IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY, ABUJA
HOLDEN AT ABUJA

ON WEDNEDAY, 20TH DAY OF NOVEMBER, 2019

BEFORE HON. JUSTICE SYLVANUS C. ORIJI

SUIT NO. FCT/HC/CV/2021/2016

BETWEEN

EMMANUEL EDET JAMES --- CLAIMANT

AND

1. **CLOBEK NIG. LTD.**
2. **CLARA EKWE**
3. **DAVID AGBO**
4. **MINISTER OF THE FEDERAL CAPITAL TERRITORY**

} **DEFENDANTS**

JUDGMENT

The claimant [plaintiff] instituted this action on 20/6/2016. The pleadings in this suit are: [i] the claimant's further amended statement of claim filed on 20/2/2017; and [ii] the 1st -3rd defendants' further amended joint statement of defence and counter claim filed on 28/3/2017.

In paragraph 69 of his further amended statement of claim filed on 20/2/2017, the claimant claims against the defendants as follows:

a) A declaration that the 1st-3rd defendants' deliberate concealment of facts relating to clauses 5.9, 5.11, 8[a] and 12 of the Sales Agreement and clause 20.2 of the Estate Bye-laws, Rules and Regulations, prior to payment of the purchase price for the property, and other financial commitments amounted to a fraudulent misrepresentation of the fundamental terms of the contract sought to be entered by the parties.

b) An order directing the 1st-3rd defendants jointly and severally in the event that the 1st defendant is found not to have a valid title to Clobek Crown Estate, Plot 1946 SabonLugbe East Extension Layout, FCT, Abuja, to give the plaintiff a similar property with valid Certificate of Occupancy [forthwith] having the current value of the property taking into account the depreciated value of the sum investment as at the time of the purchase and other economic factors like the net present value of the sum invested as at 15th June 2016 assuming he made his alternative foreign exchange investment.

c) An order confirming the plaintiff's right of way, ingress and egress at all times to the said property.

d) An order directing the 1st-3rd defendants jointly and severally to pay to the plaintiff the sum of N40,000,000.00 [Forty Million Naira] only representing general damages and economic loss suffered as a direct consequence of the 1st-3rd defendants' acts of deliberate and fraudulent misrepresentation of facts in the course of the consummation of the

agreements between the parties, which has frustrated the progress of the transaction between the parties.

e) The cost of this suit being the sum of N1,000,000.00 [One Million Naira] only.

f) And/or for such other orders that the Court may deem fit to make in the circumstances.

Alternatively

a) An order for the 1st-3rd defendants to comply with the FCTA guideline for mass housing program by releasing the plaintiff's deed of sub lease and submitting same and relevant documentations as agreed to the appropriate authorities and the FCT Minister for the plaintiff's Certificate of Occupancy.

b) An order permitting the plaintiff to drill his own subsurface borehole for water supply and/or have an alternative water supply if he does not want the 1st-3rd defendants' water and all times exercise all rights ancillary to property ownership in the FCT which includes his right of way at all times and connection to national electricity grid.

c) An order restraining the 1st-3rddefendants from determining what communal services the plaintiff should pay for as service charge.

d) An order to pay general damages of N20,000,000.00 [Twenty Million Naira] only for extra cost incurred by the plaintiff after payment for his

property, all the emotional trauma, losses and inability to have quiet enjoyment of his property [the subject matter of this action].

e) The cost of this suit being the sum of N1,000,000.00 [One Million Naira] only.

f) And/or for such other orders that the Court may deem fit to make in the circumstances.

In paragraph 22 of the further amended joint statement of defence and counter claim filed on 28/3/2017, the 1st defendantcounter claims as follows:

a) A declaration that the agreement initiated between the plaintiff and the 1st defendant, whereby the plaintiff offered to buy, and the 1st defendant agreed to sell a sub-lease interest in the property called House 6, Plot 69, Bethel Lane, situate within Clobek Crown Estate, SabonLugbe East Layout, Abuja, within the jurisdiction of this Court, has failed and become frustrated, by reason of the defendant's repudiation of the same, and the defendant's refusal to sign the purchase agreement and the Estate Byelaws, Rules and Regulations.

ALTERNATIVELY;

b) A declaration that the agreement initiated between the plaintiff and the 1st defendant, whereby the plaintiff offered to buy, and the 1st defendant agreed to sell a sub-lease interest in the property called House 6, Plot

69, Bethel Lane, situate within Clobek Crown Estate, SabonLugbe East Layout, Abuja, within the jurisdiction of this Court, has failed or become stillborn, by reason of absence of *consensus ad idem ab initio*.

AND

c) An order directing the plaintiff and the 1st defendant to revert to the *status quo ante.*

At the trial, claimant testified as PW1 and adopted his amended statement on oath filed on 20/2/2017.The claimant tendered Exhibits A, A1, B, C1-C5, D, E, F1-F11, G1-G2, H1-H2, J, K, L1-L2, M, N, O, P1-P2, Q, R1-R2, S1-S2, T, U, V1-V2, W1-W2, X, Y & Z. Pascal Aneke was PW2; he adopted his statement on oath filed on 2/12/2016. Albert OlusanyaAlakija testified as the PW3. He adopted his statement on oath filed on 2/12/2016.

Francis Maande, the Estate Manager of the 1st defendant, gave evidence on behalf of the 1st-3rddefendants as DW1. He adopted his statement on oath filed on 15/2/2019. The 4th defendant did not file any process and did not participate in the proceeding.

Evidence of PW1 [the claimant]:

In his 69-paragraph statement on oath filed on 20/2/2017, the claimant stated that he, by way of outright purchase, is the equitable beneficial owner of the property known as House 6 [F2A] Sub-Plot 59, Bethel Lane within

ClobekCrown Estate, Plot 1946 SabonLugbe East Extension Layout, Abuja. The 1st defendant is the developer of the property known as Clobek Crown Estate. The 2nd defendant is the Chairman and alter ego of the 1st defendant. The 3rd defendant is a director in the 1st defendant and is in charge of the facility management at Clobek Crown Estate. In his meeting with the 2nd defendant around 10/6/2015 at Clobek Crown Estate, she informed him of the several incentives in the Estate such as 24 hours electricity power supply, treated borehole water supply and the ambiance of not allowing the use of individually powered generating plants.

The 2nd defendant showed him available carcass two-bedroom semi-detached properties on the F-Line of the Estate [later known as Bethel Street] and the *"sample"* finished three-bedroom fully-detached house in the Estate. The 2nd defendant mentioned that the exteriors, including the external doors of the semi-finished version of the two-bedroom semi-detached houses at handover would possess same semblance and features as those of the sample house. 2nd defendant further agreed to deliver a confirmatory document detailing the external works and responsibilities of the 1st defendant in order to avoid confusion after he has committed his funds.

Being satisfied with the assurances by the 2nddefendant, he purchased an Application Form for N10,000.00. The Application Form filled by the claimant dated 10/6/2015 is Exhibit A. He discovered some clauses in the application form which he was not comfortable with and sought clarification from the

2nddefendant especially in respect of clauses 1, 12, 13, 14 & 17. He sought to know about the title document [i.e. Deed of Sublease] for the property from 2nd defendant as he informed her that he wanted a property that would be easy to divest, would be acceptable as collateral for obtaining loans, could be rented off at a premium rate, could be presented as an asset with proper title documentation for visa applications, etc.

The 2nd defendant replied that the 1stdefendant would issue a sale/purchase agreement. He informed the 2nd defendant that a sale agreement was not presentable as a title instrument at a land registry and that deed of sublease was mentioned twice in the Application Form. Later that day, 2nd defendant called and told him that he will be issued a deed of sublease. Before paying for the property, he requested for a draft copy of the deed of sub-lease, sale/purchase agreement and the facility management agreement/Estate rules and any other relevant document mentioned in the Application Form to know the exact terms of purchase. He was told that the documents can only be issued after purchase price is paid. He inquired about the running cost of the house. He was given Facility Management Service Charge breakdown with the assurance by 2nd defendant that there were no hidden charges. The Facility Management Service Charges 2015 are Exhibits P1 & P2.

