IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT COURT 4, MAITAMA, F.C.T., ABUJA.

BEFORE HIS LORDSHIP: HON. JUSTICE O. O. GOODLUCK

SUIT NO. FCT/HC/CV/592/2013

B E T W E E N:

SUPERCELL DEVELOPMENT LIMITED — **PLAINTIFF**

AND

1. **THE HON. MINISTER FEDERAL CAPITAL TERRITORY**
2. **FEDERAL CAPITAL DEVELOPMENT AUTHORITY**
3. **VISSETO ENTERPRISES NIG. LIMITED**

— **DEFENDANTS**

J U D G M E N T

The 3rd Defendant is a holder of a Statutory Right of Occupancy in respect of Plot 720, Cadastral Zone B02, Durumi District, Abuja FCT (hereinafter referred to as Plot 720). The 3rd Defendant entered into an agreement with the Plaintiff, an Architectural Consultancy and Real Estate Development Company to design Plot 720 into a residential Estate, to this end, the Plaintiff is to prepare detailed drawings, obtain formal change of the land use of Plot 720 which was designated as an Institutional to a residential plot from the Development Control Unit of the 2nd Defendant, subdivide the Plot 720 into 20 serviced plots, construct all the associated infrastructure, market and sell the plots on the understanding that the 3rd

Defendant will be paid the sum of ₦300,000,000.00 (Three Hundred Million Naira) from the proceeds of sale of the subdivided plots.

The foregoing terms were formalized in a Memorandum of Agreement, MOA and an irrevocable Power of Attorney donated by the 3rd Defendant in favour of the Plaintiff and respectively dated 7th April, 2010.

Plaintiff went into possession of Plot 720 and proceeded with development works in furtherance of the MOA whilst at the same time, coordinated with the Development Control Office for the processing of the application for the Building Plans Approval.

Plaintiff experienced protracted delays in the processing of the application for the Building Plan Approval owing to its land use designation of Plot 720 to the extent that the Director of the Development Control confirmed at a meeting on the 15th November, 2010 that Plot 720 was for residential land use hence the Plaintiff could proceed with its submission of its application to the Urban and Regional Planning Department of the 2nd Defendant obtain the approval of the change of land use. Eventually a recommendation for approval for the land use was written awaiting ratification by the FCTA, Executive Council in February 2011.

On the 18th April, 2011 Plaintiff received a letter of termination of the MOA and Irrevocable Power of Attorney from the 3rd Defendant's Counsel,

Messrs Olaniwun Ajayi, LP followed by another letter of the 19th May, 2011 reiterating the termination.

On the 21st May, 2011 one Bayo Ajaguna, acting at the instance of the 3rd Defendant forcibly entered Plot 720 with new security guards who displaced Plaintiff's security guards who were on site.

Efforts to settle between parties in this suit were to no avail. Plaintiff later discovered that the 3rd Defendant had resubmitted the Plaintiff's previous drawings for a school to the 3rd Defendant for approval whilst the Plaintiff eventually obtained the building plan approval on the 10th October, 2012. A stop work notice was issued and served on the Plaintiff by the Development Control Department on the 3rd September, 2013 and thereafter a Quit Notice was subsequently dropped at Plot 720 on 7th October, 2013.

Aggrieved by the conduct of the Defendants, the Plaintiff has now instituted this suit and is claiming several declaratory reliefs against the Defendants, it is praying *inter alia,* that the unilateral termination of the MOA and Irrevocable Power of Attorney by the 3rd Defendant is unconscionable, unlawful and void. Besides, Plaintiff is challenging the legality of the stop work order/Notice to Quit accordingly; it is praying order of specific performance of the MOA against the 3rd Defendant.

The 1st and 2nd Defendants filed a Statement of Defence dated 3rd April, 2014 wherein they refuted the Plaintiff's allegation that it obtained an approval of the building plan to build residential properties on Plot 720.

Much as Defendants admitted that there was a mix up on the user of Plot 720, 1st and 2nd Defendants maintained that the Plaintiff was notified that the Abuja Master Plan reflects that Plot 720 is designated for school institutional purpose. It is also asserted that the Building plan approval dated 20th November, 2012 was conveyed to the Plaintiff for the development of a Basic and Junior Secondary School.

