IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA
BEFORE HIS LORDSHIP, HON. JUSTICE A.A.I. BANJOKO-JUDGE
DATED 5TH MARCH 2020

SUIT NO: FCT/HC/CV/0123/2017

BETWEEN

TALSON BEGE NUNGDANG……CLAIMANT

AND

1. **ALHAJI KABIRU HARUNA**
2. **SARAHA HOMES (NIG) LIMITED .....DEFENDANTS**

- **P.I. LEMUD ESQ. REPRESENTING THE CLAIMANT**
- **MAX OGAR ESQ. REPRESENTING THE DEFENDANTS**

JUDGMENT

By a Writ of Summons dated and filed on the 13th of November 2017, the Claimant sought against the Defendants, the following Reliefs, namely:

1. **A DECLARATION that the Non-Performance of Obligation by the Defendants amounted to a Breach of Contract.**
2. **AN ORDER compelling the Defendants to jointly and severally refund the Sum of Four Million, Seven Hundred and Ten Thousand, Five Hundred Naira (N4, 710, 500) only to the Claimant.**
3. **AN ORDER directing the Defendants to pay the Claimant the Sum of Twenty Million Naira (N20, 000, 000) only as Damages as a result of the Non- Performance of Defendants' Obligation for over 6 years.**
4. **The Cost of this Action.**

The 2nd Defendant was served with the Writ and other Accompanying Court Processes on the 29th of January 2018, whilst Service was acknowledged on the behalf of the 1st Defendant by one Grace Matthew, a Staff of the 2nd Defendant. The 1st Defendant did not contest this Mode of Service on him but entered Appearance with the 2nd Defendant through a Memorandum of Appearance dated the 6th of February 2018 but filed on the 12th of February 2018.

Upon entering appearance, the Defendants elected not file any Pleadings during and after the conclusion of Trial but Cross-Examined the Claimant and filed their Final Written Address.

Now, the facts as presented by the Claimant is that he is a Civil Servant and that sometime in August 2010, he entered into discussions with the Defendants at their Office, which led to the issuance of an Offer to build on a Landed Property, a Three Bedroom Detached Bungalow.

As a prerequisite, the Defendants requested that he pays the Initial Sum of Ten Thousand, Five Hundred Naira (N10, 500) for the Application Form, which he paid and a Receipt dated 10th of August 2010 was issued to him, which he pleaded. He further made Part-payment in the Sum of Four Million, Five Hundred Thousand Naira (N4, 500, 000) to the Defendants whereupon another Receipt dated 10th of August 2010 was issued to him, which he again pleaded. Still on that same date, he made another payment for Settlement and Excavation Charges and another Receipt was issued to him, which he pleaded.

Sometimes in August 2010, the Defendants issued to him an Allocation Letter for a Land Purchase for a Three Bedroom Bungalow (Block C4) in Aldenco Systems Nigeria Limited Estate with Plot N0 28 of Cadastral Zone C07 in the Galadimawa District of Abuja. The Defendants later retrieved this Allocation Letter from him, for which he gave them Notice to Produce that Allocation Letter.

On the 12th of August 2010, the Defendants informed him to proceed to Site through a Letter of Authority but despite this Letter, the Defendants kept giving him excuses not to proceed to the Site until the land was cleared.

Upon realizing the Defendants' undue delay at mobilizing him to Site, as agreed, sometime in the First Quarter of 2011, he laid a Complaint to them, which they treated with disdain. To further compound issues, the Defendants' Site Manager told him that there was no more Land in the Aldenco Systems Nigeria Limited Estate and as a result, he would be relocated to the Saraha Goodluck City Estate, Abuja.

The Claimant made several visits to the Defendants' Office, where he later got issued with an Allocation for a Three Bedroom Detached Bungalow (Block B15) Saraha Goodluck City Estate, Idu-Sabo D04/4, Abuja dated the 3rd of June,

2011. Despite the issuance of this Allocation, the Defendants, till date, had refused, disallowed him possession or even, permitted him to sight the Land as per their Allocation.

Following the Defendants' protracted delays and failure to mobilize or relocate him to the New Site, he proceeded to engage the Services of a Solicitor, P.I. Lemut & Co., who wrote a Demand Notice containing a Seven Day Ultimatum and the Notice was dated the 10th of March 2016, which he pleaded. The Defendants failed and neglected to reply to this Demand Notice and even after the expiration of that Ultimatum and despite repeated further demands advanced by the Claimant.

According to the Claimant, the Plot initially allocated to him in Aldenco Systems Nigeria Limited Estate had since been developed and occupied. It was his belief that the Defendants were never Genuine Estate Developers and deceived him by collecting, trading and gaining from the use of his money, backing up their deception with endless promises to refund back his money. Further, their actions were unjustifiable, unconscionable and a breach of contract.

Finally, the Claimant stated that he had suffered hardship following the Defendants' refusal to deliver to him the Plot to build upon or to refund his hard earned money in the Sum of Four Million, Seven Hundred and Ten Thousand, Five Hundred Naira (N4, 710, 500), which he sourced from a 3rdParty at 10% Monthly Interests. He believed the Defendants were trying to run away from the Damages accruing to him due to their blatant refusal to fulfill their obligation towards him.

Now, during Trial, the Defendants were served with the Hearing Notice for the 25th of September 2018 and on this day, they were absent and unrepresented whereupon the Claimant opened his Case and adopted his Witness Statement on Oath dated the 13th of November 2017. He tendered into evidence Six Documents, which were admitted as **Exhibits A- F**.

On the 12th of November 2018, the Defendants though absent, were represented by their Learned Counsel who Cross-Examined the Claimant.

Under Cross-Examination, the Claimant picked out **Exhibit D,** to show that it emanated from the 1st Defendant. When asked whether he personally sent Letters of Demand to the Defendants, the Claimant stated that his Lawyer served the 1st Defendant and Saraha Homes with the Letter of Demand and the Letter was in the Custody of his Lawyer.

Shown the Allocation Letter in **Exhibit E** and told to read the **First Paragraph** therein,the Claimant read the referred Paragraph, wherein he identified the Price of the Property to be Twenty-Five Million Naira (N25, 000, 000) excluding 5% VAT.