PW1 further stated that he was issued a Letter of Allocation dated 15/6/2015 [Exhibit C1]. He made full payment of N15 million for the semi-finished two-bedroom semi-detached bungalow with boys quarters; the receipt of payment

dated 16/6/2015 is Exhibit B.After paying for the property, he made several requests for his copy of the sales agreement from the 2nd& 3rd defendants. He was informed that the agreement would be given and executed at the handover of the property. He mobilized workers for the completion of the interior of the house and spent above N7 million to finish the house to make it habitable. While he was waiting for1st defendant to finish the external works before handover of the property to him,on 7/8/2015, barely an hour after the first joint inspection of the external works, the 2nd& 3rd defendants hastily handed the house to him with a handover letter detailing the external works done by 1st defendant without his title document and other documents.

The 1st defendant through one Peter Nwoji and a female intern accosted him at his house with:[i]letter titled: Features of Semi-detached House [6 Bethel Lane] at Handover dated 22/6/2015 [Exhibit C2]; [ii] letter titled: Payments Expected Pre-handover and Post-handover dated 7/8/2015 [Exhibit C3];[iii] Handover letter of House No. 6 Bethel Lane dated 7/8/2015 [Exhibit C4]; and [iv] Estate Bye-laws, Rules and Regulation [Exhibit J].Upon going through the Estate Bye-laws, Rules and Regulation, he discovered paragraph 20.2 and other strange clauses relating to liabilities not previously mentioned and relating to reversion of the property to the 1st defendant. He declined to sign any document as there were outstanding external works and issues yet to be clarified. He called the 2nd defendant to complain about the uncompleted external works, non-connection of light and water to his apartment, manner

of handover and request for his title documents promised to be given at handover. His request *"hit a brick wall"*. He made a written complaint to the 1st defendant; the letter of complaint dated 8/8/2015 is Exhibit L1.

He travelled to Accra on 2/9/2015 for his PhD comprehensive examinations. When he returned on 14/1/2016, nothing had been done about his complaint and he could not stay in his house. In paragraphs 38, 39& 40 of his statement on oath, PW1 stated the works he carried out in the house and the expenses incurred from carcass stage. He also made payments for service charge [N106,500.00]; intercom handset levy [N5,000.00]; water and light bill for April 2016 [N25,000.00]; and legal fees [N375,000.00]. These payments are shown in his statements of account in First Bank of Nigeria Plc. [Exhibits G1 & G2].Despite the payments of the various fees, the 1st-3rddefendants did not attend to the complaints he made about his property.

Emmanuel Edet James further stated that the 3rd defendant brought a Sale Agreement [Exhibit D]. After going through it, he discovered some strange terms and conditions that were not discussed when he went to the 1st-3rd defendants to buy the property; such as clauses 5.9, 5.11, 8[a] and 12. As he was not comfortable with the contents of the Sale Agreement, he briefed Ekito Lebo-Albert Esq. of counsel to be present in his meeting with agents of the 1st defendant for him to be properly protected. On 19/3/2016, the duty security supervisor of the Estate [Mr.Useni] informed him that he was under instruction not to allow him [PW1] entry into the Estate.

On 22/3/2016, 3rd defendant strongly advised him to avoid involving his lawyer before signing the Sale Agreement. On 4/4/2016,the 3rd defendant called him on phone and advised him to sign the documents and that even SANs and other well placed persons have signed the documents without asking questions. The 3rd defendant also stated that he [PW1] will be made to suffer the pain of long legal battle without water and light throughout the period; and made reference to one Mr. Oliver Otuonye residing in the Estate who he said had similar issue and recently went to church to seek for settlement after he had suffered a year-long court battle.

The antics of disturbing his quiet and peaceful enjoyment of his property owing to non-execution of the said repugnant and repulsive Sale Agreement has taken a toll on his wellbeing, freedom and studies aside the continuous mounting cost of transportation between his home and his friend's apartment in Kado Estate to change clothes daily, including hotel bills incurred to lay his head for the night. The expenses incurred in the course of his ordeal are: [i] approximately N500,000.00 for daily transportation to and from Clobek Crown Estate to change clothing and pick up needed items; and [ii] the sum of N2,300,000.00 for hotel accommodation costs. He instructed his lawyer to write to the 1st defendant on all the issues complained about; the letter from Law Wigs Legal Consult dated 4/4/2016 is Exhibit X. Till date, they have not effected the repairs complained of or given him his title document or restored the services denied him.

On 8/5/2016, he attended the Clobek Crown Estate Association meeting and one of the complaintsraised by the residents was the fact that the 1st-3rd defendants use water and light as a means of punishment and control for anybody who defaulted in paying the outrageous water, light and estate bills. The minutes of the meeting held on 8/5/2016 isExhibit N.In paragraph 56 of his statement on oath, PW1 stated that on 22/9/2016 when the Court delivered its ruling on the claimant's motion for interlocutory injunction**,** the 1st-3rd defendants acting through Mr. Bernard Ekwe [the husband of the 2nd defendant] and Mr. Francis Maande double-locked the gates to his propertyto prevent him from entering the Estate. The locks on his gate were removed on 24/9/2016 by Mr. Francis Maande on Police order and under Police supervision. In paragraph 56[vi] & [vii] of his statement on oath, PW1 stated the trauma and pain he suffered and the losses he incurred due to the said act of locking his gates.

From the provisions in the repugnant sale agreement, the letter of allocation and the application form, the 1st defendant promised him a registrabledeed of sublease and certificate of occupancy as required of Estate Developers registered with the Mass Housing Department of FCT operating in the FCT.The Gazetted Guideline for Mass Housing Programme of FCTA is Exhibit Q. Paragraph 8 of the Sale Agreement where it stated that the 1st defendant *"has applied for issuance of Certificate of Occupancy"* contradicts the impression the 1stdefendant's agents gave him.1st defendant's root of title

cannot be a certificate of occupancy since the Mass Housing guidelines for Estate Developers in FCT Abuja only issues certificate of occupancy once and it is to the estate off-takers and not to the Estate Developers. In paragraphs 1-4 of the Sale Agreement, the 1st defendant explained the origin of its title to be a deed of Assignment. This is inconsistent with 1st defendant's promise of a certificate of occupancy.

From the above, he does not have confidence in the 1st defendant's promise of a certificate of occupancy as contained in paragraph C10 of the Application Form [Exhibit A] and paragraph 5 of the Offer Letter [Exhibit C1], which give subscribers the impression of a sublease that leads to the issuance of a certificate of occupancy in the Estate. The 1st defendant did not register Plot 1946 SabonLugbe East Extension Layout with Department of Mass Housing of FCDA, which has thepower and responsibility to give estate subscribers their certificates of occupancy as stated in the Guideline [Exhibit Q]. By the said Guideline, estate developers are to send the names of subscribers for processing and issuance of their certificates of occupancy. PW1 tendered the letter from FCDA dated 16/11/2016 to Law Wigs Legal Consult[Exhibit U] to show that the 1st defendant's Clobek Crown Estate in not registered in the Department of Mass Housing of FCDA.

In paragraph 67 of his statement on oath, PW1 set out the gains he would have made if he had invested the money expended in the purchase and development of the said property and the other payments made on the

property into treasury bills of the Government of Ghana. The total value of all his alternative investment would be worth N83,547,040.00.

During cross examination, PW1 stated that he understood from the beginning that he would be required to sign a deed of sublease and sale/purchase agreement. He accepted the offer in Exhibit C1 i.e. the Letter of Allocation. He was given the sale/purchase agreement [Exhibit D] but he did not sign it. He did not receive the Estate management agreement/Rules. As it stands, he does not have any agreement granting him title to House 6 [F2A] Bethel Lane, Clobek Crown Estate, Lugbe, Abuja. With reference to relief [a] of his alternative claims, the deed of sublease he wants the 1st defendant to release to him is the deed of sublease which it promised in the Letter of Allocation and the Application Form. In paragraph 8 of his Application Form [Exhibit A], he agreed not to erect any structure within the property in issue.

Evidence of PW2 [Pascal Aneke]:

In his statement on oath, the PW2 stated that he is the buyer of House 12 Testimony Lane, Clobek Crown Estate, Lugbe, Abuja. He paid N15 million for a 3-bedroom carcass flat in 1st defendant's Estate. When he was working on the carcass and the inside of his house, no title document was given to him as he was promised. When he had almost completed the work in his house, the 1st defendant's agents came with the repugnant sale agreement and the Estate Bye-laws which contained terms that were not mentioned or discussed

before he bought the property. Upon refusal to sign the sale agreement, he was told that his right over his property will be revoked and his initial purchase price refunded to him. The gatemen at the Estate assisted by armed Police men from time to time are under instructions not to allow him enter into the Estate or move into his house which was chained by the agents of the 1st defendant since 23/3/2015.