1st and 2nd Defendants contends that the stop work Notice and Notice to Quit were served on the Plaintiff because the Building Plan Approval is at variance to the physical developments carried out by the Plaintiff on Plot 720.

The 3rd Defendant also filed a Statement of Defence dated the 25th October, 2016. 3rd Defendant admitted execution of the MOA and the irrevocable Power of Attorney but insists that the MOA was validly terminated owing to the Plaintiff's failure to perform its obligations under the MOA. 3rd Defendant denied being in trespass, contending that its re-entry into Plot 720 was in the exercise of its ownership right. In sum, the 3rd Defendant denied any liability to the Plaintiff.

Finally, the Plaintiff filed a reply to the 3rd Defendant's Statement of Defence dated 3rd November 2016. There, the Plaintiff contends that aside from the MOA and Power of Attorney, the Plaintiff and 3rd Defendant subsequently, executed a settlement agreement dated 15th August, 2014 wherein the 3rd Defendant agreed to pay the sum of ₦220,000,000.00 (Two Hundred and Twenty Million Naira) as full and final settlement of Plaintiff's claims. Plaintiff insists that the 3rd Defendant has failed and or neglected to pay the aforestated sum.

At trial, the Plaintiff called one witness, Shola Danii Adetiba, Plaintiff's Managing Director who adopted his Witness Statement on Oath respectively dated the 14th October, 2013 and 3rd November, 2016. P.W.1's testimony is substantially in line with Plaintiff's pleading. He tendered several exhibits and was crossed examined by the Defendant's Counsel.

Similarly, the 3rd Defendant presented a lone witness Mrs. Omolara Euler Ajayi, 3rd Defendant's Director, D.W.1, she adopted her Witness Statement on Oath dated the 25th October, 2016. Her testimony is also in accord with the 3rd Defendant's Statement of Defence.

Under cross examination, D.W.1 admitted that the 3rd Defendant entered into an agreement with the Plaintiff on the condition that the model house will be completed within 60 days. D.W.1 said that one of the

conditions in the agreement was to convert the land use to residential and that deposits of the proceeds of sale of the plots were to be kept by the Plaintiff in an account jointly maintained with the 3rd Defendant.

Finally, the 1st and 2nd Defendants called one Richard Ukpabia, an officer at the Department of Development Control, FCDA to testify for the 1st and 2nd Defendants. He adopted his Witness Statement on Oath, D.W.2. Again, the 1st and 2nd Defendants' Witness Statement is substantially in accord with their Statement of Defence. He reiterated that the Development Plan Approval dated 20th November, 2012 was for the development of a basic junior and secondary school. He maintained that the land use design plan for Durumi District is meant for institutional purpose. He tendered Exhibit D.W.1A-B, the stop work notice dated 3rd September, 2013, a CTC of the conveyance of Building Plan approval, Exhibit D.W.1E and several other documents.

Under cross examination, he maintained that no approval was given to the Plaintiff for residential use of Plot 720 hence the land use of Plot 720 is designated for institutional, to date. D.W.2 insisted that it would amount to a contravention for the building to be put into residential development.

At the conclusion of trial, all Counsel filed and exchanged Final Written Addresses in compliance with the Rules of this Court.

Zaynab I. Mohammed Mrs., Counsel for the 1st and 2nd Defendants in her Final Written Address dated 25th April, 2019 formulated a lone issue for determination that is; Whether or not the Plaintiff's claim discloses a reasonable cause of action against the 1st and 2nd Defendants for which they may be liable and accordingly sued in this suit.

Olumuyiwa Balogun Esq., Counsel for the 3rd Defendant in his final written address dated 11th April, 2019 formulated three issues for determination they are as follows;

a) Whether having regard to Exhibit P.W.1GG and the circumstances of this case, the Plaintiff is entitled to the reliefs sought –the Plaintiff having abandoned its case.

b) In the alternative to issue (a) above whether the Plaintiff has made out a case of wrongful termination of the Memorandum of agreement and Irrevocable Power of Attorney against the 3rd Defendant and;

c) Whether the Plaintiff has made out a case of trespass and unlawful encroachment against the 3rd Defendant.

