

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**  
**HOLDEN AT ABUJA**  
**ON WEDNESDAY 13TH DAY OF MAY 2020**  
**BEFORE HIS LORDSHIP: HON. JUSTICE O. A. ADENIYI**  
**SITTING AT COURT NO. 14 APO - ABUJA**

SUIT NO. CV/1185/16

**BETWEEN:**

ESHIEMOMOH PAUL O. ... .. CLAIMANT

**AND**

1. CONSTRUCTII PROACTII LTD. }  
2. ALIYU BAWA AHMED } DEFENDANT  
3. VIRGO GLOBAL SECURITY SERVICES }

**JUDGMENT**

The Claimant is a legal practitioner. The summary of his case, as gathered from processes he filed to commence this suit, is that sometime in July, 2011, the 1<sup>st</sup> Defendant, acting as agent to one **Sand Base Associate**, the original allottee, offered to him allocation of 4 Bedroom Terraced Duplex housing unit,

being **Plot C3, I Pent VI Estate (Legislative Villa), at Gaduwa District, Abuja**, sited within the expanse of land being Plot No. 472, Cadastral Zone B13, Gaduwa District, Abuja. Altogether, the Claimant paid the sum of ₦13,000,000.00 out of the sum of ₦14,000,000.00 commitment and infrastructural fee charged for the plot. The Claimant built on the plot in line with the architectural drawing/building plan for the design of a terrace duplex given to him by the 1st Defendant. The Claimant listed a catalogue of complaints against the Defendants, ranging from failure to provide infrastructural facilities in the Estate; to failure to get his building plan approved, thereby leaving his building to threat of demolition by the authorities of the Development Control Department of the FCT; to failure to complete the perimeter fencing of the Estate, thereby exposing the Claimant and other residents to insecurity. The Claimant's further grievance is that rather than provide the required

facilities in the Estate, the Defendants, sometime in 2015, demanded for payment of service charge of the sum of ₦70,000.00 which he refused to pay since no services were provided by them in the Estate; that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants further demanded that he paid the balance of ₦1,000,000.00 charged for the plot which he also refused to pay as a result of their failure to provide the agreed infrastructures in the Estate.

As a result, the Claimant further alleges, the Defendants trespassed upon and disturbed his peaceful occupation of his premises; with threats to sell the plot and evict him therefrom.

Consequently, the Claimant commenced the instant suit, by Writ of Summons and Statement of Claim filed in this Court on 04/04/2017, by which he claimed against the Defendants, jointly and severally, the reliefs set out as follows:

- 1. A declaration that by virtue of the Certificate of Occupancy and the agreement between Land Base Associate and the 1<sup>st</sup> Defendant, and having granted a provisional offer of allocation of housing unit in Ipent VI Legislative Villa to the Plaintiff and other allottees, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants cannot claim the title to the “estate” or ownership of the piece or parcel land and the appurtenances therein known as Plot 472 (also described as Ipent VI Legislative Villa), Cadastral Zone B13, Gaduwa District, Abuja, FCT.**
  
- 2. A declaration that having refused/neglected to put the basic infrastructures as agreed in the letter of offer on the plot, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants cannot enter and take over the management of the facilities provided in the plot by the Plaintiff and other allottees.**
  
- 3. A declaration that having failed to provide a perimeter fence and other infrastructures and obtain approval for the buildings on the plot which resulted in the theft of the Plaintiff’s property, and threat of demolition of his property, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants are not entitled to**

***any further payments from the Plaintiff, unless and until they fulfil their obligation to provide the agreed amenities on the plot.***

***4.A declaration that the Defendants entering the Plaintiff's plot at various times and destroying his building materials without his consent and authority amount to trespass on his property.***

***5.An order of perpetual injunction restraining the 1<sup>st</sup> and 2<sup>nd</sup> Defendants, whether by themselves, their servants or agents from further entering or trespassing on the plot known as plot 472 (also described as Ipent VI Legislative Villa) Cadastral Zone B13, Gaduwa District, Abuja, FCT.***

***6.The sum of ₦30,000,000 (Thirty Million Naira) only as general and exemplary damages to the Plaintiff against the Defendants both jointly and severally for trespass, loss and destruction of property.***

The 1<sup>st</sup> and 2<sup>nd</sup> Defendants joined issues with the Claimant by filing their joint Statement of Defence on

12/10/2017, to which they subjoined a Counter-Claim against the Claimant. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants denied substantial portions of the Claimant's claim, stating that they did not concede to providing infrastructures in the Estate before total payment of the cost of the plot was made; contending further that failure of the Claimant and other subscribers to make full payment of costs of their plots hindered provision of infrastructures in the Estate; and that the Defendants have obtained approved plan for the Estate; that the demand for payment of service charge is customary and in line with the agreement signed with the Claimant. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants thereby Counter-claimed against the Claimant as follows:

- 1. The sum of One Million Naira (N1,000,000.00) only, being the outstanding balance which he has failed to pay.***

**2. The sum of Five Million Naira (₦5,000,000.00) only as general damages.**

**3. 10% post-judgment interest from the date of judgment until the debt is liquidated.**

**4. Cost of this action.**

The Claimant thereafter filed Defence to the 1<sup>st</sup> and 2<sup>nd</sup> Defendants' Counter Claim on 27/10/2017.