When Mr. Pascal Aneke was cross examined, he stated that he has a separate suit against the 1st defendant. He gave evidence for the claimant because he has a common grievance with the claimant; the 1st defendant is making things difficult for everybody.He and claimant want a sale agreement acceptable to them; they want the Court to draft a sale agreement because they were not involved in the preparation. Both parties have to come together to determine the terms of the saleagreement. When asked if he will give up possession of the property since he has refused to sign the sale agreement and if he will advise the claimant to do same, PW2 said he will not.

Evidence of PW3 [Albert OlusanyaAlakija]:

The evidence of PW3is that he is the buyer of House 7, Plot 17, Testimony Lane, Clobek Crown Estate, Lugbe, Abuja. After he made full payment for his house in 2014, the ownership of the house was given to him by a letter dated 21/12/2015. When he went to take possession of the house, he met the house locked with chains and padlocks. He made inquiry from the management of

the Estate and he was given a sale agreement and Estate bye-laws, Rules and Regulations to sign. When he went through the documents, he informed Mr. Bernard Ekwe, the 2nd defendant's husband, that he was not comfortable with the contents of the documents. Mr. Bernard Ekwe and 3rd defendant informed him that unless he signed the documents, he will not be given possession of his house.

Albert OlusanyaAlakija further stated that he has sought ways to negotiate with the 1st defendant on some of the terms of the documents that he is not comfortable with; but all efforts proved abortive. If he was given the sale agreement or the Estate Bye-laws, Rules and Regulations at the beginning of the transaction, he would not have made any payment tothe 1st defendant.The contents of these documents were hidden from him until he finished making all payments, which to him is fraudulent and inappropriate.

During cross examination, PW3 saidhe wants a separate sale agreement because the one given to him is not a true representation of a sale agreement. In a sale agreement, the seller cannot say he can re-enter the property after the sale. The PW3 stated that he wants the Court to compel the 1st defendant to sign a different sale agreement with him and to specify the terms.When asked if he will give up possession of the plot since he has refused to sign the sale agreement and if he will advise the claimant to do same, PW3 said he is ready to leave the property *"if I get my money's worth"*

Evidence of Francis Maande on behalf of the 1st-3rd defendants:

The evidence of Francis Maande [DW1] is that the claimant has no title over House 6, Plot 59, Bethel Lane in Clobek Crown Estate, SabonLugbe East Layout, Abuja as the property has not been conveyed to him. The claimant reneged from the transaction which should lead to the conveyance of the property to him by his refusal to execute the deed of conveyance relating to the property. The claimant did not have any interaction with the 2nd& 3rd defendants at any time. He narrated that the claimant came to the Estate and purchased an application form for N10,000.00; he completed the form and submitted same to the management of the Estate by delivering it to him [the DW1]. Thereafter, a letter of allocation dated 15/6/2015 was issued to the claimant. He subsequently received the letter dated 22/6/2015, which set out the features of the property. The claimant demanded for copies of the sale/ purchase agreement and the Estate Rules; and these were shown to him.

It was stated in the letter of offer that the claimant shall execute a sale/ purchase agreement and the Estate Rules as part of the house handing over process. It was also stated that the allocation may be withdrawn from the claimant without notice in the event of his contravention and/or failure to comply with any of the conditions stated in the letter, the application form, the sale/purchase agreement and the Estate Rules. The claimant paid the agreed purchase price of N15 million. A handover letter dated 7/8/2015 was delivered to him requesting him to pay the legal fee of 2.5% of the purchase

price of the house for the preparation of the deed of sublease and the contract of sale. A copy of the Estate Bye-laws, Rules and Regulations dated 2/7/2015 and a copy of the sale/purchase agreement were delivered to the claimant in July 2015 for execution.

During the handing over process on 7/8/2015, the claimant who had been enlisted by one Mr. Oliver Otonye [another purchaser who had maintained a relentless campaign of vilification of Clobek Crown Estate] did not tender the executed sale agreement and the Estate Byelaws, Rules and Regulations. Instead, he wrote a letter dated 8/8/2015 to the 1st defendant listing his observations during the handing over process. Despite repeated demands by the 1st defendant, the claimant refused to sign the sale agreement. By this act, claimant frustrated the contract of sale by repudiating it. The 1st defendant has therefore declined to yield vacant peaceable possession of the premises to the claimant.After the commencement of this suit, on 16/9/2016, the claimant attempted to take forcible possession of the premises but the 1st defendant resisted.

There is no sale agreement between the claimant and the 1st defendant to support the claimant's claim. By this suit, the claimant is expecting the Court to make a contract of sale and determine the terms for the parties.The 1st defendant is ready to refund the purchase price for the property paid by the claimant as the transaction has totally failed due to the claimant's refusal to execute a sale agreement and the Estate Bye-laws, Rules and Regulations.By

reason of the claimant's refusal to sign and perfect the sale agreement and the Estate Bye-laws, Rules and Regulations, and in view of the failure of the meeting of the minds as to the terms of the sale and purchase, the transaction between the 1st defendant and the claimant had totally failed or had broken down or become frustrated.

During cross examination, DW1 testified that he was not present when the transaction in issue took place; upon resumption, he was briefed about the transaction. When Mr. Francis Maande was asked if he will sign the sale agreement [Exhibit D] if he is the claimant who bought a house in the light of paragraphs 8 & 12 thereof,he said:*"I will sign and move on."*His boss told him that the 1st defendant is registered with Mass Housing Department of FCDA and it has complied with Exhibit Q [i.e. Government Guidelines for Mass Housing Development]. When DW1 was asked if he will accept N15 million if he expended so much money in completing the carcass of the house shown in the photographs [Exhibits F3, F4& F5], he said he will collect it.

Issues for determination:

At the end of the trial, B. M. AmansEsq. filed the 1st-3rd defendants' final address on 24/4/2019. Lebo-Albert Ekito A. Esq. filed the claimant's final address on 19/6/2019. Mr. B. M. Amans filed the 1st-3rddefendants' reply on points of law on 17/9/2019. The learned counsel for the 1st-3rd defendants and the claimant adopted the final addresses on 18/9/2019.

B. M.AmansEsq. posed these four issues for determination:

1. Whether from the pleadings and evidence led, there is privity of contract between the plaintiff and the 2nd and 3rd defendants as to sustain the claims against the 2nd and 3rd defendants.

2. Whether the 4th defendant is a juristic person capable of being sued and whether the suit is competent based on the fact that the name of the 4th defendant was changed without leave of Court being first sought and obtained.

3. Whether the plaintiff has discharged the onus placed on it *[sic]* and led any evidence, as to warrant the reliefs being sought.

4. Whether the 1st defendant/counter-claimant is entitled to the reliefs being claimed in its counter-claim.

On the other hand, Lebo-Albert Ekito A. Esq. formulated three issues for determination, to wit:

1. Whether having regards to the conduct and relationship between all the parties and considering all the relevant evidences including transfer documents and receipts issued to the claimant in this transaction, there are rights beneficial to the claimant and to what extent, irrespective of the refusal of the claimant to sign the Sales Agreement and Estate Rules, Bye-laws and Regulations.

2. Whether the Court upon satisfaction to the existence of equitable rights beneficial to the claimant can order an appropriate remedy to the claimant either by awarding him the proprietary interest [C of O] of the property by the doctrine of equitable estoppel or by ordering the issuance of a registrable Deed of Sublease and substantial compliance by the defendants towards the issuance of his C of O within legal conveyance laws as gazette in the guidelines for FCT Mass housing allocation which order Estate Developers to hand over control of any Estate after Housing Units have been sold to Subscribers or by ordering the 1st-3rd defendants to give a similar property with valid Title document to the claimant, after taking into account the detrimental acts, intimidation tactics and other injurious conducts of 1st-3rd defendants to deny the claimant the promised Deed of Sublease leading to his C of O.

3. Whether the claimant is entitled to damages for all the pecuniary and economic losses, losses suffered in contract and in tort, pain and trauma suffered, particularly the outrageous house lock-up carried out by the 1st-3rd defendants during the pendency of this suit and other detrimental experiences in the hands of the 1st-3rd defendants over a straightforward conveyance transaction vitiated by fraudulent intentions.