When asked whether the above Stated Sum was the Subject-Matter of this Suit, the Claimant disagreed by explaining that before **Exhibit E** was issued to him, he had earlier been issued with a Letter of Offer for a Land Allocation in Aldenco Estate in Galadimawa I for which he paid the Sum of Four Million, Five Hundred Thousand Naira (N4, 500, 000). Referred to in **Paragraph 9** of his Witness Statement and asked to name the Site Manager, the Claimant could not do so but made the point that he was told to contact the Site Manager.

On whether he had any proof to show that the Defendants were indicted for fraud, the Claimant stated he had no such proof but the facts leading up to this Suit, indicated the Defendants were deceitful. According to him, in Year 2010, the Defendants had initially issued him with an Allocation Letter containing an instruction to move to the Aldenco Project Site. He then approached the Site Manager, who told him that the land was not ready. He kept disturbing Saraha Estate to allow him take possession of the land and that did not happen until the Year 2011, when again, he was issued with a new Allocation Letter for a Site in Goodluck City, Idu Sabo, wherein the Cost of Building was priced at Twenty-Five Million Naira (N25, 000, 000).

Despite this New Allocation Letter, he could not secure this new Site. He was later shown other Sites Behind Apo Resettlement and in Gwagwalada whereupon he concluded that the Defendants were deceitful. He requested for a refund of his money but received no reply, which yet again informed him that the entire process was deceitful.

Finally, when asked whether the grouse of his complaint against the Defendants started in Year 2010, the Claimant agreed adding that had he been allowed to mobilize to Site, he would have done so.

There was no Re-Examination and the Claimant applied to Close his Case.

After the Closure of the Claimant's Case, the Defendants elected to Rest their Case on the facts and evidence adduced by the Claimant and applied to set aside a Date for Adoption of Final Written Addresses, which application was obliged.

On the Return date, Learned Counselacross the divided, adopted their Final Written Addresses, which were as follows: -

Learned Counsel representing the Defendants, filed on the 24th of January 2020 his Written Address dated the 21st of January 2020, wherein he formulated Two Issues for Determination, namely: -

1. **Whether the Claim of the Claimant herein is not Statute Barred?**
2. **Whether this Court has the Requisite Jurisdiction to entertain this Suit as presently constituted?**

In response to the above Issues, Learned Counsel representing the Claimant, regularized his Written Address, which he subsequently adopted and in it, he formulated Three Issues for Determination namely: -

1. **Whether there was a Contract between the Defendants and the Claimant?**
2. **Whether the Defendants breached the Contract?**
3. **Whether the Claimant is entitled to the Reliefs sought?**

Now, after a careful consideration of the facts and evidence adduced before the Court and after noting the submissions and arguments of Learned Counsel across the divide, the Court finds this Sole Issue stated hereunder, as germane for the just determination of this Suit and it is: -

Whether the Contract was Statute Barred thereby disentitling the Claimant from any Relief; or Whether there was a Contract, the non-

performance of which constituted a Breach of Contract against the Defendants thereby entitling the Claimant to the Reliefs sought.

Before determining this Substantive Issue, it is imperative to first and foremost consider the Allegation of Deceit, the Question of Non-Joinder of Issues or the Non- Filing of Pleadings by a Litigant and also, the Question of Resting of the Case of the Defence on that of the Claimant.

As regards the Allegation of Deceit, from the facts pleaded by the Claimant and his Oral Evidence adduced under Cross-Examination, he had claimed that the Defendants reneged from their initial obligation to allow him access into the Aldenco Systems Nigeria Limited Estate to enable him commence Building Works as agreed. According to him, even when the Initial Allocation fell through, he was again offered a New Allocation Letter, which also fell through.

After series of complaints, the Defendants later showed him other Sites such as Behind Apo Resettlement and in Gwagwalada but still, they could not live up to their obligations in view of the Contract that transpired between them. He believed the Defendants were deceitful and were never Genuine Estate Developers. The Defendants deceived him by collecting, trading and gaining from the use of his money, backing up their deception with endless promises to refund back his money. Upon the failure to refund his money and their failure to reply both to his demands and that from Solicitor, he concluded that the entire process of acquiring a Land Property through the Defendants was deceitful.

When confronted with the Question of whether the Defendants were indicted for fraud, the Claimant testified that he had no proof but the facts leading up to this Suit, indicated the Defendants were deceitful.

Now, "Deceit", "Deceitful", and "Deceived" when pleaded, the Law requires that it must be **specificallypleaded**. Reference is made to the Cases of **EZEKIEL OKOLI VS MORECAB FINANCE (NIG) LTD (2007) LPELR- 2463 (SC); UNITED AFRICA COMPANY LIMITED VS JAMES EGGAY TAYLOR (1936) 2 WACA PAGE 70 AT PAGE 71.**

In this instance, the Claimant only pleaded "Deceit", "Deceitful", and “Deceived" but did not specifically plead these acts in his Statement of Claim. This is a requirement of the Law, which cannot be ignored even when the facts are

deemed admitted. This is just One Hurdle the Claimant's unchallenged facts in regard to Deceit, had failed to scale.

The Second Hurdle is that, "Deceit", "Deceitful", "Deceived" are synonymous but not conterminous with "fraud" and when alleged in a Civil Trial, the Proof cannot be sustained by admitted facts nor can the burden of proof be discharged or satisfied on the Balance of Probabilities. The Law is that an allegation of Deceit must be proved Beyond Reasonable Doubt by leading credible evidence. Reference is made to **Section 135 of the Evidence Act (2011) As Amended** and the Cases of **DERRY VS PEEK (1889) 14 AC PAGE 337; MARADI VS SANDA (1958) WRNLR PAGE 172; REMAWA V. NACB CONSULTANCY & FINANCE COMPANY LTD. & ANOR (2006) LPELR-7606**;

From the above, the Claimant by his pleadings has failed to specifically plead "Deceit", "Deceitful", and “Deceived" and has also failed to lead evidence, oral or documentary, to show Beyond Reasonable Doubt that the Defendants used Deceit or were deceitful or that they deceived him in the course of their relationship with him as pleaded above.