Finally, the Plaintiff's Counsel, in the final written address filed by Adetayo Adeyemo Esq., formulated two issues for determination as follows;

1. Whether the Plaintiff has proven wrongful termination of the agreement of 7th April, 2010 embodied in Exhibit P.W.1A and thus its entitlement to the reliefs sought under same agreement and the irrevocable Power of Attorney of 7th April, 2010 between the 3rd Defendant and the Plaintiff Exhibit P.W.1J.
2. Whether in view of the pleadings and admittance (sic) in evidence Exhibit P.W.1GG (the parties agreement of 2014) the Plaintiff is entitled to have its provisions enforced as against the provisions of Exhibit P.W.1H (the parties agreement of 2010 in this suit).

Having set out the issues for determination respectively formulated by all Counsel, I find it needful to invoke Order 27 Rule 6 of the High Court of the FCT, Civil Procedure Rules, 2018 and amend issues (a) and (b) of 3rd Defendant, it is forthwith amended as follows;

a) Whether the Plaintiff has abandoned its case and is consequently disentitled to the reliefs sought having regard to Exhibit P.W.GG.

Issue (b) is amended thus:

b) In the event that issue (a) is answered in the affirmative, whether the Plaintiff has made out a case of wrongful termination of the Memorandum of Agreement and Irrevocable Power of Attorney.

Issue (b) has been so amended in order to delete the words *"...in the alternative..."* I am of the view that both issues (a) and (b) formulated by the 3rd Defendant's Counsel are pertinent for the

resolution of the real issues for determination. I am disinclined to endorse issues (a) and (b) as alternative issue for consideration, this Court must be availed the opportunity to consider the submissions of Counsel on both issues minded that they are both crucial for the determination of the real issues in controversy.

That said, I will now proceed to consider 3rd Defendant's Counsel's issue (a) together with Plaintiff's Counsel's 2nd issue for determination I am so minded, having regard to the fact that both issues touches and concern Exhibit GG *vis-a-vis* its implications to the Plaintiff's case before the Court. The 3rd Defendant seems to have raised a threshold point on Exhibit GG by inviting this Court to consider the competence of this suit in the light of Exhibit 1GG.

Going by the submissions of O. Balogun Esq., he posits that the Plaintiff has abandoned its case and is therefore disentitled to the reliefs sought having regard to Exhibit GG. It follows that in the event that this Court finds Learned Counsel's submission forceful on this point, the entire bucket will be knocked out of the Plaintiff's case, thus rendering this suit incompetent on account of its being bereft of any subject matter for adjudication. Exhibit P.W.1GG is a settlement agreement executed between the Plaintiff and the 3rd Defendant dated the 15th August, 2014.

Learned Counsel for the Defendant has submitted in his written address that the agreement of 2010, the MOA, Exhibit P.W.1H, upon which the Plaintiff reliefs (contained in paragraph 78 of the statement of claim) "are no longer feasible" He reasons that Plaintiff has instead sought for the enforcement of Exhibit P.W.1GG on account of its being pleaded in paragraph 1 of Plaintiff's reply.

O. Balogun Esq., has submitted that the introduction of Exhibit P.W.1GG in Plaintiff's reply amounts to an introduction of a new cause of action. He reasons that the Plaintiff's suit as it is constituted is incurably flawed as the Plaintiff's claim through its reply constitutes a separate and distinct claim. This being the case O. Balogun Esq. reason that the Plaintiff has abandoned its case as set up in its statement of claim.

3rd Defendant's Counsel has rightly noted that the declaratory reliefs sought by the Plaintiff are predicated on the Defendant's unilateral termination of Exhibit P.W.1H and P.W.1J, that is the MOA and the irrevocable Power of Attorney upon which the Plaintiff is praying for an order of specific performance by ordering the defendants to comply with the provisions of Exhibit P.W.1H and P.W.1J together with the ancillary orders of injunction e.t.c.