Before I go to the merits of the case, let me first consider -as a preliminary issue - the arguments of learned counsel for the 1st-3rddefendantson his Issue No. 2which is in respect of the juristic personality of the 4th defendant.

B. M. AmansEsq.stated that the claimant without leave of Court altered or amended the name of the 4th defendant from *"Honourable Minister of the Federal Capital Territory Authority"* to *"Honourable Minister of the Federal Capital Territory".* It was submitted that this renders both the amended statement of claim and the writ of summons void. He referred to **Oje v. Babalola [1987] 4 NWLR [Pt. 64] 208** to support the view that where leave is required before a step can be taken in a judicial proceeding, taking the step without leave first sought and obtained renders the step void. Learned counsel forthe 1st-3rddefendants also submitted that the *"Honourable Minister of the Federal Capital Territory"* [the 4th defendant] is not a juristic person having not been conferred with such status by a statute or common law. Heconcluded that 4th defendant cannot be sued and therefore the suit is not competent.

In his response, learned counsel for the claimant relied on the records of the Court and stated that the claimant's counsel made an oral application for the correction of the name of the 4th defendant from *"Honourable Minister of the Federal Capital Territory Authority"* to *"Honourable Minister of the Federal Capital Territory."* It was on the strength of the leave granted that the name of the 4th defendant was changed or alteredon the subsequent amended processes.He pointed out that this issue had been raised by the 1st-3rd defendants' counselin the course of the proceedings. Upon being satisfied from the records of the Court that the claimant sought and obtained leave of the Court to correct the name of the 4thdefendant, the 1st-3rd defendants' counsel dropped the issue.

In the originating processes, the claimant stated the name of the 4thdefendant as *"Honourable Minister of the Federal Capital Territory Authority"*. On 16/3/2017, the Court granted the claimant's motion *No. M/3517/2017* filed on 20/2/2017 for leave to amend his processes in the suit as reflected in the proposed amended processes attached to the motion.Part of the amendment in the proposed amended processes is the name of 4th defendant i.e.*"Honourable Minister of the Federal Capital Territory Authority"*.As rightly pointed out by claimant's counsel, on 28/3/2017,the 1st-3rddefendants filed*Motion No. M/4991/2017* for an order to strike out claimant's amended statement of claim dated 20/2/2017 on the ground that he amended the name of the 4th defendant as aforesaid without the leave of the Court. On 25/5/2017, counsel for 1st-3rddefendants withdrew the application when he was satisfied from the records of the Court that the claimant was granted leave on 16/3/2017 to correct or amend the name of the 4th defendant.

With respect of the argument that the *"Honourable Minister of the Federal Capital Territory"*is not a juristic person and cannot be sued, my view that the office of *"Honourable Minister of the Federal Capital Territory"* is created by section 302 of the 1999 Constitution [as amended] as an appointee of the President of the Federal Republic of Nigeria.Thus, I take the view that the *"Honourable Minister of the Federal Capital Territory"* sued as the 4th defendant can be sued and this suit is competent. Even if Mr.Amans is correct, this suit will still be competent without the 4thdefendant.

Now, from the case presented by the parties and the submissions of learned counsel, it is my respectful opinion that there are four issues that call for determination. These issues, which will be considered one after the other,are:

1. Whether the 2nd& 3rd defendants are necessary parties in the suit.

2. What is the status of the allocation of property known as House No. 6 Bethel Lane, Clobek Crown Estate, Plot 1946 SabonLugbe Extension, Lugbe by the 1st defendant to the claimant vide the Letter of Allocation dated 15/6/2015 [Exhibit C1]?

3. Is the claimant entitled to his reliefs?

4. Whether the 1st defendant/counter claimant is entitled to its counter claims.

ISSUE 1

Whether the 2nd& 3rddefendants necessary parties in this suit?

The submission of learned counsel for the 1st-3rddefendants is that there is no privity of contract between the claimant and the 2nd&3rd defendants and as such he cannot successfully claim against them. He referred to **Ogundare&Anor. v. Ogunlowo&Ors. [1997] LPELR-2326 [SC]** on the doctrine of privity of contract; and posited that from the application form, letter of allocation and other documents, the relationship is between the claimant and the 1st defendant. The claimant made payment to the 1st

defendant's account and not to the 2nd& 3rd defendants. The 1st defendant has a separate legal personality; therefore, the 2nd& 3rd defendants cannot bear any liability for any transaction between the claimant and 1st defendant. Mr.Amans stated that the 1st-3rddefendants denied the claimant's averment that the 2nd& 3rd defendants are respectively the chairman and director of the 1st defendant; and the claimant failed to prove this assertion.

The standpoint of learned counsel for the claimant is that the attempt to exonerate the 2nd& 3rd defendants of potential liabilities from their several acts of breach of duties as directors of the 1st defendant has failed as all the cases on this issue had been codified in the Companies and Allied Matters Act, 2004 [CAMA]. He submitted that there is a clear distinction between acts done by a company and acts done by its directors; and when it can be said that the directors acted as agents of the company as in the instant case. Mr. Lebo-Albert Ekitoposited at paragraph 5.1.1 of the claimant's final address that *"Section 248[3]-[8] and Section 290 of CAMA clearly states that'on issues bothering on receiving money for the execution of a contract or anything that has to do with fraudulent acts, intent to defraud, wrong application of monies received shall be a personal liability of the Directors and not that of the company.'"*

The claimant's counsel submitted that from the facts before the Court, the conducts and acts carried out by the directors of the 1st defendant touch the above provisions. That is why the 2nd& 3rd defendants are jointly sued as co-

defendants with Exhibits A, B, C & D in view. He referred to the case of **Littlewoods Mail Order Stores Ltd. v. I.R.C. [1969] 1 WLR 1241.**

In paragraphs 3 & 4 of the amended statement of claim, the claimant averred that the 2nd defendant is the chairman of the 1st defendant and its alter ego from whom all directives are taken for the running and management of the 1st defendant; while the 3rd defendant is a director in the 1st defendant who is in charge of the Facility Management at Clobek Crown Estate among other responsibilities as the 1st defendant may instruct. All the alleged acts of the 2nd& 3rd defendants as narrated in the claimant's evidence are acts which they carried out in the course of the transaction between the claimant and the 1st defendant. Exhibits A-D referred to by claimant's counsel show that the transaction that gave rise to this suit was between the claimant and the 1st defendant. The 1stdefendant owns Clobek Crown Estate; the 1st defendant issued the letter of allocation to the claimant;the claimant paid monies to the 1stdefendant; and the letters[Exhibits C1-C5] signed by the 3rd defendant [as director]were signed on behalf of the 1st defendant.

From theabove, it is clear that 2nd& 3rd defendants are 1st defendant's officers and/or agents who acted on its behalf since it does not have brain, legs or hands.It is the law that the acts of the directors, shareholders or agents of a limited liability company are deemed to be the acts of the company. In**EMCO & Partners Ltd. &Ors. v. Dorbeen [Nig.] Ltd. &Anor. [2017] LPELR-43453 [CA],** the position of the law was restated that subject to the exceptions

allowed for lifting the veil of incorporation, where a director or any authorized officer of a company acted on behalf of the company, he does not incur personal liability because he has acted as an agent of a disclosed principal.

Section 290 of the Companies and Allied Matters Act provides situations where the directors or officers of a limited liability company may be held personally liable. The provisions ofsection 290 of CAMAand the case of **Littlewoods Mail Order Stores Ltd. v. I.R.C. [1969] 1 WLR 1241**are on the principle of lifting the veil of incorporation of a limited liability company.

Theprinciple of lifting the veil of incorporation applies in cases of fraudulent activities carried out in the name of the company by directors or officers of the company. In that situation, the courts can pull off the mask or lift the veil of incorporation of the company so that the directors or officers of the company can be held personally liable. This principle is not applicable to the instant case to make the 2nd& 3rd defendants necessary parties.

The Court agrees with Mr.Amans that there is no privity of contract between the claimant and the 2nd& 3rd defendants. I resolve Issue No. 1 against the claimant and hold that the 2nd&3rd defendants are not necessary parties in this action. The names of the 2nd& 3rd defendants, Clara Ekwe and David Agbo, are struck out of the suit.