As regards the Question of Non-Joinder of Issues/Non-Filing of Pleadings, Learned Counsel representing the Claimant submitted that where the evidence rendered before the Court remained unchallenged or contradicted or rendered inadmissible by the provisions of any Enactment, that evidence is deemed true and accepted and the Court seized of the Matter, can rely on it in arriving at a decision. Reference was made to the Cases of **EPROVIN ENG. CONST. LTD VS SIDOV LTD (2006) 13 NWLR PART 996 PAGE 73 (CA); AKINLAGUN VS OSHOGBA (2006) 12 NWLR PART 993 PAGE 60 (SC).**

In this instant case, the Defendants had the opportunity to defend themselves but they did not file any Document or led evidence and therefore, the aforesaid Judicial Principles and that decided on in the Case of **BGS PASCUTTO (TRADING AS COM. EST) VS ADE CENMTRO NIG (1997) 11 NWLR PART 529 PAGE 467 RATIO 11 (SC)** should apply against the Defendants.

As for the Defence, there was no comeback on this point.

Now, it is Trite Law that where a Defendant fails to file a Defence, he will be deemed to have admitted the Claim or Relief in the Statement of Claim. Reference is made to the Cases of **AWOYEGBE VS OGBEIDE (1988) 1NWLR (PT. 73) 695; OKOEBOR VS POLICE COUNCIL & ORS (2003) LPELR-2458 (SC); CONSOLIDATED RESOURCES LTD VS ABOFAR VENTURES (NIG) LTD**

(2007) 6 NWLR (PT 1030) 221; OLADIPO VS MOBA LOCAL GOVERNMENT AREA (2010) 5 NWLR (PT 1186) 177; SALZGITTER STAHL GMBH VS TUNJI DOSUNMU INDUSTRIES LTD (2010) 11 NWLR (PT 1206) 589; LAGOS STATE WATER CORPORATION VS SAKAMORI CONSTRUCTION (NIG) LTD (2011) 12 NWLR (PT 1262) 569.

From the above Judicial Pronouncements, the failure of the Defence to file any Pleadings means that the facts adduced by the Claimant are unchallenged, uncontroverted facts and deemed true and for all purposes admissions against the Defendants unless the facts are incredible and unworthy of belief.

As regards the Question of Resting of the Defence's Case on that of the Claimant, the Cases of **THE ADMIN & EXECUTORS OF THE ESTATE OF ABACHA VS EKE-SPIFF & ORS (2009) LPELR-3152 (SC); MOBIL PRODUCING NIGERIA UNLIMITED & ANOR VS MONOKPO & ANOR (2003) LPELR-1886 (SC); AKANBI VS ALAO (1989) 3 NWLR (PT108) 118; (1989) 5 SCNJ 1; NEPA VS OLAGUNIU & ANOR (2005) 3 NWLR (PT913) 603 @ 632 CA; AGUOCHA VS AGUOCHA (2005) 1 NWLR (PT906) 165 @ 184,** have settled the Principle. The implication where a Defendant rests his Case on that of the Claimant's Case, may mean that: (a) that the Defendant is stating that the Claimant, has not made out any case for the Defendant to respond to; or (b) that he admits the facts of the Case as stated by the Claimants or (c) that he has a Complete Defence in answer to the Claimant's Case.

Therefore, the Court will utilize those Pieces of Evidence obtained during the Cross-Examination by Learned Counsel representing the Defence, which Evidence will be pitted against the Unchallenged and now Admitted Facts together with the Oral and Documentary Evidence, which would be placed on the proverbial scale of justice.

But it is important to note that even though unchallenged facts are deemed true and are clear admissions, it still remains that they must cogent and credible to enable the Court rely on them. Reference is made to the Case of **OLUYEDE VS ACCESS BANK PLC (2015) 17 NWLR PART 1489 PAGE 596.**

Further, the burden of proof lies squarely on the shoulder of the Claimant to prove his Case on his strength and not to rely on the weakness of the Case of the Defendant or even when no Defence is put up at all. See the Cases of **OGUANUHU VS CHIEGBOKA (2013) 2 SCNJ PAGE 693 AT PAGE 707; MATANMI VS DADA (2013) 2 SCNJ PAGE 616 AT PAGES 627, 629, 630.**

Now, turning to the **Substantive Issue** before the Court, it can be seen that from the facts led and evidence adduced during Trial, it was argued for the Claimant that the Ingredients of a Binding Contract/Agreement were constituted, when the Claimant and Defendants freely and voluntarily entered into contractual relationship as evidenced by series of correspondences that transpired between them. Reliance was placed on the Cases of **UDEAGU VS BENUE CEMENT CO. PLC (2006) 2 NWLR PART 965 PAGE 600 (CA); NNEJI VS ZAKHAM COMPANY (NIG) LTD (2006) 12 NWLR PART 994 PAGE 297 (SC); SONA BREWERIES PLC VS PETERS (2005) 1 NWLR PART 908 PAGE 478 (CA); FGN VS ZEBRA ENERGY LTD (2002) 18 NWLR PART 798 PAGE 162 (SC); ALI VS HASSAN (2004) FWLR PART 194 PAGE 494 RATIO 10.**

According to the Claimant's Counsel, a Contract is breached when one Party performs defectively or differently or did not act at all in regard to the performance of his Obligations, citing the Case of **PAN BISBILDER (NIG) LTD VS FIRST BANK OF NIGERIA LTD (2000) 1 SC PAGE 71.** Further, a Party who has paid money to another for a Consideration that has totally failed, is entitled to claim that money back and reference was made to the Case of **HAIDO VS USMAN (2004) 3 NWLR PART 859 PAGE 65(CA).**

In this instance, the Defendants breached that Contract by acting contrary to the Terms of the Contract by the Non-Performance of their obligation. Therefore, the Claimant was entitled to have his money back as well as entitled to a Monetary Relief in form of Damages, which naturally resulted from the breach. Reference was made to the Cases of **O.U. DAVIDSON CONSTRUCTION (NIG) LTD VS BEES ELEC. CO. LTD (2001) 9 NWLR PART 719 PAGE 507; OLAGUNJU VS RAJI (1986) 5 NWLR PART 42 PAGE 408 (CA).**

In response to the above, the Defence after having analyzed the Claimant's Reliefs, premised their Objection on a Point of Law, which is that, the Contract had since been extinguished by effluxion of time caused by the failure of the Claimant to prosecute his Claims within Six Years after his Alleged Cause of Action arose. According to Learned Counsel for the Defence, the Claimant commenced this Action on the 13th of November 2017, a period well over Six Years when the wrong was allegedly committed, as encased in his Writ of Summons and Statement of Claim. He cited the Case of **EGBE VS ADEFARASIN (1987) ALL NLR PAGE 1; and Section 7 of the Limitation Act of the Federal Capital Territory 1990**, to argue the point that the Claimant's Action was Statute Barred. He further made reference to the testimony of the Claimant, who himself had confirmed repeatedly under Cross-Examination that he discovered the Defendants were not genuine in Year 2010. It was therefore Learned Counsel's Conclusion that by implication, the Claimant's Cause of Action arose in 2010.