In effect, O. Balogun Esq. has submitted that the Plaintiff has by his reference to Exhibit P.W.1GG completely abandoned its statement of

claim, thus rendering the Plaintiff's reliefs *"non grantable"*: 3rd Defendant's Counsel has further submitted that by the Plaintiff's reply, the Plaintiff's reliefs has changed from the enforcement of the terms of the memorandum of understanding and the irrevocable Power of Attorney, Exhibit P.W.1H and P.W.1JJ to the enforcement of the terms of settlement in Exhibit P.W.1GG. Defendant's Counsel drew the attention of this Court to the testimony of P.W.1 during cross examination when P.W.1 said that "*the memorandum of agreement of 7th April, 2010 has been superseded by a settlement agreement of July, August 2014"*

In sum, 3rd Defendant's Counsel has argued that the reliefs being sought by the Plaintiff pursuant to the terms of Exhibit P.W.1H has been anchored and has been superseded and overtaken by Exhibit P.W.1GG. In effect, Counsel submitted that the reliefs arising from the alleged breach of Exhibit P.W.1H is not grantable.

Having considered the submissions of both Counsel, ingenious as they appear, it must be emphasised here that the Court cannot depart from settled principles. Firstly, it must be noted that the Plaintiff's reliefs in the writ and the statement of claim remains valid and operational in the absence of an application by the Plaintiff to amend or strike them out. Secondly, the rules of pleadings are long settled. A reply is only filed in answer to fresh facts canvassed by the Defendant in its statement of defence. A reply cannot play the role of a statement of claim,

consequently, all the reliefs sought by a Plaintiff against the Defendant can only arise from pleadings in the statement of claim. The point that is being made here is that the statement of claim and the reply has its age long distinctive and separate roles which cannot be substituted with one another. In effect, a relief cannot be sought by the Plaintiff in its reply. Besides, where the Defendant only admits and or joins issues with Plaintiff in a Statement of Defence it is needless for the Plaintiff to file a reply.

In other words, the Plaintiff cannot seek for reliefs in its reply, neither can it raise fresh facts in its reply which are not in answer to facts canvassed in a statement of defence. Putting it another way, the Plaintiff cannot seek for the enforcement of its full and final settlement of the settlement agreement vide a reply to the Defendant's Statement of Defence. In the instant case, the Plaintiff did not seek for any relief in the reply and even if it did (which is not conceded) it cannot be considered by the Court. Similarly, any fact such as the reference by Plaintiff to the settlement agreement, Exhibit GG will be discountenanced or struck off at the instance of the Defendant.

Going by the foregoing hallowed principles of pleadings, Plaintiff's paragraph 1 of the reply to the statement of the 3rd Defendant is more or less like a sore thumb, sticking out of the Plaintiff's reply. Paragraph 1 in my view and I will so hold is incongruous to the Plaintiff's pleadings unlike

the other paragraphs of the reply it not in answer to pleaded facts by the Defendant in the Statement of Defence.

Concerning O. Balogun Esq.'s submission that Exhibit P.W.1GG supersedes Exhibit P.W.1H rendering all the Plaintiff's reliefs sought in paragraph 78 useless or no longer grantable by this Court, I am unable to allude to Counsel's submission in this regard. Looking at the entire gamut of the Plaintiff's pleadings there is no where the Plaintiff's averred that the reliefs sought in the statement of claim is superseded by any other relief. Indeed, the only set of reliefs before this Court is that reflected in paragraph 78 of the Statement of Claim.

Similarly, the fact that P.W.1 said under cross examination that the settlement agreement of August 2014 supersedes the MOA of 7th April, 2010 does not prejudice the Plaintiff's claim against the Defendants in the statement of claim. It is trite that parties are bound by their pleadings, any evidence elicited at trial which is at variance with a party's pleadings goes to no issue and same will be ignored by the Court as in the instant case. Besides, it is no longer unsettled that material fact(s) must be pleaded for the evidence elicited at trial for it to be admissible.

3rd Defendant's Counsel has rightly recounted that the Plaintiff attempted to amend its statement of claim during trial by introducing facts predicated on the settlement agreement, Exhibit P.W.1GG vide the Motion

dated 26th September, 2017. This application was declined by this Court. Firstly, on the reasoning that the amendment sought by the Motion of 26th September, 2017 was to introduce the settlement agreement which amounts to the Plaintiff setting up another story and secondly that the settlement agreement, Exhibit P.W.1GG post dates the institution of this action hence a right of action cannot accrue to the Plaintiff in this suit.

