendants something to hold on to pending the time the Plaintiff will liquidate the consideration for facilitation due to the Defendants under exhibit AR1. Learned Counsel submitted that it was "out of sheer greed and personal interest" that the Defendants sold the Plaintiff's land to a third party.

It was also the contention of learned Counsel that the Defendants have not establish before the Court how title in the disputed property vested in them so as to legally empower them to sell the Plaintiff's property as done in this case. Learned Counsel called in aid the latin maxim *nemo dat quod non habet* and Sections 21 – 25 of the Sale of Goods Act to support his position that you cannot give what you don't have in the first place. Of course, I must say with considerable haste that the Sale of Goods Act does not apply to land. It is therefore a clear misapprehension of the Law for the learned counsel to the Plaintiff to invoke an appropriate principle of *nemo dat quod non habet* under a wrong Law. That is just by the way!

Now the foundation of the relationship between the Plaintiff and the Defendants is exhibit AR1 titled ***"Memorandum of Understanding between Alhaji Awal Tahir (facilitator) And Aveo Global Resource Limited (Client)".*** The opening paragraph of the exhibit read as follows.

"This agreement is made this …. day of … 2011".

The exhibit was witnessed on 2nd February, 2011 and brought before the Commissioner for Oath of this Court for endorsement on 3rd February, 2011.

Looking at the exhibit it is clear beyond peradventure that it has no date of execution. It is trite law that date of execution is very critical

to the enforcement of contractual document. It is the Law that unsigned and undated documents are in the same boat as they both have no evidential value. On this principle of Law I lean on the case of **GLOBAL SOAPS & DETERGENT IND. LTD V. NAFDAC (2011) ALL FWLR (PT.599) 1025 AT 1047.**

See also the case of **UCHIEZE V. EZENAGU & ORS (2010) LPELR – 5043 (CA)** where Ogunwumiju, JCA shed more light on this point of law thus:

> **"The Law is that all documents are presumed to have been made or written or executed on the date or dates shown on them. See Onu JCA (as he then was) in Ottih v. Nwaneke (1990) 3 NWLR (PT.140) pg 550 at 563. If a document is not dated or wrongly dated the reason for the wrong dating must come from evidence of the maker. See M/S O. Ilemobola Co. Ltd V. Gov. Kaduna State (2007) 7 NWLR (Pt.666) 633."**

On this point of Law see also:

AMAIZU V. NERUBE (1989) 4 NWLR (PT.118) 755.

In this case exhibit AR1 (Memorandum of Understanding) which brought parties into contractual relationship has no date. It simply says , **"This agreement is made this …. day of … 2011".** It is also curious that the pleadings of parties especially that of the Plaintiff

remain mute on this fundamental issue. If that be the case, the document (exhibit AR1) is in my view worthless and invalid. For the sake of emphasis, the Court in appropriate cases may accept documents such as exhibit AR1 under certain exceptions where there are specific pleadings and evidence to justify the omission to date the document. For example, where there are specific pleadings to demonstrate the date the undated document is meant to come into force the Court may reckon with the document. But that is not the case in the instant matter.

On this note I have carefully perused the pleadings of parties and I must say that there is nothing therein to suggest that parties pleaded the date of commencement of the Memorandum of Understanding. Although Paragraph 4 of the amended statement of claim states as follows:

> **"The Plaintiff entered into a Memorandum of Understanding (MUO) with the 2nd defendant on the 2nd of February 2011 to facilitate allocation of a piece of land situate at Plot 26, D02, Karsana South District, FCT, Abuja measuring about 8.29 hectares to be used for the development of a mass housing estate. A copy of the MOU marked as Exhibit A is hereby attached and shall be relied upon in this suit."**

I have carefully scrutinized the above averments and I must say with the greatest respect that it does not meet the demand of the law to justify the validity of exhibit AR1. As a matter of fact the pleadings is at variance with exhibit AR1. What the Plaintiff pleaded was a document executed on 2nd February, 2011 but what it tendered was an undated document. The document pleaded with specific date of execution and the undated exhibit AR1 tendered in this trial cannot be one and the same document. To take advantage of the exception mentioned earlier the Plaintiff is expected to plead the undated MOU and then plead the mutually agreed date of commencement of its operation as afforstated. Having failed to do the needful I hold as I should that the exhibit is invalid.