According to Learned Counsel, the Claimant had lost his right to enforce his Claims by Judicial Process because the period of time laid down by the Limitation of Law for instituting such an Action had lapsed. Reference was made to the Case of **AGBONIKA VS UNIVERSITY OF ABUJA (2014) ALL FWLR PART 715 PAGE 225 AT PAGE 349.**

Therefore he argued that this Court cannot assume jurisdiction to exercise any discretion in regard to the Claimant's Action. This is because he failed to initiate his Case by following Due Process of Law. His fulfillment of the Condition Precedent that would have enabled this Court to competently assume and exercise jurisdiction was absent. There was nothing placed before the Court to enable it exercise its discretion. Reliance was placed on the Cases of **MADUKOLU VS NKEMDILIM (1962) 1 ALL NLR PART 4 PAGE 587; SKEN CONSULT VS UKEY (1981) 1 SC PAGE 6; COTECNA INTERNATIONAL NIG LTD VS I.M.B. LTD (2006) PART 985; UAC VS MACFOY (1961) 3 ALL ELR PAGE 1169.**

Learned Counsel representing the Claimant,in his Reply on Points of Law submitted that"Statute Barred", is a Substantial Question of Law that borders on the Jurisdiction of the Court when raised by the Adverse Party. According to Counsel, **Section 7 of the Limitation Act**does not apply in this instance because the Contract entered between the Parties was a Contract for Sale of Land and not a Simple Contract as contemplated by the Act.

Further, in determining whether this Suit was within the precinct of the Limitation Act, recourse must be had to the Statement of Claim as well as to **Exhibits E and F**for the purposes of computing when time began to run in order to render the Action Statute Barred. According to Counsel, the injury suffered by the Claimant was a continuous one, as the Defendants, who continued to benefit from the Contract Sum, unjustly denied him the benefit of his hard earned money.

Learned Counsel representing the Claimant surmised that this Suit was in regard to a Breach of Contract for the Sale of Land and the Remedy was Equitable, which formed one of the Exceptions to the Provisions of **Section 7 of the Limitation Act**.

Other Exceptions were encased in **Section 8(5) of the Limitation Act** as well as in the Cases of **OBOT & ORS VS SHELL PETROLEUM DEVELOPMENT COMPANY NIGERIA LIMITED (2013) LPELR- 2070(CA); AREMO II VS ADEKANYE (2004) ALL FWLR PART 224 PAGE 2113 AT PAGES 2132, 2133 (SC); EGBE VS ALHAJI (1990) 1 NWLR PART 128 PAGE 546; OLALEYE**

FAJIMOLU VS UNIVERSITY OF ILORIN (2007) 2 NWLR PART 1017 PAGE 74.

Finally, in the light of the above, Learned Counsel submitted that this Court had the Requisite Jurisdiction to entertain this Suit,becausethe Defence misinterpreted **Section 7 of the Limitation Act**. According to him, the Rule of Interpretation is that, where a Statute seeks to oust the Jurisdiction of a Court, that Statute must be strictly construed and any ambiguity must be resolved in favour of Vesting Jurisdiction, as it is only the Constitution and Relevant Laws that can oust a Court's Jurisdiction. Reference was made to the Case of **EHIKHAMWEN VS ILUOBE 2 NWLR PART 750 PAGE 151 (CA).**

Now, the Claimant in proof his Claims and to demonstrate that there was Contract, which was subsequently breached, tendered into evidence Six Documentary Evidence and they were as follows: -

1. **Exhibit A-** A Receipt of N10, 500 dated 10th of August 2010
2. **Exhibit B**- Original Receipt of N4, 500, 000 dated the 10th of August 2010
3. **Exhibit C**- Original Receipt of N200, 000 dated the 10th of August 2010
4. **Exhibit D**- Original Authority Letter dated 12th of August 2010
5. **Exhibit E**- Original Allocation Letter dated 3rd of June 2011
6. **Exhibit F**- Photocopy of Solicitor's Letter of Demand dated 10th of March 2016.

From the facts presented before the Court, the Sequence of Events that brought the Claimant and the Defendants together started off with discussions between them and prelude to the Claimant securing a Landed Property from the Defendants, he paid Sums of Money to the 2nd Defendant. This was evidenced by the Receipts issued by the 2nd Defendant in **Exhibits A, B and C.** The Total Sums captured in these Exhibits was Four Million, Seven Hundred and Ten Thousand, Five Hundred Naira (N4, 710, 500), which were all paid on the 10th of August 2010.

A perusal of **Exhibits A, B and C** will show that that the purposes for their issuance were: (1). Application; (2). 3 Bedroom Bungalow (Excluding Infrastructure); and (3) Setting and Excavation, respectively.

Exhibits B and C listed the Site, as "**Aldenco**" and bore the inscription "**C4**". This inscription featured in **Exhibit D** corroborating the point that Payments were made in respect of **BLOCK C4**, **ALDENCO SYSTEMS NIG LTD ESTATE, PLOT NO.28 CADASTRAL ZONE C 07 GALADIMAWA DISTRICT, ABUJA**.