It will be noted from the records of this Court that this action was instituted in 2013 whilst the settlement agreement, Exhibit P.W.1GG is dated August 2014, whatever redress the Plaintiff intends to seek regarding Exhibit P.W.1GG can only be maintained by an independent suit minded that the cause action (if any) regarding Exhibit P.W.1GG post dates this action. See the case of **GOWON v. IKE OKONGWU (2003) 6 N.W.L.R. (PART 815) page 38.**

Finally, and more importantly, as hitherto noted this suit was filed on the 14th October, 2013, consequently, Exhibit P.W.1GG ought not have been admitted in evidence as an Exhibit of trial having regard to Section 83(3) and (4) of the Evidence Act of 2011. These provisions renders inadmissible in evidence any statement made whilst litigation is contemplated or whilst litigation is pending.

I find it expedient to recapitulate both provisions of the Evidence Act as it affects the admissibility of Exhibit P.W.1GG, it provides;

Section 83(3) *"Nothing in this section shall render admissible in evidence any statement made by a person interested at a time when proceeding were pending or anticipated involving a dispute as to any fact which the statement might tend to establish.*

Section 83(4) For the purpose of this section, a statement in a document shall not be deemed made by a person unless the document or the material part of it was written, made or produced by him in his own hand or was signed, intimated by him or otherwise recognised by him in writing as one of accuracy of which he is responsible"

Flowing from the foregoing provisions, Exhibit P.W.1GG is legally inadmissible in evidence, I am minded that this Court can overrule itself where a document which is legally inadmissible is wrongly admitted by the Court. Here, I will draw strength from the decision in **AGBI v. AGBEH (2006) 11 N.W.L.R. (PART 65) at 119 paras. B – C,** per Musdapher, JSC held thus:

"I am also of the view that Exhibit F, the investigating report of the Hon. Chief Judge of the FCT Abuja and the Police final report have no evidential value and the lower Court were right in discountenancing them. It is trite law, that any piece of evidence which slips into the records without passing the test of admissibility is not legal evidence and is liable to be

expunged even where it is admitted by consent. See ***SAIDU v. STATE (1982) 4 sc page 41.***

Similarly, Tobi JSC also made the telling remark in the case of **BROSSETTE MANUFACTURING (NIG.) LTD. v. M/S OLA ILEMOBOLA LTD. & ors. (2007) L.P.E.L.R. – 809 (SC).**

"The law is elementary that a trial Judge has the right to expunge from the record a document which he wrongly or wrongfully admitted. He can do so suo motu at the point of writing Judgment. He needs no prompting from any of the parties, although a party is free to call his attention to the document at the stage of address. Where a trial Judge is wrong in expunging a document, the Appellate Court will correct it and so an argument that the Judge ought to have expunged the document suo motu at the stage of writing Judgment, will not avail the party wronged. After all, it is better for a Judge to expunge suo motu a document which is clearly inadmissible under the Evidence Act than allow it to be on the record to give headache to the appellate Court. As the Appellate Court has the competence to expunge it from the record, why not the trial Judge"

Reinforced by our Apex Court decision supra, I am inclined to overrule my previous decision to admit Exhibit P.W.1GG, accordingly exhibit P.W.1GG is forthwith discountenanced by this Court having now

held that it is a legally inadmissible document. All evidence as it relates to Exhibit P.W.1GG is hereby expunged forthwith.

In the light of the foregoing considerations my answer to issue 'a' formulated by O. Balogun Esq. is in the negative. I hold that Plaintiff's reliefs sought in this suit remains unfettered by Exhibit P.W.1GG which as hitherto been noted is of no effect whatsoever to this suit.

Similarly, this Court's answer to the Plaintiff's issue two will be considered as a non issue and is accordingly discountenanced considering that it borders on Exhibit P.W.1GG, a document which has been expunged from the records of this Court. Plaintiff is at liberty to pursue any legal redress it considers fit with it.

Apropos to the first issue for determination formulated by the Plaintiff's counsel as well as 3rd Defendant's issue 'b' amended by this Court both will be considered together by this Court for the simple reason that both issues are aimed at determining the proprietary (or otherwise) of the termination by the 3rd Defendant of Exhibits P.W.1J and P.W.1H, the Memorandum of Agreement and irrevocable Power of Attorney.