In reaching this conclusion I have carefully read the 41–paragraph statement of defence filed on behalf of the defendants and it is clear to me that the Defendants were equally silent on the date of execution or commencement date of exhibit AR1.

The point must also be made that the date of execution of a document is critical to the date the document was witnessed. On that note it is irrelevant to witness a document once it is shown that such document has no date of execution. This must be so because you cannot put something upon nothing and expect it to stand. One Alhaji Abdullahi Lawal purportedly witnessed exhibit AR1 on behalf

of the 2nd Defendant on 2nd February, 2011. Similarly one Alhaji Abubakar Tanimu witnessed the document on behalf of the Plaintiff herein. The simple question is whether an invalid document can be validly witnessed? I answer the question in the negative. In all, I hold as I should that exhibit AR1 is invalid and of no probative value.

In the event that I am wrong I will now take a look at exhibit AR1 and evaluate same on the merit. The recital on the face of the exhibit captured the intention of parties. It says:

> **"WHEREAS: The Facilitator's services were retained by the Client for the procurement of the approval of the Hon. Minister of FCT and allocation of 2 plots of lands for the following of files Nos (sic):**
>
> **(1) MISC 103140 – AVEO GLOBAL RRESOURCES LIMITED.**
>
> **The Facilitator has agreed to render his services by undertaking to procure the aforesaid approval and allocation in consideration of the sum of N120,000,000 (One Hundred and Twenty Million Naira) only"**

I have also seen the Power of Attorney (i.e. exhibit AR9) between the Plaintiff and the 1st Defendant and I must say that the exhibit is in no way connected with the MOU. For the avoidance of doubt the MOU is between the Plaintiff and the 2nd Defendant in his private capacity as

Alhaji Awwal Tahir while the Power of Attorney is between the Plaintiff and the 2nd Defendant which is a limited liability company. There is nothing on the face of the exhibit to link the said Power of Attorney with the MOU. In my view exhibit AR9 is independent of exhibit AR1.

That aside, the Power of Attorney (exhibit AR9) also share the fundamental defects associated with exhibit AR1 as it has no date of execution. To demonstrate this point the opening paragraph of the exhibit states as follows:

> **"This Irrevocable Power of Attorney is made this…. day of …… 20….. Between Aveo Global Resources Ltd…"**

As can be seen from the above exhibit AR9 has no date of execution. This means that the law already espoused above on the fundamental nature of the date of execution of legal documents will also apply in this case with the resultant effect of rendering the exhibit invalid and I so hold.

Now even if exhibit AR9 (Power of Attorney) is valid the question is whether the 1st Defendant as Donoee can validly rely on same to sell the Plaintiff's land. My view on this point is very simple. Exhibit AR1 is the document that brought parties together on a contractual ground and as rightly submitted by the learned Counsel to the

Defendants the Court is bound to abide by its terms. If that be the case, I shall forthwith reproduce the content of the exhibit to facilitate ease of understanding of parties' obligations. Clause 2.0 of the MOU reads as follows:

2.0 <u>PARTIES OBLIGATION</u>

2.1 The Facilitator hereby gives the following undertaking:

(a) To use his Contacts, know-how, experience, influence and resources to obtain the above mentioned approval and allocation for the file Number mentioned above.

(b) To inform the Client as soon as the Hon. Minister's approval and allocations are obtained.

(c) To ensure that all these processes are carried out within a reasonable time.

2.2 The Client hereby gives the following undertakings:

(a) To pay the sum of N120,000,000 (One Hundred and twenty Million Naira) to the Facilitator as soon as the aforesaid approval and allocation of plot is obtained without much ado.