Now, the Claimant had stated that the Defendants had initially issued an Allocation Letter to him, which was later retrieved from him by them and they were put on Notice to Produce that Retrieved Allocation Letter. During Trial, this Allocation Letter was never produced, and no answer was rendered by Defence, who had elected not file any Pleadings. Their failure to file Pleadings, gave the Claimant opportunity to either produce a Secondary Copy of this Allocation Letter or Subpoena its production. The Claimant explored none of these two options available to him during his examination-in-chief, which simply means he did not back up this fact by Documentary Evidence. It is Trite Law that Pleadings are no evidence; it is the duty of a Litigant to call evidence to support his Averments failure of this is, abandonment. See the Cases of**OKECHUKWU VS OKAFOR (1961) 2 SCNCR PAGE 369, UREGBA VS ATTORNEY GENERAL BENDEL (1986) 1 NWLR PART 16 PAGE 303 AT 307; AYOKE VS BELLO (1992) 1 NWLR PART 218 PAGE 380.**

In addition, Pleadings not supported by Evidence goes to no issue or are deemed abandoned.Reference is made to the Cases of **MOHAMMED VS KLARGESTER (NIG) LTD (2002) 14 NWLR PART 787 PAGE 335; UGOCHUKWU VS UNIPETROL (2000) 3 SC PAGE 80; OGIAMIEN VS OGIAMIEM (1967) 1 NMLR PAGE 245; CARDOZO VS DOHERTY (1938) 4 WACA PAGE 78.**

Further, the Court cannot speculate on the existence or non-existence of a Document not placed before it in determining whether or not that Retrieved Allocation Letter constituted a Vital Element in the formation of the Contract between the Claimant and the 2nd Defendant.

However, the absence of this Allocation Letter was not entirely fatal, as the Court can look at other Documents and the Surrounding Circumstances for the purposes of determining whether there was a Contractual Relationship between the Claimant and the 2nd Defendant.

The Law is trite that for a Contract to be formed there must be an Offer, Acceptance, Consideration, Terms and Conditions, Intention to Create Legal Obligation and reference is made to the Cases of **AKINYEMI VS ODU'A INVESTMENT (2012) 1 SCNJ PAGE 127; WEST AFRICAN OFFSHORE LTD VS ARIRI (2015) 18 NWLR PART 1490 PAGE 177; OJO VS ABT ASSOCIATES INCORPORATED (2017) 9 NWLR PART 1570 PAGE 167 AT PAGE 171.**

From the facts and Surrounding Circumstances set out before the Court, what is clear, was that after the discussions between the Claimant and the 2nd Defendant, Receipts in **Exhibits A, B and C** all dated the 10th of August 2010, were issued by the 2nd Defendant evidencing that **Consideration** had moved from the Claimant to the 2nd Defendant for **BLOCK C4, ALDENCO SYSTEMS NIG LTD ESTATE.**

The Movement of this Consideration could only mean that the Claimant, as Promisee, initiated the First Ingredient of a Binding Contract, by making an Offer when he handed over his Monies to the 2nd Defendant. The 2nd Defendant by issuing Receipts in **Exhibits A, B and C**, showed their Acceptance of what was offered. These Corresponding Acts all show that a Contract has been entered between the Claimant and the 2nd Defendant.

But the Question must be asked, whether this Contract sufficed as a Simple Contract or a Formal Contract/Contract under Seal in view of the Submission raised by Learned Counsel representing the Claimant. According to him, the Contract was not a Simple Contract within the Contemplation of **Section 7 of the Limitation Act** whilst Learned Counsel representing the Defence maintained that it was a Simple Contract, which fell within the precinct of the Limitation Law andfor this reason,the Six Years' Window had elapsed between when the Cause of Action arose and when the Claimant instituted this Suit.

Now, from analysis already set out this far, what transpired between the Parties was a Contract for Sale of Land. In the Case of **MINI LODGE LTD & ANOR VS NGEI & ANOR (2009) LPELR-1877(SC)**His Lordship Per **ADEKEYE JSC at Pages 40, 41 PARAS G-BHELD** thus: - "An Offer must be accepted in order to crystallize into a Contract. A Contract of Sale exists where there is a Final and Complete Agreement of the Parties on Essential Terms of the Contract, namely the Parties to the Contract, the Property to be sold, the Consideration for the Sale and the Nature of the Interest to be granted. Once there is Agreement on these Essential Terms, a Contract of Sale of Land or Property is made and concluded."

In this instant case, the Parties were "locked-in"by this Form of Contract, and the Question must necessarily be asked, whether it was different from a Simple Contract?

In **WORDS AND PHRASES LEGALLY DEFINED, VOLUME 1,** a Simple Contract is defined to include, All Contracts, which are not Contracts of Record or Contracts under Seal.

SAGAY (SAN), in his Book,**NIGERIAN LAW OF CONTRACTS**, 2nd Edition at Page 4, defined a Simple Contract, as all Contracts other than Formal Contracts or Contracts required to be under Seal.This Definition was also cited in the Cases of **ADENIYI VS GOVERNING COUNCIL, YABA COLLEGE OF TECHNOLOGY (2012) LPELR-8434; POWER PRODUCTS INT. LTD. V. WEMA BANK PLC (2012) LPELR-7952.**

Now, juxtaposing these Definitions against the Documentary Exhibits before the Court, there is not a Single Exhibit, which demonstrated that the Contract for the Sale of Land was entered under Seal thereby disqualifying it from being termed as a Simple Contract. Therefore, the Contract of Sale of Land in this context is one and the same with a Simple Contract.

In this instant case, there was no Seal and the circumstances of interaction and engagement between the Parties denote a situation of a Simple Contract. It is worthy of note that this Simple Contract ended up being Variable by the Different Promises being made by the Defendants in regard to Different Locations for Land Allocations.

The Key Factor is whether this was a Continuing Contract or whether the Frustrating Events in regard to Aldenco Estate, terminated it, in which case, the Argument could be made as to the Application of the Limitation Law.

Now, having determined that a Binding Simple Contract ensued between the Parties, what was left of this Contract was its **PERFORMANCE**.

According to the Claimant, two days later, the 2nd Defendant issued him a Letter of Authority in **Exhibit D.**

This Letter bears Reference No: **SRH/SEL/BGL/C 4** in **Exhibit D** titled **" AUTHORITY TO PROCEED TO SITE FOR 3- BEDROOM DETACHED BUNGALOW BLOCK C4AT OUR ALDENCO SYSTEMS NIG LTD ESTATE, PLOT NO.28 CADASTRAL ZONE C 07 GALADIMAWA DISTRICT, ABUJA"**

The Opening Paragraph of this Letter reads,

"<u>Having satisfied the following payments of</u>: -

Setting Out, Excavation & Survey Fee- N100, 000

Building Plan N10, 000

Engineering Supervision N90, 000

Please pay into Union Homes Savings & Loans Plc, Wuse- Abuja."