ISSUE 2

What is the status of the allocation of property known as House No. 6 Bethel Lane, Clobek Crown Estate, Plot 1946 SabonLugbe Extension, Lugbe by the 1st defendant to the claimant vide the Letter of Allocation dated 15/6/2015 [Exhibit C1]?

The determination of this issue will to a large extent assist the Court to determine the claimant'sreliefs and the 1st defendant's counter claim. It is not in dispute that the claimant filled and signed the Application Form [Exhibit A] wherein he expressed his intention to purchase a two-bedroom semi-finished house [otherwise called carcass] in Clobek Crown Estateat the purchase price of N15 million. Section A of the Application Form contains the claimant's personal data. Section B contains the house type/prices and an addition of 2.5% Legal Fees *"for the preparation of the Deed of Sublease."* Section C contains the Declarations/Agreements by the claimant [as the applicant]. Clauses 2, 10, 11, 14 and 17 of the Application Form [Exhibit A] read:

2. *That if an allocation is given to me, full payment of the purchase price shall be made within 30 days of the date of the offer.*

10. *I agree to pay the government official fees and all other fees leading to the engrossing and registration of the Deed of Sub-Lease and the issuance of Certificate of Occupancy.*

11. *The estate shall be managed at all times by an Estate Management firm appointed by Clobek Nig. Ltd. I agree to be bound by the rules guiding residents of the estate and shall pay the facility management fees as and when due.*

14. *That I agree to sign the facility management agreement with Clobek Nig. Ltd. and pay the annual facility management fee and any arrears, as part of the requirements for handover of the keys to the house.*

17. *That my allocation may be withdrawn by Clobek Nig. Ltd. from me without notice if I do not comply with any of the above conditionalities.*

It is also not in dispute that on 15/6/2015, the 1st defendant issued a Letter of Allocation to the claimant [Exhibit C1] and the claimant paid the purchase price of N15 million to the 1st defendant on 16/6/2015; the receipt of payment of N15 million is Exhibit B. The Letter of Allocation reads:

We refer to your application for a house in Clobek Crown EstateLugbe, Abuja and are pleased to inform you that you have been given an allocation in the estate as follows:

(i) Type of House:	*2-Bedroom Semi-Detached Bungalow with a BQ [Semi-Finished]*
(ii) House No.:	*House No. 6, Bethel Lane.*

(iii) Location:	*Clobek Crown Estate, Plot 1946 Sabon - Lugbe East Extension,Lugbe, Federal Capital Territory, Abuja.*
(iv) Purchase Price:	*N15,000,000.00 [Fifteen Million Naira only].*
(v) Your title:	*Deed of Sublease derivable from the Root Title*

This Allocation is subject to the following terms and conditions:

1. *Full payment of N15,000,000 within 3 days of the date of this offer.*
2. *Physical possession of the house shall be only on completion of the full payment.*
3. *A payment of 2.5% of the purchase price shall be made for Legal Fees for the preparation of the Deed of Sublease and other legal documents. This amount shall be paid as part of the house handing over process.*
4. *All payments are to be made in certified bank draft in favour of Clobek Nig. Ltd. or by bank transfer to the company's Bank Account as shall be advised on request.*
5. *The buyer shall be responsible for the payment of all government official fees and all other fees and expenses leading to the engrossing and registration of the Deed of Sublease and the issuance of Certificate of Occupancy.*

6. *All improvements and works on the house shall be in accordance with specified standards and under the strict supervision of building engineers/project managers engaged by Clobek Nig. Ltd.*

7. *In keeping with the uniformity of the external ambience and appearance of the estate, the buyer will not alter in any form the external features and appearance of the house, including the fence, paints, roof and any other external physical feature of the house.*

8. *As part of the rules of the estate, use of personal generators is not allowed in the estate.*

9. *This allocation herein is not to be alienated by sale, assignment, mortgage or transfer of sublease without your written application to and the written consent of Clobek Nigeria Limited.*

10. *The buyer shall execute a Sales/Purchase agreement and the Estate Rule as part of the house handing over process.*

11. *This allocation may be withdrawn from you, without notice, in the event of your contravention and/or failure to comply with any part of or all conditions stated in this letter, the application form, the Sales/Purchase Agreement and the Estate Rules.*

Kindly signify your acceptance of this offer by signing and returning the attached duplicate letter within three [3] days from the date of this letter.

There is no contention that the claimant accepted the offer in Exhibit C1. The claimant confirmed this fact during cross examination. In the course of the transaction, the 1st defendant gave the claimant the Sale Agreement [Exhibit D] and the Estate Bye-laws, Rules and Regulations [Exhibit J] to sign. There is a disagreement as to the date when these documents were shown or handed over to the claimant. The evidence of the claimant is that Mr. Peter Nwoji and a female intern gave him the Estate Bye-laws, Rules and Regulations on 7/8/2015;while the Sale Agreement was given to him sometime in March 2016. On the other hand, the evidence of DW1 is that these documents were delivered to the claimant in July 2015 for execution.

The Court is of the view that DW1 [who admitted that he was not present when the transaction took place] did not adduce any credible evidence to prove that these documents were given to the claimant in July 2015. The Court believes the evidence of the claimant that he was informed that the sale agreement would be given and executed at the handover of the property. This evidence is in line with clause 10 of the Letter of Allocation [Exhibit C1]. The Court finds that the two documents were not given to theclaimant before he paid the purchase price for the property and before he started the completion of the interior of the property, which was a semi-finished house when claimant paid for it.

The critical or material point is that the claimant did not sign the documents on the ground that they contain *"repugnant,"repulsive"*and unacceptable terms

and conditions. The claimant said he discovered some strange terms and conditions in the documents that were not discussed when he went to buy the property; such as clauses 5.9, 5.11, 8[a] and 12 of the Sale Agreement and clause 20.2 of the Estate Bye-laws, Rules and Regulations. At this juncture, it is necessary to set out the said clauses, which form the basis of the claimant's relief 1.

Clause 5.9 of the Sale Agreement [Exhibit D] reads:

> *The Buyer shall within one month of any assignment or underletting or other alienation of the Buyer's interest creating a term of years exceeding 5 [five] years in the House or any part thereof notify the Managing Agent in writing of the name, address and other details as may be required by the Managing Agent of such proposed assignee or tenant and shall pay a consent charge for registering the assignee or tenant as may be demanded by the Managing Agent before the consent for the alienation is granted. This charge shall be 1.5% [one and half per cent] of the consideration for the time being which may be reviewed in the future as deemed necessary.*

Clause 5.11 reads:

> *To insure and keep insured the Property including the building, structure thereon to their full reinstatement value with a reputable insurance company against loss or damage caused by fire, flood, accident and other risk/peril from time to time and shall upon the request of the Seller or the Managing Agent to*

produce the policy of such insurance and the receipt for all premiums and to cause all sums received in respect of such insurance to be forthwith laid out and expended in rebuilding or repairing or otherwise reinstating the buildings and structures developed on the property in accordance with the approved architectural and technical plans and to make up any deficiencies in such sums out of his own moneys.

Clause 8 titled: *Proviso for Re-entry*provides:

[a] Provided always and it is hereby agreed and declared as follows, that:

If and whenever the ground rent and/or the facility management service charge referred to in clause 3 above or any part thereof shall be in arrears and unpaid for 30 [thirty] days after its due date or if and whenever there shall be any material breach or non-performance or non-observance of any of the covenants or restrictions on the part of the Buyer herein contained then and in any of the said cases it shall be lawful for the Seller at any time thereafter and notwithstanding the waivers of any previous right of entry to re-enter into and upon the House or any part thereof in the name of the whole and thereupon the said term shall absolutely cease and determine but without prejudice to the rights and remedies which may then have accrued to the Buyer in respect of any antecedent breach of any of the covenants herein contained.

Clause 12of the Sale Agreement [Exhibit D] provides:

If after the expiration of the statutory right of occupancy held under the Certificate of Occupancy, when obtained, a new right of occupancy or other title over the Estate is granted to the Seller for any further term, then the Seller shall grant to the Buyer a new Sub-Lease for the same term of years as the Sub-Lessee holds under the new title less 90 days or where the extension granted to the Seller is not of sufficient length of years, a lease of the entirety of the renewed term granted to the Sub-Lessor less 30 days.