There is no further or additional obligation under exhibit AR1 outside those spelt out above. As a matter of fact clause 3 anticipates the possibility of variation when it states the condition for such alteration thus:

3.0 ENTIRE AGREEMENT

> **"This Memorandum of Understanding constitutes the entire understanding of the parties hereto, and it may only be altered in writing with the consent of the Legal Counsel – Barr. Nnamdi H. Attamah."**

From the terms of exhibit AR1 there is nothing to suggest or support the position canvassed by the Defendants that the Plaintiff's land was sold due to delay in remitting the consideration of N120 million due to the 2nd Defendant under exhibit AR1. Under cross examination the PW1 stated inter alia as follows:

> **"The MOU I entered with the 1st defendant was to strengthen the agreement to facilitate. It was after the MOU that I donated a Power of Attorney to the defendant. The Memorandum of Understanding prescribes that I should pay the defendants the N100,000,000 soon after the execution of the MOU. After the payment of the first tranch of N10Million I had various meetings with the defendant. I offered to**

pay the N100,000,000 because I believe that facilitation involved expenses and waste of time. I moved to site and entered into arrangement with villagers to be sure the land is not encumbered. I moved to site and mobilized before I completed payment of facilitation. If I had paid the facilitation fee promptly the certificate of occupancy would have been released to me. The authority given to the defendant includes the power of attorney to dispose off the property if I did not pay.

In a related development the DW1 in his testimony under cross examination stated that:

"The Plaintiff was to pay me some money after facilitating the allocation but he did not. The Plaintiff gave me power of attorney to protect my interest. I cannot recall the Plaintiff paying N10Million into my account after I told him I had secured the allocation for Plaintiff. I now remember that the Plaintiff paid money into my account. The period meant for the Plaintiff to pay my due is contained in the Power of Attorney. The Plaintiff later paid the balance due to

me. The money the Plaintiff paid was used in securing another land."

The documentary evidence before me, that is to say, exhibits AR1 and AR9 made no provision for the sale of the Plaintiff's land in the event of default by the plaintiff. If that be the case it is now trite Law that oral evidence cannot be deployed to vary or modify documentary evidence already before the Court. On this principle of Law I lean on Section 128 of the Evidence Act, 2011 and the following Supreme Court cases:

1. **ATTORNEY-GENERAL BENDEL STATE V. U.B.A LTD (1986) 2 NSCC 954 AT 956;**
2. **GURARA SECURITIES FINANCE LTD V. T.I.C LTD (1999) 2 NWLR (PT.589) 29 AT 47-48;**
3. **ANYANWU V. UZOWUAKA (2009) 13 NWLR (PT.1159) 445; and**
4. **EGHAREVBA V. OSAGIE (2009) 18 NWLR (PT.1173) 299 where OGBUAGU, JSC held as follows:**

"It is now firmly settled that documentary evidence, is the Best evidence. It is the best proof of the contents of such document and no oral evidence, will be allowed to discredit or contradict the contents thereof except where fraud is pleaded."

His Lordship further espoused the Law as follows:

> **"It is trite law that where there is oral as well as documentary evidence; the latter should be used as a hanger from which to assess the oral evidence. See the cases of *Fashonu v. Adekoya (1974) ANLR 32 @ 37-38; (1974) 6 S.C. 83*; *Kinder & 11 ors. v. The Military Governor of Gongola State & ors. (1988) 2 NWLR (pt.77) 445: (1988) 5 SCNJ 28* and *B. Stabilini & Co. Ltd. v. Nwabueze Obasi* (1997) 9 NWLR (Pt.520) 293 @ 305 CA. This is because, documentary evidence is said to be more reliable than oral evidence and it is used as a hanger to test the credibility of oral evidence. See the case of *Ezembi v. Ibeneme & anor.* (2004) 14 *NWLR (Pt.894) 617: (2004) 7 SCNJ 136 @ 157: (2004) 7 S.C. (pt.1) 45.* Exhibits 'G' and 'F' have debunked and rubbished any oral evidence by the Respondent to the contrary. The said oral evidence is bogus, unreliable, fake and most hopelessly discredited by the said documentary evidence. I also so hold."**

In essence the oral evidence led before the Court to support the purported sale of the Plaintiff's land goes to no issue as it is at variance with exhibits AR1 and AR9. It is reasonable to hold that if

the Plaintiff defaulted in the payment of the facilitation fee the remedy opened to the Defendants could not have been the outright sale of Plaintiff's land. It is also true that no time frame for payment of the facilitation fee under exhibit AR1 was agreed upon by parties. The retention of the title deed by the Defendant pending the payment of the said fees is sufficient protection or guarantee that the consideration will be paid.