The Penultimate Paragraph then stated that, "*You are hereby authorized to mobilize to Site to commence immediate work as a Participatory Customer*"

The Concluding Paragraph mentioned other Payments that were to be made in the future, that is, **<u>BEFORE</u>** the Completion of the 3 Bedroom Bungalow.

This **Exhibit D** was affixed a Stamp of the Internal Audit emanating from the 2nd Defendant, whose Officer signed and dated the Exhibit.

The Second Page of **Exhibit D**, is an "**AUTHORITY TO PROCEED TO SITE/INDEMNITY ON SITE**", which stated thus: -

"*I hereby agree to proceed to Site through a Joint Venture Partnership Agreement and abide by all the Rules & Regulations, as contained in the Sales Agreement.*

"I /We shall abide strictly to Engineering Design provided by Saraha Homes Limited and other Technical Specifications

...

Now, the Court observes from this Page that the Claimant's name was typed therein but he did not sign the Column meant for him to append his Signature. Directly underneath this Column is a Bottom Section of **Exhibit D,** headed "FOR OFFICIAL USE". An Officer of the 2nd Defendant remarked, "CLEARED" and thereafter affixed a Stamp, and thereafter, this Officer signed and dated it.

By these Administrative Acts, the 2nd Defendant was well aware that the Claimant did not sign his Acceptance of this Letter of Authority but went ahead to officially clear him to proceed to Site.

The non- signing of this Authority Letter by the Claimant was not prejudicial to him, because from the facts pleaded and evidence led, he positively demonstrated his willingness to proceed to Site and had persistently approached the 2nd Defendant to allow him proceed to Site to enable him

commence building works on the Site. His conduct goes to show he was in tandem with the Mandate given to him in the Authority Letter and he acted on it when he severally approached its Issuer.

Upon the Issuance of the Authority Letter to proceed to Site, the 2nd Defendant, however, deliberately stood in the way of the PERFORMANCE of this Contract. The 2nd Defendant did so, by giving several excuses to the Claimant not to mobilize to Site because the Site was not cleared. The un-cleared Site was contrary to their Earlier Representation written in black and white where they had intimated an IMMEDIATE mobilization and commencement of building works at the Aldenco Estate Site.

The Question then must be asked, **WHAT** was the reason for the 2nd Defendant's Excuses that led to the Non-Performance of their obligation under this Contract?

A careful perusal of **Exhibit D**, would show that apart from acknowledging the Sums paid by the Claimant, they had further informed him that **ALL** the Remaining Outstanding Payments such as Development Levy, Insurance Charges, Administrative Charge, Legal Fees and Infrastructure, were only to be paid ***BEFORE THE COMPLETION OF THE BUILDING***.

In other words, they gave the Claimant unfettered discretion or liberty to determine **WHEN** that completion would take place in the future before he would be expected to pay Outstanding Charges and Levies. Upon the 2nd Defendant realizing that they had made imprudent bargains, which has Cost Implications to their Enterprise, they took the Unilateral Initiative of giving excuses to the Claimant that the Site was not cleared.

These excuses, aided the 2nd Defendantinshrouding the reality of a Cleared Site and a Reallocation of the Claimant's Site to an Unknown 3rdParty, who had himself mobilized to Site and completed his development on the Claimant's Allocation. The 2nd Defendant's Site Manager backed up this point, when he confirmed to the Claimant that all the Sites within the Aldenco Estate had been exhausted and not a Single Site was available to enable the Claimant mobilize and commence construction.

The Identity of this Site Manager is Immaterial; as what is Material is the fact of non-availability of any Site in Aldenco to enable the Claimant commence

construction. With this new information from the Site Manager, the Claimant had the Golden Opportunity of exploringany Remedial Claim that may accrue to him under Contract Law. But he waived that recourse, which caused that Opportunity to slip through his hands choosing rather to bombard the 2nd Defendant with complaints over his Allocation.

The Claimant's persistent complaints, led to New Assurances of New Allocations in other Sites such as Idu-Sabo, Apo and Gwagwalada and this time around with the option of picking and choosing where he wanted the New Allocation to be situated.

The Question has to be, whether these New Assurances of other Sites in Idu-Sabo, Apo and Gwagwalada were given Six Years **AFTER** the 2nd Defendant failed to fulfill their Contractual Obligations or whether they were given **WITHIN** the Six Years as provided for in the Limitation Statute.

Exhibit E, the New Allocation made on the 7th of June 2011, clearly showed that these assurances were eventually realized within the Six Year Statutory Period. Therefore, for the purposes of computing when time would begin to run to render their New Relationship Statute Barred in relation to Non-Performance, it would have to be a period commencing from Year 2011 or thereafter and not Year 2010, as argued by Defence Counsel. Further, to sustain an Objection on Statute Barred/Limitation of Law, the Rule of this Court requires that it must be Specifically Pleaded in order to rely on it. Reference is made to **Order 15 Rule 7(2) of this Court's Civil Procedure Rules 2018,** which states: -

"***Where a Party raises any ground which makes a transaction void or voidable or such matters as fraud, limitation of law, release, payment, performance, facts showing insufficiency in contract or illegality either by any enactment or by Common Law, he shall specifically plead it"***

In **OMOTOSHO VS BANK OF THE NORTH LTD & ANOR (2006) LPELR-7580 (CA)** His **Lordship OGUNWUMIJU JCA IN PAGE 18 PARAS A- B**, held that, "...the Law is that the Defence of Limitation would affect the Competence and Jurisdiction of the Court only when the issue is raised by the Defendant as a Shield against Litigation at the Appropriate Time. The answer to Issue One is that a Party**MUSTPLEAD**the Statute of Limitation in order to rely on it." See

also the Cases of **SAVAGE VS ROTIBI (1944) 10 WACA AT PAGE 264; IHEANACHO VS EJIOGU (1995) 4 NWLR PART 389 PAGE 324 BOTH CITED IN THE CASE OF SANNI VS OKENE LOCAL GOVERNMENT & ANOR (2005) LPELR- 1131 (CA) PER RHODES VIVOUR JCA (AS HE THEN WAS) PAGE 14 PARAS B-C; OYEBAMIJI & ORS VS LAWANSON & ORS (2008) LPELR- 2864 (SC) PER NIKI TOBI, JSC PAGE 14 PARAS F; ALLEN VS ODUBEKO (1977) 5 NWLR PART 506 PAGE 638.**

Consequently, the failure of the Defence to plead Limitation of Law and to do so specifically, was fatal not only to the Defence but also to the Written Address filed in their regard by their Learned Counsel. In that Address, Learned Counsel had cited the Case of **UAC VS MACFOY (SUPRA)** where he argued the point that you cannot build something on nothing and expect it stand. But, it now appears this Dictum cited by Learned Counsel applied to his detriment and to the Defence.