The consideration payable by the Sub-Lessee for renewal shall be determined and agreed without taking the current/capital value of the said House into full consideration but subject to new covenants and conditions to be agreed between the parties. Any dispute or difference concerning the amount payable on the new Sub-Lease or the covenants and conditions to be included in the Sub-Lease shall be referred to arbitration as provided in the Management Agreement.

Clause 20.2 of the Estate Bye-laws, Rules and Regulations [Exhibit J] reads:

Contravention of these rules, byelaws, regulations or any other guidelines as shall be issued from time to time can be a cause for invoking the revocation or repossession clause of the property from the purchaser/owner as contained in the Purchase Agreement or Deed of Sub-Lease.

From the evidence of the parties, the claimant's decision not to sign the Sale Agreement and Estate Bye-laws, Rules and Regulations gave rise to the

events and issues that led to this suit.I will refrain from expressing any opinion on the above clauses bearing in mind that it is not the duty of the Court to make contract for parties or re-write their agreement. Also, it is not the duty of the Court to compel or order the 1st defendant to change the terms and conditions stated in Exhibits D & J; or to compel or order the claimant to accept the said terms and conditions. The duty of the Court is to interpret and enforce the agreements entered into by parties in their contract. See **Arjay Ltd. v. A.M.S. Ltd. [2003] 7NWLR [Pt. 820] 577** and **Sona Brewery Plc. v. Peters [2005] 1 NWLR [Pt. 908] 478.**

Now, by accepting the offer in Exhibit C1, the claimant agreed that he *"shall execute a Sales/Purchase Agreement and the Estate Rules as part of the house handing over process."*Since claimant did not sign Exhibits D & Jin fulfilment of the terms and conditions of the allocation in Exhibit C1, what is the status of the allocation of the said propertyby the 1st defendant to him?

Learned counsel for the 1st-3rd defendants stated that the claimant has no title over the said property as it was not conveyed to him by the 1st defendant. The claimant repudiated the transaction which should have led to a conveyance of the property to him by the 1st defendant by refusing to execute the Sale Agreement. The conveyance of the property was subject to contract by the fulfilment of certain terms, which the claimant has failed to perform. He referred to **Niger Classic Investment Ltd. v. UACN Property Development Co. Plc. &Anor. [2016] LPELR-41426 [CA]**to support the viewsthat *"subject to*

contract" simply means a contract made subject to fulfilment of certain terms; and where a contract is made subject to the fulfilment of certain terms and conditions, the contract is not formed and not binding unless and until those terms and conditions are complied with or fulfilled.

Mr.Amans also referred to **Commissioner for Works, Benue State &Anor. v. Devcon Development Consultants Ltd. &Anor. [1988] LPELR-884 [SC],**to support the principle that repudiation occurs when a party by word or conduct conveys to the other party that he no longer intends to honour his obligations in the agreement. It was submitted that the implication of the claimant's refusal to sign Exhibits D & J is that he has repudiated the contract; and there is no longer *consensus ad idem* between the parties as it relates to the obligations in Exhibits A& C1.

For his part, learned counsel for the claimant stated that the claimant received a letter of offer [allocation] and a handover letter, which show that he has met the requirements for owning the property in issue, the non-signing of the Sale Agreement notwithstanding.It was submitted that the Sale Agreement is *"moot"* based on the doctrine of estoppel since handover of the property has already occurred. He relied on the case of**Int. Textile [Nig.] Ltd. v. Aderemi [1999] 8 NWLR [Pt. 614] 268** where it was held that:*"The procedure of formal contract and the recourse to 'Subject to Contract' do not at the moment fit into the Nigerian system of sale to land. Particularly as Nigeria does not have the equivalent*

of any special conditions. Therefore, the use of the phrase 'subject to contract' appears to be irrelevant and perhaps meaningless in contract for sale of land in Nigeria."

In **Best [Nig.] Ltd. v. Blackwood Hodge [Nig.] Ltd. &Ors. [2011] 5 NWLR [Pt. 1239] 95,** the 1st respondent was the owner of the property known as No. 11/15 Burma Road, Apapa, Lagos. In 1985, the 3rd respondent sought, through the 2nd respondent, to purchase the property and deposited N1 million. In March 1986, the appellant commenced negotiation with the 1st respondent for the purchase of the property. The 1st respondent offered to sell the property to the appellant for N3 million. It also stipulated that the appellant was to pay the sum of N450,000.00 to the 1st respondent as consent fee which the 1st respondent was to eventually pay to the Lagos State Government. The appellant paid N3 million to cover the purchase price of the property but failed to pay the sum of N450,000.00 for consent fee. The 1st respondent sold the property to the 3rd respondent who had agreed to pay N3.5 million. The 1st respondent returned N3 million to the appellant together with N50,000.00.

The appellant sued the respondents and sought an order for specific performance, etc. The trial Court dismissed the appellant's case. Its appeal to the Court of Appeal was dismissed. The further appeal to the Supreme Court wasalso dismissed. The Supreme Court restated that where a contract is made subject to the fulfilment of certain specific terms and conditions, the contract is not formed and not binding unless and until those terms and conditions are complied with or fulfilled. In other words, if the conditions for

the formation of a contract are fulfilled by the parties thereto, they will be bound by the contract. It was also held that a contract for sale of land, as in thatcase, is guided by the basic rules of contract.

In **Niger Classic Investment Ltd. v. UACN Property Development Co. Plc. &Anor. [supra],Mikano Int'l Ltd. v. Ehumadu [2013] LPELR-20282 [CA],**the above decision was adopted. In **BPS Construction & Engineering Co. Ltd. v. FCDA [2017] LPELR-42516 [SC],** it was held that the general principle of law is that where a contract is made subject to the fulfilment of certain terms and conditions, the contract is inchoate and not binding until those terms and conditions are fulfilled.

I have read the case of **Int. Textile [Nig.] Ltd. v. Aderemi [supra].** In that case, the court considered the effect of the phrase *"subject to contract"* which appeared on some of the relevant letters from the landlords and held that it did not affect the fact of the existence of a binding contract in the circumstances. In my opinion, that case was decided on its peculiar facts. The facts of that case are markedly different from the facts of the instant case; therefore the part of the decision in that case quoted by learned counsel for the claimant is not applicable to this case.

It is important to point out that in the above case, the Supreme Court also held that in appropriate cases, the courts construe the words *"subject to contract"* or such similar incantations so as to postpone the incidence of

liability until a formal contract is drawn up and accepted by the parties. Therefore, the task of the courts in such cases is to extract the intention of the parties from the terms of their correspondences and from the circumstances which surround and follow them.If the preparation of a further document is a condition precedent to the creation of a contract, then the parties, if no further document has been prepared, would not have reached a *consensus ad idem* on the various terms of the agreement and no contract in such circumstance would be deemed to have been concluded as at that stage.

I hold that the principle applicable to the instant case is that where a contract is made subject to the fulfilment of certain terms and conditions, the contract is inchoate and not formed; the contract is not binding until those terms and conditions are fulfilled. The effect is that there was no contract of sale of the said property by the 1st defendant to the claimant; the contract in Exhibit C1 was inchoate and not binding since the terms and conditions stated therein were not fulfilled by the claimant.When the claimant was cross examined, he admitted that: *"I do not have any agreement granting me title to the property, House No. 6 [F2A] Bethel Lane, Clobek Crown Estate, Lugbe, Abuja."*

In paragraph 7.1.2 at page 27 of his final address, the claimant's counsel stated: *"We strongly believe that equitable rights beneficial to the Claimant exist, and believe that the Claimant deserves the unexpired residue of the interest from the 4th defendant. … It is clear from the evidence led that the Claimant in good faith validly purchased the property without knowledge of the faulty Estate land ownership*

position and duplicitous intentions of the 1st-3rd Defendants revealed in Exhibit D. He was handed possession of the property by the 1st-3rd Defendants, and currently lives on the property without certainty of his legal rights over the property … See: ***Elema&Anor. V. Akenzua [2000] LPELR-1112 [SC] P. 19 Paras. B-C****".*

In **Elema&Anor. v. Akenzua [supra],** the Supreme Court held that a valid sale of land under native law and custom is without the necessity for a conveyance as under English Law. What is required is the handing over of the purchase money by the purchaser and the delivery of possession on the other hand by the vendor.Thisprinciple relates to sale of land under native law and custom. The principle is not applicable to the instant case where the 1st defendant and the claimant have a written agreement, which stipulated the terms and conditions for the sale of the said property.