The evidence before me is that the Plaintiff did not pay the facilitation fee on time. In fact, the last sum of N90Million paid to the Defendants by the Plaintiff was later returned to the said Plaintiff. However, parties met again and decided to put the past behind by renegotiating their earlier agreement. Arising from this latest development the Defendants instructed their Solicitor to write the Plaintiff in order to restore the strained relationship between parties. The letter dated 5th September, 2011 and admitted as exhibit AR6D read in part:

> "**Having paid the initial deposit of N10,000,000 (Ten Million Naira) on the 23rd of May, 2011 and your subsequent payment of N90,000,000 (Ninety Million Naira) which was refunded due to unresolved issues as at then.**

However, having reconciled all differences amicably, we hereby authorize you to pay the renegotiated balance of N120,000,000 (One Hundred and Twenty Million Naira) into my account."

In compliance with the above demand the Plaintiff paid the sum of N120Million to the Defendants. Exhibits AR8 and AR8A were tendered by the Plaintiff as proof of this payment. In other words, the Plaintiff paid the facilitation fee due to the Defendants in full about one month after exhibit AR6 was served on it. If that be the case the allegation that the Plaintiff was guilty of undue delay in the payment of the facilitation fee in dispute cannot fly as it was paid within reasonable time. Such line of defence in my view is an afterthought to cover up the fraudulent enterprise of the Defendants as manifestly demonstrated by the illegal sale of the Plaintiff's property.

It is therefore curious that the Defendants in a most unapologetic manner have the courage to tell the Court that the Plaintiff's property was sold on account of the delay in the payment of facilitation fee. This is nothing but a brazen act of crude illegality which the Court must condemn with all sense of responsibility. In other words the agreement of parties as demonstrated on the face of

exhibit AR1 does not support the fraudulent conduct of the Defendants.

The Law on this point is as re-echoed by the Supreme Court in **AGBARA V. MIMRA (2008) 2 NWLR (PT.1070) 378** where it was held as follows:-

> **"If parties enter into an agreement they are bound by its terms and that either of them or the court cannot legally or properly read into the agreement terms on which the parties have not agreed and did not agree to. "**

In the same vein the Court of Appeal in **OIL SERVERV LTD V. L.A. IBEANU & CO. NIG. LTD (2008) 2 NWLR (PT. 1070) 191** held as follows:

> **"Where parties have made a contract for themselves they are bound by the terms thereof. In interpreting the contract the court at all times should give a meaning that reflects the plain and obvious intention of the parties and should never import into the contract ideas not patent on the face of the contract. It is only when the words used are not clear that the court would try to find the intention behinds the**

words. On no account would the Court make agreement for the parties."

What am saying in essence is that there is nothing in the agreement of parties which empowered the Defendant to dispose of the Plaintiff's property. The Defendants cannot import terms it unilaterally concocted into exhibit AR1. To approve of the conduct of the Defendants in this case would simply mean that the Court is re-writing the contract of parties. The Court has no jurisdiction to do so as amply captured in the cases cited above. The duty of the Court is strictly limited to the interpretation and enforcement of the contract of parties.

Now there is another dimension to this issue. In purporting to sell the Plaintiff's land the Defendants claimed it acted on Exhibit AR9 (Power of Attorney). This is laughable because the exhibit being an instrument of delegation standing alone without a deed of assignment cannot vest title in the disputed land on the 1st Defendant. The cases cited to that effect by the learned Counsel to the Plaintiff cannot be faulted. In the popular case of **OBI V. NWARA & ORS (1993) 2 NWLR (PT.278) 638 AT 651** ably cited by the learned to the Plaintiff Nnaemeka-Agu, JSC (of blessed memory) stated as follows:

"A power of attorney is a document, usually but not always necessarily under seal, whereby a person seised of an estate in land authorizes another person (the donee) who is called his attorney to do in the stead of the donor anything which the donor can do, lawfully usually clearly spelt out in the power of attorney... A power of attorney merely warrants and authorizes the donee to do certain acts in the stead of the donor and so is not an instrument which confers, transfers, limits, charges or alienates any title to the donee: rather it could be a vehicle whereby these acts could be done by the donee for and in the name of the donor to a third party. So even if it authorizes the donee to do any of these acts to any person including himself, the mere issuance of such a power is not per se an alienation or parting with possession. So far, it is categorized as a document of delegation: it is only after, by virtue of the power of attorney, the donee leases or conveys the property, the subject of the power, to any person including himself then there is an alienation. "

The argument of the learned counsel to the Defendants that by virtue of exhibit AR9 the 2nd Defendant has become the agent of the

Plaintiff is correct. But what the defence counsel failed to tell the Court is whether the Defendants sold the plaintiff's land in their capacity as agents. If that be the case have they rendered account of the proceeds of the sale to the Plaintiff? I have seen paragraph 3 of exhibit AR9 and it stated as follows:

> **"From time to time when the said Attorney, that is the Donee, thinks fit, to exchange, mortgage, assign, to himself/herself or to any other person or dispose off the plots or any part thereof whether developed or undeveloped and to transfer the ownership and obtain benefits thereof."**

In my view what this clause is simply saying is that the 2nd Defendant as the agent of the Plaintiff may sell the disputed land to any third party including the Donee (i.e. 2nd Defendant). But such sale would still amount to transactions carried out on behalf of the Plaintiff. And needless to say that in such circumstances the Donor would have to execute relevant documents outside the Power of Attorney in favour of the Donee (as purchaser) in order to be effectively divested of its title to the disputed land. That is not the scenario in this case. It is therefore totally off target for the Defendants to argue as they have erroneously done that they exercised their power of sale under exhibit AR9. Such wild and

suspicious interpretation definitely travelled far beyond the intendment of parties to exhibit AR9.

I have evaluated exhibit AR9 (Power of Attorney) on the merit simply for the purpose of argument and nothing more. This is so because the exhibit is actually a worthless document as it has no date of execution. The Law as set out elsewhere above is that once a document in the category of exhibit AR9 (Power of Attorney) has no date of execution the Court cannot ascribe any probative value to it. The implication of this finding is that there is nothing before the Court to support the illegal disposition of the Plaintiff's property by the Defendants. Put in another way the Defendants have no defence to the Plaintiff's claim as their sole defence founded on exhibit AR9 (Power of Attorney) has collapsed like a pack of card. Thus Plaintiff's claim is now left without any credible resistance from the Defendants and I so hold.

Before I conclude this issue, I need to comment on the point made by the Defendants that the renegotiated facilitation fee of N120Million was used to procure a different plot of land for the Plaintiff. This line of defence in my view is another strange defence as the Plaintiff has effectively denied the contention. In that case the onus is on the Defendants to establish the existence of any independent agreement outside exhibit AR1 (i.e. Memorandum of

Understanding) to support the procurement of another land outside the plot captured in exhibit AR1 (i.e. Memorandum of Understanding). This the Defendants have failed to do. The Court cannot speculate on facts not before it. In fact, parties are agreed by virtue of clause 3 of exhibit AR1 as follows:

3.0 ENTIRE AGREEMENT

"This Memorandum of Understanding constitutes the entire understanding of the parties hereto, and it may only be altered in writing with the consent of the Legal Counsel – Barr. Nnamdi H. Attamah."

The Defendants who want the Court to believe that the terms of exhibit AR1 has been altered to accommodate the allocation of another plot of land other than the disputed plot to the Plaintiff must lead cogent and credible evidence to support such alteration. To believe the story of the Defendants on the purported alternative allocation without any credible proof would render clause 3 of exhibit AR1 cited above ineffective and in consequence mean that the Court is re-writing the agreement of parties. I have already demonstrated elsewhere in this judgment the position of the Law that Courts of Law have no power to re-write the contract of parties.