The 3<sup>rd</sup> Defendant did not participate in the proceedings throughout; even though the records of the Court bear out that the originating processes and hearing notices for the scheduled hearing dates were duly served on her.

At the plenary trial, the Claimant testified in person. He adopted his *Statements on oath* as his evidence-in-chief. He further tendered a total of twenty three (23) sets of documents in evidence as exhibits to further

support his case. He was cross-examined by the Defendant's learned counsel.

In turn, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants fielded a sole witness, by name **Ibrahim Manset**, who claimed to be the Managing Director of the 1<sup>st</sup> Defendant. He adopted his *Statement on oath* and the four sets of documents he tendered were provisionally admitted in evidence.

Upon completion of plenary trial, parties filed and exchanged their written final addresses in the manner prescribed by the **Rules** of Court. The Defendants filed their final address on 21/03/2019, wherein a sole issue is formulated for determination in this suit, namely:

***Whether having regards to the Defence and Counter Claim of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants as contained in the Statement of Defence and documentary evidence adduced in support of the defence and Counter Claim the Defendants have not proved their case on the***



***preponderance of documentary evidence to dismiss the Claimant's claims for lacking in merit and frivolous?***

In turn, the Claimant, who appeared in person throughout the trial proceedings, filed his final address on 04/03/2019, wherein he also formulated two broad issues as having arisen for determination in this suit, namely:

- 1. Whether, having regards to the claims of the Claimant as contained in the Statement of Claim, viva voce evidence and documentary evidence adduced in support of the claim, the Claimant has not proved his case on the preponderance of evidence to be entitled to the judgment of this Court?***
- 2. Whether the Defendants/Counter-Claimants' claims are not liable to be dismissed having failed to prove their Counter-Claim on the preponderance of evidence before this Court.***

I shall proceed to determine the suit on the basis of the broader issues formulated by the Claimant as reproduced in the foregoing.

In determining these issues, I had carefully considered the totality of the arguments canvassed by the Claimant and learned counsel for the 1<sup>st</sup> and 2<sup>nd</sup> Defendants in their written addresses and their oral adumbrations. I shall endeavour to make specific reference to their arguments as I deem needful in the course of this judgment.

## **RESOLUTION OF ISSUES**

### **ISSUE ONE:**

The Claimant pleaded in *paragraph 2* of his Statement of Claim as follows:

***“2. The 1<sup>st</sup> Defendant is a limited liability company and Estate Agent to one Land Base Associate, the original allottee of Plot No. 472 Cadastral Zone***

***B13, Gaduwa District, Abuja (also known as Ipent VI Legislative Villa, hereinafter referred to as the “Estate”).”***

The Claimant further pleaded in *paragraph 5* of the Statement of Claim of how, sometime in June, 2011, he was introduced to the 1<sup>st</sup> Defendant, who was selling plots of land in the said Estate on behalf of the said **Land Base Associate**.

Again, in *paragraph 8* of the Statement of Claim, the Claimant avers that he expressed interest in acquiring a plot in the Estate as a result of which he purchased the expression of Interest Form at a cost of ₦10,000.00; and in *paragraphs 9 & 11* of the Statement of Claim, he further avers that after satisfying himself of the validity of the title of the Estate offered to **Land Base Associate**, he expressed interest to purchase the plot known as **Plot No. C3**, measuring about **350sq. metres** with the design for building a terrace duplex with a pent house.

The Claimant further averred in *paragraph 14* of the Statement of Claim that the 1<sup>st</sup> Defendant gave him a letter of provisional offer in respect of **Plot C3** in the Estate.

The 1<sup>st</sup> and 2<sup>nd</sup> Defendants, in *paragraphs 1, 3, 5 and 7* of their joint Statement of Defence, admitted the averments in *paragraphs 2, 5, 8, 9, 11 and 14* of the Statement of Claim, enumerated in the foregoing. The implication, on the basis of the trite principle that an averment which is admitted needs no further proof, is therefore that the issues of ownership of the Estate from which the Claimant sought to purchase a plot and that of the status of the 1<sup>st</sup> Defendant, who sold same on behalf of the original allottee, **Land Base Associate**, are no longer in controversy between the parties. I so hold.