Now, the Court has to determine what the New Allocation in **Exhibit E** between the Parties entails, and how it affects the Earlier Existing Contract entered between the Claimant and the 2nd Defendant.

Exhibit E, is referenced as N0: **SRH/SEL/BGL/B 15** andis titled thus: -

"**RE: ALLOCATION OF 3 BEDROOM DETACHED BUNGALOW (BLOCK B 15) AT OUR ESTATE, SARAHA GOODLUCK CITY, IDU-SABO DO4/4, ABUJA**"

The Opening Paragraph reads: -

"*With reference to your **Application No. 1167** we write to offer you a property in the above referred Estate on terms contained herein and **SUBJECT TO CONTRACT.***

LOCATION: SARAHA GOODLUCK CITY, Idu-Sabo DO4/4, Abuja

DESCRIPTION: Block No: B 15- 3 Bedroom Bungalow

***PRICE: N25, 000, 000.00 (Twenty-Five Million Naira) only**, exclusive of 5% VAT and Title Documentation Fee of 5%*

...

The Claimant on his own part, accepted this New Offer Letter by endorsing his Signature. By his acceptance, it can be seen that Parties had set out a New Path that would chart their relationship. In the event of a breach, recourse will be made to their new relationship, as a Guide in determining when a Cause of Action arose. Further, the Claimant having accepted this New Allocation, he had impliedly extinguished his Interests and Obligations in the Earlier Contract he entered with 2nd Defendant.

Now, **Exhibit E,** clearly shows that it was made, **"SUBJECT TO CONTRACT".** In the Case of **NIGER CLASSIC INVESTMENT LTD VS UACN PROPERTY DEVELOPMENT CO. PLC & ANOR (2016) LPELR- 41426 (CA), "SUBJECT TO CONTRACT"** was defined by the Supreme Court Case of **BEST (NIG) LTD VS BLACKWOOD HODGE (NIG) LTD & ORS (2011) LPELR- 776 (SC),** the where the Apex Court held that, "*Where a Contract is made subject to the fulfillment of certain specific Terms and Conditions, the Contract is not formed and is not binding unless and until those Terms and Conditions are complied with or fulfilled*."

From the above Judicial Precedent, both the Claimant and the 2nd Defendant had entered into a Non-Binding Contract, which now reduced their relationship to that of a Roundtable Negotiations that may lead into a Contract.

Now, the 1st Defendant, as Managing Director of the 2nd Defendant, featured in this New Allocation in **Exhibit E**. From the Record before the Court, the 1st Defendant did not challenge his appearance or Capacity with which he was sued in this Suit. Therefore, the Court cannot *suo motu* make a jurisdictional challenge on his behalf but to hold that he was a Party to this Suit. With the involvement of the 1st Defendant into the mix, he introduced New Twists into the relationship between the 2nd Defendant and the Claimant by inserting into the New Allocation Letter, Certain Clauses such as "**SUBJECT TO CONTRACT"** and further, by inserting **TIMEFRAMES** to every step taken by both parties.

The 1st Defendant was the Smart Head that was missing in the initial relationship between the 2nd Defendant and the Claimant and little wonder, is the adage,

"*Two Heads are better than one!!!*"

With the introduction of the Clause,**"SUBJECT TO CONTRACT",** the Terms and Conditions took precedence over the Contract. These Terms and Conditions were **CONDITIONS PRECEDENT**whose performance must be completed before a Contract would becoming binding and enforceable in Law.

In the Performance of this New Terms and Conditions, the Claimant was given Two Options to make Payments, Upfront. The First Option was 100% Outright Purchase of Gross Sum of N25, 000, 000, which guaranteed him, Permanent Allocation and Protection against Inflation.

The Second Option was to pay a minimum of 40%, that is, N10, 000, 000 upon accepting the Offer and to complete the balance of 60%, that is, N15, 000, 000 within 60days in full. By computation of time, 60days from the Date of Acceptance was the 7th of August 2011.

There is no Documentary Evidence showing which of the Two Options the Claimant elected to fulfill. The only evidence of Payment remained those Initial Sums paid to the 2nd Defendant in the Previous Contract.

Upon Accepting this New Allocation, no other payment was received for either the First Option or for the Second Option, which elapsed on the 7th of August 2011. The Claimant did not pay up 100% to purchase the 3Bedroom Bungalow in Saraha Estate nor did he complete the Initial Minimum Payment of 40% Deposit on the day he accepted the Offer.

Either of the Payments was necessary before he could then mobilize to Site within Eight (8) Weeks. The Claimant led no evidence showing that these Payment Requirements were a factor to the issuance of a New Letter of Authority mandating him to mobilize to Site.

The Defendants' Performance hinged on the Claimant's Performance and until he had performed, then would their performance be set in motion. However, he failed to meet up with the Deadline, and there was nothing left for the Defendants to perform, other than to refund his money less Legal Fees of 5% and Administrative Fees of 5%, **AFTER** 60days when payment was not completed.

It must be noted, however, that after the 7th of August 2011, the Defendant's never refunded the Claimant's Money less these Deductions. Their New

Obligation restricted them to making only Refunds but never extended to embarking on a frivolous voyage of discovery by showing the Claimant other Sites in the Apo and Gwagwalada.