Learned counsel for the claimant also argued that payment of consideration for the property suffices for the contract of sale of the property. He referred to **Dantata v. Dantata [2002] 4 NWLR [Pt. 756] 144**to support the view that where a party entered into an agreement and received consideration which he never returned to the other contracting party, equity will come in to stop him from retracting from the agreement. He cannot be allowed at that stage, having benefitted, to refuse to give consideration to the other party by passing title of the property to him.In Exhibit C1, payment of the purchase price is one of the terms to be fulfilled for the allocation. The execution of the Sale Agreement and the Estate Rules are also conditions for the allocation of

the property. I hold that the above principle is not applicable to this case as the facts of that case are distinguishable or different from the facts of the case before this Court.

The other contention of the claimant's counsel is that the 1st-3rddefendants have not complied with the provisions of the law and regulations governing Mass Housing Estates in FCT. They have also breached their obligation to deliver the Deed of Sublease to the claimant. The law regulating Mass Housing development in FCT has not been followed and the Court has been called upon to intervene based on the gazetted Mass Housing Guideline in FCT [Exhibit Q]. Following the said gazette, the 1st defendant only needed to send the name of the claimant to the 4th defendant for processing and issuance of certificate of occupancy.

In the reply on points of law, Mr.Amans stated that the issue of sublease is premature. There was no specific timing as to when a deed of sublease was to be issued to the claimant. There was no agreement or *consensus ad idem* between the parties as to warrant the issuance of a deed of sublease as the claimant failed to sign the requisite documents.The claimant did not plead the fact of Mass Housing and no evidence was led to that effect.

As I said before, the duty of the Court is to interpret the terms of agreement between the 1st defendant and the claimant. It is trite law that where there is a dispute between parties to a written agreement, the only authoritative and

legal source of information for the purpose of resolving the same is the written document executed by the parties. See the case of**B.F.I. Group v. Bureau of Public Enterprises [2012] LPELR-9339 [SC].**In the Letter of Allocation, Exhibit C1, the 1st defendant and the claimant agreed that the claimant's title is *"Deed of Sublease derivable from the Root Title."* Part of the recitals in the Sale Agreement is that: *"The seller has applied for issuance of Certificate of Occupancy for the entire plot and shall upon obtaining the said Certificate of Occupancy execute a Deed of Sub Lease in favour of the Buyer on the terms and covenants as hereinafter set out."*

I am aware that the claimant did not sign the Sale Agreement but the above recital explains the 1st defendant's Root Title from where the Deed of Sublease stated in Exhibit C1 would be derived.The material point being made here is that the Court is to interpret and enforce the clear words in Exhibit C1.

In the light of all that I have said in respect of Issue No.2, I hold that the status of the allocation of the property known as House No. 6 Bethel Lane, Clobek Crown Estate by the 1st defendant to the claimant vide the Letter of Allocation [Exhibit C1] is that the allocation is inchoate and therefore not binding on the parties since the terms and conditions for the completion of the contract were not fulfilled. The contract for the sale of the property was frustrated by the absence of *consensus ad idem* of the 1st defendant and the claimant on the terms of the Sale Agreement.

ISSUE 3

Is the claimant entitled to his reliefs?

Relief [a]:In relief [a], the claimant seeks a declaration that the deliberate concealment of facts relating to clauses 5.9, 5.11, 8[a] and 12 of the sale Agreement and clause 20.2 of the Estate Bye-laws, Rules and Regulations prior to payment of purchase price for the property and other financial commitments amounted to fraudulent misrepresentation of the fundamental terms of the contract sought to be entered by the parties. I have already quoted these clauses.

The counsel for the 1st-3rd defendants referred to **Albert Afegbai v. Attorney General, Edo State [2001] LPELR-193 [SC],**to support the view that in an action alleging fraudulent misrepresentation, the plaintiff must prove that the defendant made the false statement knowing it to be false, or reckless, neither knowing nor caring whether it was false or true. Hestated that the alleged concealment of facts cannot amount to fraudulent misrepresentation. The basis upon which a claim for fraudulent misrepresentation can succeed must be on false statements made to the claimant by the 1stdefendant and not based on what the claimant was not told by the 1stdefendant. Mr. B. M. Amans submitted that the clauses complained of in Exhibits D & J areall in line with the 1st defendant's representations in Exhibits A & C1.He concluded that the claimant failed to prove fraudulent misrepresentation.

On the other hand, claimant's counsel posited that the legal conveyance of an Estate property developed by Estate Developers operating in FCT is guided by the Estate and Mass Housing Guidelines [Exhibit Q], which instructs the Estate Developers to send the names of successful subscribers to the FCT Authority for *"issuance of Title documents including Certificate of Occupancy."* The claimant expected the 1st-3rd defendants to send his name to FCDA and additionally expected *"an engrossableregistrable Deed of Sublease"* after he paid the 2.5% legal fees to the 1st-3rd defendants.

Mr. Lebo-Albert Ekito submitted that in view of claimant's expectations, the 1st-3rddefendants'*"strange representations that were never discussed ab initio yet incorporated into a dubious inconsistent Estate Byelaws, Rules and Regulations and another repugnant Sales Agreement, and further to that their conducts in the most unconscionable ways … reveal the stark intention of the 1st-3rd defendants. All these show deliberately misrepresented and/or concealed fundamental terms absent from the Initial Agreement contained in Exhibit A upon entering into the purchase agreement by the parties."*He referred to**Derry v. Peek [1889] 14 App. Cas 337**for the meaning of fraudulent misrepresentation

In **Fhomo [Nig.] Ltd. v. Zenith Bank [2016] LPELR-42233 [CA],** it was held that misrepresentation is simply the act of making a misleading assertion about something; it is therefore a false assertion. In an action alleging misrepresentation, the law requires the appellant to prove that respondent made a false statement knowing it to be false, or reckless.

At pages 7-12 of his final address, claimant's counsel outlined 8 examples of deliberate misrepresentation and concealment of fundamental terms and the *"fraudulent acts or illegal acts"* of the 1st-3rd defendants in the transaction. Examples [a], [b], [c], [d] & [e] and the submissions in that regard are to the effect that there are clauses or terms in the Sale Agreement [Exhibit D] and the Estate Byelaws, Rules and Regulations [Exhibit J] which the 1st defendant did not discuss with, or disclose to, the claimant before he paid N15 million as purchase price for the said property and incurred other expenses.

In my respectful view, the alleged concealment of the clauses in Exhibits D and J does not qualify as fraudulent misrepresentations for the grant of the declaratory order in relief [a]. In other words, the complaint that some of the clauses in Exhibits D& Jwere not disclosed to the claimantby the 1st defendant before he paid N15 millionand incurred other expenses cannot be the basis of a claim of fraudulent misrepresentation. Relief [a] is refused.

Relief [b]:Relief [b] is an order for the Court to direct the 1st-3rddefendants to give the claimant a similar property with a valid certificate of occupancy if it is found that the 1st defendant does not have a valid title for Clobek Crown Estate, Plot 1946 SabonLugbe East Extension Layout, Abuja.As rightly submitted by Mr.Amans, the claimant failed to prove that 1st defendant is not the owner of Plot 1946 SabonLugbe East Extension Layout, Abuja where the Estate is built.

At the trial, the claimant tendered the letter dated 16/11/2016 [Exhibit U] from the Department of Mass Housing of FCDA to the effect that *"the Department of Mass Housing does not have any information on Plot 1946 SabonLugbe Extension Layout and Messrs Clobek Nigeria Limited."* The letter added: *"You may wish to further direct your enquiries to the Department of Land Administration FCT please."* In my humble view, this letter is not proof that the 1st defendant is not the owner of Plot 1946 SabonLugbe East Extension Layout, Abuja. Besides, there is no evidence that claimant directed his inquiries toDepartment of Land Administration of FCT. This relief lacks merit and is refused.

Relief [c]:The claimant seeks an order of the Court confirming his right of way, ingress and egress at all times to the property. Mr.Amans submitted that since the claimant has not signed Exhibits D and J and the conveyance of the property was never completed, the 1st defendant has a right to deny him access to the property as this is what the claimant agreed to. By refusing to sign these documents, the claimant never completed the handover process as to entitle him to ingress and egress. This relief is incidental to the claimant's right of ownership of the property. Having found that there is no binding contract of sale of the property to the claimant,this relief is refused.