From the onset, it is noted that all parties are commonly agreed that Exhibits P.W.1J and P.W.1H were terminated by the 3rd Defendant, the divisive point between parties is that Plaintiff contends that the termination

was unlawful and invalid whereas the Defendants maintain that both Exhibits are lawfully and validly terminated.

Plaintiff's Counsel has submitted that the termination of the MOA and the Irrevocable Power of Attorney was unilaterally exercised by the 3rd Defendant. He recounted that the reasons for the termination was predicated on the reasons noted in 3rd Defendant's statement of defence in paragraph 16. In all, the 3rd Defendant has hinged five reasons arising from the breach of Clauses 2.2, 4.1, 4.2, 4.3 and 4.7 of the Memorandum of Agreement by the Plaintiff. A. U. Mustapha, SAN noted that the first breach or allegation was that the Plaintiff failed to apply to the Department of Development Control for the alteration of the land use of Plot 720 from institutional to residential purpose until 15th December, 2010.

The Learned Counsel Silk further recounted in his oral address that the search report of the 13th April, 2010 confirmed the land use to be residential, three days after the agreement was executed. He also posits that the Defendant's letter of the 29th April, 2010 also confirmed this fact, he then concluded that the Plaintiff's letter of December 2010 was therefore a surplusage.

I have considered the state of pleadings in this suit and on the contrary, it is noted that the 1st and 2nd Defendants in paragraphs 4, 5 and 6 of their statement of defence averred that the letter of the 29th April, 2010

was written in error and the Plaintiff was subsequently communicated with the fact that Plot 720 falls under land designated for school and institutional purpose hence it is not designed to serve for residential purpose.

Indeed, the Plaintiff in paragraph 33 of its statement of claim that: *"…in line with the terms of the MOA, it initiated the process of obtaining change of land use and commenced preparations of requisite documentation for change of land including E1A, change of land use report and site investigation report..."*

Still on efforts made by the Plaintiff towards the procurement of the change of land use, Plaintiff avers in paragraph 43 that: *"A site inspection visit was arranged by the committee for change of site inspection visit, a recommendation for approval for change of land use was written, waiting for ratification by the FCTA, Executive Council"*

Similar assertions of the steps taken by the Plaintiff towards obtaining the change of land use were also noted in paragraphs 44 and 45 of its Statement of claim, The Plaintiff has by its showing in its pleadings demonstrated that throughout and uptill the termination of the MOA and Irrevocable Power of Attorney it was still making frantic efforts to obtain the change of use from institutional to residential, Plaintiff never succeeded in fulfilling its obligations in the MOA regarding the change of use.

Indeed, this Court is inclined to believe the 1st and 2nd Defendants assertion that a Building Plan approval dated 20th November, 2012 which CTC was admitted as Exhibit D.W.1E, was for the development of a Basic and Junior Secondary School. This being the case I am unable to allude with the Plaintiff's Counsel's submission that the Plaintiff obtained the approval for change of use of Plot 720 for residential purpose.

O. Balogun Esq., has further drawn the attention of this Court and quite rightly too that by the operation of the MOA, specifically by Clause 4.7(a), the Plaintiff is to apply to the Department of Development and Control of the FCT and facilitate the alteration of the land use from institutional use to residential purpose within 60 days from the execution of the agreement. I am of the inescapable conclusion that the Plaintiff is in fundamental breach of Exhibit P.W.1H, the MOA, on the non procurement of the change of use.

The Plaintiff also was in breach of Clause 4.4, 4.2 and 4.3 of the MOA which provides *"for the period of 60 days from the execution of the agreement and upon failure to commence execution of these obligations Visseto shall immediately have the right to terminate this agreement and contract with other parties in respect of the property"*

In a relay of breaches of the MOA and the Power of Attorney, the 3rd Defendant in paragraph 16.3 also alleges that the Plaintiff failed to

subdivide the property into 20 Plots with each plot measuring 500 square metres and sell same within the agreed time frame.

In reaction, the Plaintiff in its reply in paragraph 2(c) contends that the plots were divided with 20 plots but failed to join issues with the 3rd Defendant on its obligation to sell all the 20 Plots as required by the Plaintiff under the MAO.