The Defendants were time bound to Refund the Claimant's Monies and all the Unchallenged Facts and Evidence, both Oral and Documentary, positively show that they unreasonably and unjustifiably held back the Claimant's Money. They held back paying the Claimant's Money for approximately Five Years after a Demand Letter was written by his Solicitor on the 10th of March 2016 and for a further Period of One Year and Eight Months, when this Suit was instituted against them in November 2017.

In total, the Defendants held-on to the Claimant's Money for a Period well over Six Years and Five Months. Equity, would certainly not allow them to keep holding unto the Claimant's Money indefinitely nor would Equity permit them to take benefit of the 5% Deductions of Legal Fees and 5% for Administrative Fees as contained in their New Allocation.

The New Arrangement or Engagement in **Exhibit E**, that is, the New Allocation,invariablyestablished the point that there was no Binding Contract between the Claimant and the Defendants and consequently, the Question of Statute Barred would certainly not arise even if, legitimately raised. The failure of both Parties to honour the New Terms and Conditionsin **Exhibit E**invariably terminated that Relationship, limiting their Relationship to that of a Creditor and Debtor Relationship, which has no Limitation of Law ascribed to it.

As regards the Claim for Damages, it is clear that the Defendants had been in the Custody of the Claimant's Monies since August 2010 and had continued to be in Custody of those Monies when they entered into a New Relationship with Claimant in 2011. From then till the Date of this Judgment, the Monies had continued to remain in their Custody. Certainly, these Monies had appreciated in Value from the date of deposit of the Monies with the Defendants, who had enjoyed the benefits of the Accrued Interests and perhaps, were trading with it.

They deprived the Claimant to the Use of his Monies and did not fulfill their part of the bargain. Aside of the initial failure of the Earlier Contract, they kept on assigning him to different Areas of Allocation to no success, and had refused to return his Monies upon Demand without any reasonable excuse.

It was expected that they filed Pleadings or Summoned Witnesses contesting the Contentions of the Claimant but they did not. This renders the Claimant's Facts and Evidence uncontroverted and unchallenged.

His Lordship KARIBI-WHYTE, JSC PG 47, PARAS C-E in the Case of **YALAJU-AMAYE VS ASSOCIATED REGISTERED ENGINEERING CONTRACTORS LTD & ORS (1990) LPELR-3511 (SC)**held that, "General Damages may be awarded to assuage such a loss which flows naturally from the Defendant's Act. It need not be Specifically Pleaded. It arises from Inference of Law and need not be proved by Evidence. It suffices if it is generally averred. They are presumed by the Law to be the Direct and Probable Consequence of the Act complained of. Unlike Special Damages, it is generally incapable of substantially exact calculation."

In the Case of **AGU VS GENERAL OIL LTD(2015) LPELR-24613(SC),His Lordship, OKORO JSCheld at PG 20-22, PARAS E-C,** as follows: -"It is now well settled that in a Claim for Damages for Breach of Contract, as in the instant case, the Court is concerned only with Damages, which are Natural and Probable Consequences of the Breach or Damages within the Contemplation of the Parties at the time of the Contract. **SEE MOBIL OIL NIG LTD VS AKINFOSILE (1969) 1 NMLR 227; ARISONS TRADING & ENGINEERING COMPANY LTD VS THE MILITARY GOVERNOR OF OGUN STATE (2009) 15 NWLR PART 1163 PAGE 26.**The Essence of Damages in Breach of Contract cases is based on what is called *Restitutio in Integrum*. It isthe Award of Damages in a Case of Breach of Contract to restore the Plaintiff to a position as if the Contract has been performed and reference was made to the Case of **UNITED BANK FOR AFRICA PLC VS BTL INDUSTRIES LTD (2006) 28 NSCQR 381.His Lordship** further held that, the Measure of Damages is the Loss flowing naturally from the Breach and is incurred in Direct Consequence of the Breach.See also the Cases of **GONZBEE NIG LTD VS NERDC (2005) 22 NSCQR 735**; **ALHAJI MUSTAPHA ALIYU KUSFA VS UNITED BAWO CONSTRUCTION CO LTD (1994) 4 NWLR PART 336 AT PAGE 1**;**UBN PLC VS AJABULE & ANOR(2011) LPELR-8239(SC) PER FABIYI, JSC at PG 32, PARAS C-E.**

In **IGHRERINIOVO VS S.C.C. NIGERIA LIMITED & ORS (2013) LPELR-20336(SC)His Lordship FABIYI, JSC in PG 18-20, PARAS G-C, held that**

"Generally, Award of Damages is intended to Compensate the Plaintiff for Financial Loss, both present and future, suffered by him. Further, in making an Award of Damages, it is relevant to bear in mind galloping Inflation and consistent Depreciation of the Value of the Naira, which is obvious to all. A Judge should bear in mind the Purchasing Power of the Naira at the Material Time of Judgment. Reference was made to the Cases of **SEE IFEANYI CHULCWU OSONDO C. LTD VS AKHIGBE (1999) 11 NWLR PART 625; UGO VS OKAFOR (1996) 3 NWLR PART 438 AT PAGE 542; AND KALU VS MBUKO (1988) 3 NWLR PART 80 AT PAGES 86 AT 102**. His Lordship further held that, it should be stated that no hard and fast principle can be laid down for Award of Damages for pains and suffering. Each Case should be determined based on its own Peculiar Facts and Circumstance of the Injury complained about.

Without further ado, the Court: -

1. **As regards the DECLARATION that the Non-Performance of Obligation by the Defendants amounted to a Breach of Contract, the Court finds that this earlier Contract has been was breached by the Defendants and even though the Parties continued into a New Contractual Relationship, the fact is that, the First Contract was breached by the Defendants and a Declaration is made to that effect.**

2. **AN ORDER of Court is made compelling the Defendants to jointly and severally Refund the Sum of Four Million, Seven Hundred and Ten Thousand, Five Hundred Naira (N4, 710, 500) only to the Claimant forthwith.**

3. **AN ORDER is made directing the Defendants to pay the Claimant the Sum of Five Million Naira (N5, 000, 000) only as Damages as a result of the Non- Performance of Defendants' Obligation for over 6 years.**

4. **The Cost of this Action is made in the Sum of N1, 000, 000.00 (One Million Naira Only)**

HON. JUSTICE A.A.I. BANJOKO

JUDGE