The point must also be made that the Defendants did not plead the date the Plaintiff's land was purportedly sold before the issue of

alternative allocation crop up. This is important because on the face of exhibit AR6D the Defendants directed the Plaintiff to pay a renegotiated fees of N120Million to enable parties conclude what they started earlier. The exhibit is the 2nd Defendant's Solicitor's letter of 5th September, 2011 and it read as follows:

> **"5th September, 2011**
>
> **The Managing Director,**
>
> **Aveo Global Resources Limited,**
>
> **Plot 456 Nouakohott Street,**
>
> **Wuse Zone 1, Abuja.**
>
> **Sir,**
>
> **AUTHORITY TO PAY THE OUTSTANDING BALANCE FOR THE FACILITATION OF THE ALLOCATION OF PLOT NO.26 CAD.DO2 KARSANA – SOUTH DISTRICT, ABUJA.**
>
> **We are a firm of Solicitors and Attorney to Alh. Awal Tahir, the Managing Director of Interland Skills Limited, on whose mandate and instruction we give you the above authority.**
>
> **Having paid the initial deposit of N10,000,000 (Ten Million Naira) on the 23rd of May, 2011 and your subsequent**

payment of N90,000,000 (Ninety Million Naira) which was refunded due to unresolved issues as at then.

However, having reconciled all differences amicably, we hereby authorize you to pay the renegotiated balance of N120,000,000 (One Hundred and Twenty Million Naira) into my account.

The account details are as follows:
Account name: ATTAMAH HILARY N.
Account Number: 2000382540
Sort Code: 057080031- Wuse Branch
Bank: Zenith Bank.
We look forward to a continuation of our cordial business relationship.

Please find attached my letter of authority to act as Solicitor and Attorney to Alh. Awal Tahir.
Yours Faithfully,
SIGNED
ATTAMAH HILARY N. ESQ
Principal Partner"

From the caption and content of this exhibit the Defendants made it abundantly clear that the renegotiated fees of N120 Million was in respect of **PLOT NO.26 CAD.DO2 KARSANA – SOUTH DISTRICT,**

ABUJA. The said exhibit AR6 tendered by the Plaintiff emanated from the Defendants' Solicitors and it was stated in the clearest term that the renegotiated fee was in respect of the disputed property. If that be the case it is reasonable to believe that the Plaintiff's land was sold after the Defendants demanded and received the renegotiated facilitation fee of N120Million from the Plaintiff. This must be so because if the land was no longer available at the material time exhibit AR6D was issued there would be no need and indeed fraudulent for the Defendants to make such demand. The point must also be made that as soon as the Plaintiff disbursed the renegotiated sum of N120Million to the Defendants the Power of Attorney (exhibit AR9) issued by the Plaintiff to the 1st Defendant become spent as it was issued as a lien or security for the payment of the said facilitation fees and not for valuable consideration as wrongly submitted by the learned counsel to the Defendants. I therefore rejected the contention of the Defendants that the renegotiated fees paid by the Plaintiff was in respect of another land as this line of defence sharply contradict exhibit AR6D which made it abundantly clear that the fee was in respected of the disputed property.

At the end of the day, I hold as I should that the Defendants were in grave error by purporting to sell the Plaintiff's land outside the contemplation of parties' agreement and failing to render account to

the Plaintiff. Issue (1) is accordingly resolved in favour of the Plaintiff and against the Defendants.

ISSUE 2

Depending on the answer to the above question whether the Plaintiff has satisfactorily discharged the onus of proof imposed by law on it so as to warrant the grant of its claims.

Relief (1) is for a declaration of this Honorable Court that the land located at Plot 26, DO2, Karsana South District, FCT, Abuja measuring about 8.29 hectares belongs to the Plaintiff by virtue of the Letter of allocation marked as exhibit B and attached to the Plaintiff's amended statement of claim.