Relief [d]:The claim for general damages of N40 million as general damages in relief [d] is predicated on the*"1st-3rd defendants' acts of deliberate and fraudulent misrepresentation of facts in the course of the consummation of the agreements between the parties, which has frustrated the progress of the transaction*

*between the parties."*In the light of the decision of the Court under relief [a] that claimant did not proof the allegation of fraudulent misrepresentation against the 1st defendant, this claim cannot be granted. It is refused.

Alternative Relief [a]:The claimant seeks an order for 1st-3rddefendants to comply with the FCTA guideline for mass housing programme by releasing hid deed of sublease and submitting same and other documentations to the appropriate authorities and the FCT Minister for his certificate of occupancy. I adopt my decisions under Issue No. 2 that the duty of the Court is to interpret the agreement entered into by the parties, in this case Exhibit C1; and that there was no binding contract of sale of the property to claimant.In the light of these decisions, there is no basis to grant this relief. It is refused.

Alternative Reliefs [b]& [c]:Relief [b] is to permit the claimant to drill his own surface borehole for water supply or to have an alternative water supply and at all times to exercise all rights ancillary to property ownership in the FCT which includes his right of way and connection to national electricity grid. Relief [c] seeks an order to restrain the 1st-3rddefendantsfrom determining the communal services the claimant should pay for as service charge. These reliefs are incidental to the right of ownership of the said property by the claimant. Since there is no binding contract for the sale of the property to claimant, these reliefs cannot be granted. Besides, the reliefs are not consistent with claimant's declarations in Exhibit A and the conditions or terms in Exhibit C1.Theseclaims are refused.

Alternative Relief [d]:

The claim for general damages in relief [d] is partly for claimant's emotional trauma, losses and inability to have quiet enjoyment of his property. Part of the claimant's evidence in paragraph 56 of his statement on oath is thatthe 1st-3rd defendants acting through Mr. Bernard Ekwe [the husband of the 2nd defendant] and Mr. Francis Maande double-locked the gates to his property on 22/9/2016 to prevent him from entering the Estate. The locks on his gate were removed on 24/9/2016 by Mr. Francis Maande on Police order and under Police supervision. In paragraph 56 [vi] & [vii] of his evidence, PW1 stated the trauma and pain he suffered and the losses he incurred as a result of the act of locking his gates by agents of the 1st defendant. The 1st defendant did not deny that its agents locked the gate of the said property on 22/9/2016 and opened it on 24/9/2016 on the order of the Police.

Fromthe evidence of the claimant, there was a formal handover of possession of the house to him on 7/8/2015 vide the handover letter [Exhibit C4]. Thus, theclaimant was in possession of the house before the disagreement that arose from non-signing of Exhibits D & J and when he filed this action on 20/6/2016. I hold the view that the 1stdefendant's act of locking the claimant's house on 22/9/2016 while this suit was pending was unlawful and an affront to the Court. The 1st defendant's act of locking the house was an unjustified interference with the claimant's possession of the property.The claimant is therefore entitled to general damages which I assess as N1,000,000.00.

ISSUE 4

Whether the 1st defendant/counter claimant is entitled to its counter claims.

From the decision of the Court under Issue No. 2 that the contract for the sale of the property by the 1st defendant to the claimant was frustrated by the absence of *consensus ad idem* of the 1st defendant and the claimant on the terms of the Sale Agreement, I hold that 1stdefendant's alternative claim in relief [b] of thecounter claim has merit. The relief is a declaration that the agreement between the claimant and the 1st defendant for the sale of the said property has failed or become stillborn [i.e. unsuccessful] and frustrated by reason of absence of *consensus ad idem* on the terms of the sale agreement.

The 1st defendant's second relief is an order directing the claimant and the 1st defendant to revert to the *status quo ante.* It is also my view that this relief ought to be granted in the light of the fact that the contract for the sale of the property has failed and become frustrated due to absence of *consensus ad idem* on the terms of the sale agreement. It remains to determine the status *quo ante*to which the 1st defendant and the claimant should revert or return.

The 1st defendant's position isthat it is ready to refund the purchase price of N15 million paid by the claimant as the transaction has failed due tothe claimant's refusal to execute a Sale Agreement and the Estate Bye-laws, Rules and Regulations. This sum is for claimant to vacate and give up the property.

Learned counsel for the claimant submitted that any reversal to *status quo* ought to be to a period after the execution of the initial agreement to enable the 1st-3rddefendants honour their obligations, including the obligation to deliver the registrable Deed of Sublease leading to the issuance of claimant's certificate of occupancy.

In my considered opinion, the 1st defendant and the claimant are to return to the position they were before the process for the sale and purchase of the house started. This implies that the claimant is entitled to be refunded all the monies he paid to 1st defendant in respect of the transaction and the monies he expended to complete the interior of the house, which was a semi-finished house [or carcass].The refund is for him to give up the house. This, to my mind, will meet the justice of this case. It will not be in the interest of justice for the 1st defendant to refund only the sum of N15 million to the claimant as the 1st defendant has proposed. On the other hand, since there is no binding contract of sale of the house to the claimant, it will not be appropriate for the Court to order the *status quo* proposed by the claimant's counsel.

In paragraphs 38& 39 of the amended statement of claim, the claimant pleaded the expenses he incurred in completing the house. He alsoadduced evidence in support of the pleadings in paragraphs 38 & 39 of his amended statement on oath. The total of these expenses is N5,300,000.00. 1st defendant did not deny the averments in paragraphs 38 & 39 of the amended statement of claim and did not dispute the expenses for the completion of the house.

In paragraph 40 of both the amended statement of claim and hisamended statement on oath, the claimant stated the payments he made to 1st defendant, to wit: [i] N106,500.00 [for service charge];[ii] N5,000.00 [for intercom handset levy; [iii]N25,000.00 [for water and light bill for April 2016]; and iv] N375,000.00 [for legal fees]. The total of these sums is N511,500.00. The 1st defendant did not deny that it received these sums from the claimant.

I hold that for the claimant to vacate and give up possession of the property, he is entitled to the refund of the sums of N5,300,000.00 and N511,500.00 in addition to the sums of N10,000.00 he paid for application form and N15,000,000.00 he paid for the semi-finished house.The total of these sums is N20,821,500.00. I pause to remark that the claimant's alternative relief [d] for general damages for the extra cost he incurred after payment for the property is covered by theabove sums.

CONCLUSION

1. I award the sum of N1,000,000.00to the claimant against the 1st defendant as general damages under claimant's alternative relief [d].

2. I grant the 1st defendant'sreliefs [b] and [c] in the counter claim and order as follows:

    i. Adeclaration that the agreement initiated between the claimant and the 1st defendant, whereby the claimant offered to buy, and

1st defendant agreed to sell a sub-lease interest in the property called House 6, Plot 69, Bethel Lane, situate within Clobek Crown Estate, SabonLugbe East Layout, Abujahas failed or become stillborn [i.e. unsuccessful] or frustrated by reason of absence of *consensus ad idem* on the terms of the sale agreement.

ii. An order directing the claimant and the 1st defendant to revert to the *status quo ante.*For the claimant and the 1st defendant to return to *status quo ante*, the 1st defendant shallpay the total sum of N20,821,500.00 to the claimant on or before 31/12/2019. Upon receipt of the sum of N20,821,500.00, the claimant shall within 7 days, remove his personal belongings and vacate the property.

Consequential Order:

Since the contract for the sale of the property was frustrated with the effect that the claimant has no title over the property;but heis in possession of the property, I am of the view that there is need to make a consequential order to protect the claimant's right of possession and occupation of the property pending when the 1st defendant pays the sum of N20,821,500.00to him.

It ishereby ordered that the claimant shall enjoy all rights of possession in Clobek Crown Estate without any interference by the 1st defendant or its agents, officers and servants until the sum of N20,821,500.00 is paid to him.

The parties shall bear their costs.

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HON. JUSTICE S. C. ORIJI
(JUDGE)

Appearance of counsel:

1. Lebo-Albert EkitoEsq. for the claimant.
2. C. J. AniugboEsq. for the 1st-3rddefendants.