On the Plaintiff's obligation to build a four bedroom detached duplex as a model unit for Plot 720, again, the Plaintiff was unable to give any credible and plausible evidence that it fulfilled its part of the MOA by competing the model building at the time the agreement was terminated on April 2011.

In the light of the foregoing considerations, I am not left in doubt that the 3rd Defendant validly exercised its rights pursuant to clause 4.7(a) entitling the 3rd Defendant to terminate Exhibit P.W.1H having regard to Clause 4 which provides that if Supercell, (the Plaintiff) fails to commence and carry out any of these obligations within the stated period of 60 days, Defendant may terminate the agreement. I am in agreement with the 3rd Defendant's Counsel that the Plaintiff failed to plead material facts and lead credible evidence in proof that it performed its obligation in Clause 2.2, 4.1 and 4.3.

Having not performed or observed its obligations in exhibit P.W.1H, the Defendant is immediately entitled to terminate Exhibit P.W.1H. Failure to comply with the obligations under Exhibit P.W.1H undoubtedly snowballs into the collapse of Exhibit P.W.1J.

My answer to the Plaintiff's first issue for determination and 3rd Defendant's second issue for determination are in the negative. I hold the Plaintiff has failed to prove that the termination of Exhibit P.W.1H was wrongful hence it cannot be entitled to the reliefs sought under the agreement and irrevocable Power of Attorney, Exhibit P.W.1J, 3rd Defendant's issue two is answered in the negative. I hold that the Plaintiff has not made out a case of wrongful termination of the MOA against the 3rd Defendant.

Turning to the 3rd Defendant's third issue for determination, that is, whether the Plaintiff has made out a case of trespass and unlawful encroachment against the 3rd Defendant, having held that the 3rd Defendant's termination of Exhibit P.W.1H and P.W.1L, the irrevocable Power of Attorney and the memorandum of agreement is valid and lawful, it follows that physical possession of Plot 720 automatically reverts to the 3rd Defendant. The Plaintiff's right to possession of Plot 720 is extinguished upon the valid termination of Exhibit P.W.1H and P.E.1J.

Indeed, the Plaintiff will be in trespass if it continues to remain in possession after service of a valid and lawful notice of termination of the agreement. In other words, Plaintiff's prayer for an order for trespass collapses with the termination of MOA. This Court's answer is in the negative, Plaintiff has not made out a case for unlawful encroachment against the 3rd Defendant.

Lastly, on the 1st and 2nd Defendants' lone issue for determination, that is whether a reasonable cause of action lies against them and whether they are jointly liable to the Plaintiff, the 1st and 2nd Defendants' Counsel, Zaynab I. Mohammed Mrs has commended this Court to a series of judicial precedents on what constitutes a cause of action.

I find the decision in **CHUKWU v. AKINPELU CHUKWU (2014) 13 N.W.L.R. (PART 1423) page 359 at 380 paras. E – H** per Ogunbiyi JSC quite illuminating on this point when Her Lordship held cause of action denotes the present of two elements.

"The wrongful act of the Defendant which gives the Plaintiff a cause of complaint and the subsequent damage caused to the Plaintiff"

I am in agreement with Mrs. Mohammed that Plaintiff and statement of claim does not reveal any cause for the complaint or damages against the 1st and 2nd Defendants. Both Defendants are not parties to the Memorandum of Agreement and the Power of Attorney upon which this

action has been predicated. I am persuaded by the forceful submissions of Mrs. Mohammed that no cause of action lies against the1st and 2nd Defendants herein. I am also inclined to tow the line of reasoning of Ogunbiyi JSC in the **CHUKWU v. AKINPELU case supra** where her Lordship held:

"A cause of action therefore enthrones justification on the Court, the absence of which renders the suit incompetent and liable to be struck out"

I am bound to follow the reasoning of our Apex Court hook line and sinker. Accordingly, the 1st and 2nd Defendants are hereby struck out for want of a reasonable cause of action against them.

Plaintiff's case fails and is accordingly dismissed.

O.O. Goodluck,
Hon. Judge.
7th May, 2020.

APPEARANCES

Parties absent

Adetayo Adeyemo Esq.: For the Plaintiff

Ogunmuyiwa Balogun Esq. with me is Abayomi Okubote Esq.: For the 3rd Defendant.