Being a declaratory relief the Law imposed a mandatory duty on the Plaintiff to lead cogent and credible evidence to ground its claim and not rely on the weakness of the defence as in this case. Thus in **ADDAH VS UBANDAWAKI (2015) 7 NWLR (PT. 1458) 325 AT 344** where it was held by the Supreme Court that:

> **"It should be stated clearly that the weakness of the defendant's case does not assist the plaintiff's case. He swims or sinks with his own case. See Animashaun vs Olojo 1991 10 SCNJ 143; Dantata vs Muhammed 2000 7 NWLR (PT. 664) 176; Ekundayo**

vs Baruwa 1995 2 NLR 211; Nwokidu vs Okanu 2010 3 NWLR (PT. 1181) 362 and Dumez Nig Ltd vs Nwakhoba 2008 18 NWLR (PT. 1119) 361 at 373-374 wherein it was graphically captured that the burden of proof on the plaintiff in establishing declaratory relief to the satisfaction of the Court is quite heavy in the sense that such declaratory reliefs are not granted even on the admission by the defendant where the plaintiff fails to establish his entitlement to the declaration by his own evidence."

On this point I have carefully considered the evidence led by the Plaintiff especially exhibit AR2 (allocation letter) which shows that title is in the name of the Plaintiff. That document has not been discredited by the Defendants. There is also nothing before me to show or suggest that the Plaintiff has transferred its title either by a deed of assignment or any instrument of transfer to anybody. In other words, the title conveyed to the Plaintiff on the face of exhibit AR2 is valid and subsisting. I therefore have no problem in granting this claim. Relief 1 is accordingly granted as prayed.

Relief (2) is for an order of this Honorable Court declaring the purported sale of the above land by the Defendants to unknown persons as void and illegal. Taking into consideration my findings

that the sale of the Plaintiff's property is illegal I have no doubt in my mind that the Plaintiff is entitled to a consequential Order voiding the purported sale of its land and I so Order as prayed.

The next relief is for an Order of this Honorable Court mandating the Defendants and all those who are claiming to have bought the said land to vacate same without further interruption, trespass and tempering with the Plaintiff's title thereof. This relief in my view is also consequential and accordingly granted as prayed.

The Plaintiff is also praying for an order mandating the 1st and 2nd Defendant to handover the original Letter of Allocation to the land to the Plaintiff without further delay.

Looking at this claim and having admitted that the Plaintiff has fully discharged its obligations to the Defendants under exhibit AR1 and AR6D the Plaintiff is entitled to its original allocation paper. The relief is therefore granted as prayed.

I have also considered the claim for general damages in the sum of N150,000,000.00(One hundred and fifty million naira) for the emotional and psychological pains caused the Plaintiff by the Defendants as well as loss of valuable time for which the Plaintiff would have proceeded with its business. It is settled law that general damages are always made as a claim at large. The quantum

need not be pleaded and proved. The award is quantified by what in the opinion of a reasonable person is considered adequate loss or inconvenience which flows naturally, as generally presumed by law, from the act or conduct of the Defendant. It does not depend upon calculation made and figure arrived at from specific items. On this point of Law see:

1. **ODULAJA V. HADDAD (1973) 11 S.C. 357;**
2. **LAR V. STIRLING ASTALDI LIMITED (1977) 11- 12 S.C. 53; AND**
3. **OSUJI V. ISIOCHA (1989) 3 N.W.L.R. (PT. 111) 623.**

Without any much ado I have no doubt in my mind that the Plaintiff has made out a strong case for the award of general damages. The Plaintiff fully disbursed the sum of N120 Million to the Defendants as far back as October, 2011 (about 8 years ago), but has been denied access to the disputed property by the Defendants without any legal justification. The conduct of the Defendant is blameworthy. In the circumstances of this case the Plaintiff is entitled to recover general damages from the Defendants which I assess in the sum of N10 Million Only.

There is also a claim for an order mandating the Defendants to pay the sum of N5, 000,000.00 (five million naira) only being the cost of procuring legal services to prosecute this suit. With all due respect

to the learned counsel to the Plaintiff this claim is neither supported by pleading nor evidence led at trial. It is a matter of trite knowledge that you cannot put something upon nothing and expect it to stand. Put in another way, the claim has no legal foundation to sustain it. On that score the claims for legal services is accordingly refused and dismissed.

In all the case of the Plaintiff succeed and for the avoidance of doubt I make the following order.

SIGNED
HON.JUSTICE HUSSEINI B. YUSUF
(PRESIDING JUDGE)
16/11/2019