The Claimant, in his oral testimony, went ahead to further support these salient averments with

documentary evidence. I make reference to **Exhibit P1**, copy of the Offer of Statutory Right of Occupancy granted by the Hon. Minister of the FCT in favour of **Land Base Associate** with respect to **Plot No. 472, Cadastral Zone B13, Gaduwa District, Abuja, measuring approximately 5.78 hectares**. He also tendered in evidence as **Exhibit P6**, original provisional offer of allocation of housing unit in **I Pent VI Estate (Legislative Villa)**, issued by the 1<sup>st</sup> Defendant to the Claimant with respect of purchase of Plot C3 in the Estate.

On the basis of the state of the pleadings before the Court, I no longer see any need to dabble into the arguments canvassed by the Claimant in his written address as to where or in whom legal title to the entire land comprised in the Estate originally resides. This fact is apparent on the face of **Exhibit P1**.

Now, on the question of the status of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants in relation to the Estate land, the Claimant's pleading in *paragraphs 2 and 5* of his Statement of Claim is that the 1<sup>st</sup> Defendant is Estate Agent to **Land Base Associate** with the mandate to sell plots of land in the Estate to interested members of the public. These facts, as I had noted earlier, were unequivocally admitted by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants.

The Claimant, to further assert the relationship between the said **Land base Associate** and the 1<sup>st</sup> Defendant, with respect to the Estate in context, pursuant to his pleading in *paragraph 10* of his Statement of Claim and oral evidence adduced in *paragraph 11* of his *Statement on oath*, tendered in evidence as **Exhibit P2, Estate Development Agreement** between **Land Base Associate** and the 1<sup>st</sup> Defendant.

The Agreement clearly confirmed that the Estate land was allocated to the said **Land Base Associate**; whereas the 1<sup>st</sup> Defendant, as civil engineering, building and construction consultants, agreed to collaborate with the said **Land Base Associate** to develop a residential estate on the land.

By the Agreement, the 1<sup>st</sup> Defendant is further authorized to solely engage in selling plots, building houses, selling houses of different sizes on the land. She is also responsible for the provision of infrastructures such as roads, drainages, water, electricity, sewages, street lights and landscaping. I make reference to *paragraph 2(a), (b) and (g)* of **Exhibit P2**.

The 1<sup>st</sup> and 2<sup>nd</sup> Defendants deny *paragraph 10* of the Claimant's Statement of Claim, by stating that she is a stakeholder with substantial interest in the Estate.

Notwithstanding this denial, my finding is that the contents of **Exhibit P2** has settled the issue as to the status and interest of the 1<sup>st</sup> Defendant with respect to the Estate, as well as her obligations therein.

In the circumstances, I again consider it needless to dwell on the Claimant's allegations in *paragraph 40* of his Statement of Claim to the extent that the 2<sup>nd</sup> Defendant claims that the Estate belonged to him and that he can deal with anyone who steps on his way.

For one, the 2<sup>nd</sup> Defendant is not a party to the Estate Development Agreement, **Exhibit P2**; as such has no personal claim to the Estate or the plot sold to the Claimant. I so hold.

Again, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants denied the said allegation made by the Claimant in *paragraph 40* of his Statement of Claim in *paragraph 16* of their Statement of Defence.



I therefore further consider it academic for the Court to declare the status of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants in relation to the ownership of the Estate. The averments in *paragraphs 2 and 5* of the Statement of Claim, admitted in *paragraph 1* of the Statement of Defence and **Exhibit P2** are clear cut as to the status of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants with relation to the transaction had with the Claimant on the Estate in question. I so hold.

In the circumstances, I hold that relief (1) of the Claimant's claim is academic and in a sense amounted to crying wolf where there was none. It is accordingly struck out.

The next issue that calls for consideration is as to whether the Claimant is obliged to pay full cost of the plot to the 1<sup>st</sup> Defendant when full infrastructure was not provided in the Estate?

The Claimant's unchallenged evidence is that up until the date of filing the instant action, he has so far paid a total sum of ₦13,000,000.00 to the 1<sup>st</sup> Defendant as Commitment and Infrastructure Fee, leaving a balance of the sum of ₦1,000,000.00, unpaid. He tendered in evidence as **Exhibits P5, P8 and P9** respectively, receipts issued to him by the 1<sup>st</sup> Defendant to cover the sums he paid at different times, all totalling ₦13,000,000.00.

In his oral evidence, the Claimant further testified that after he took possession of the plot, he mobilized to site, paid the sum of ₦120,000.00 for setting out (as evidenced by the receipt, **Exhibit P7**); that in the course of building, the 1<sup>st</sup> Defendant did not provide water, central sewage and drainages in the Estate; that he had to sink a borehole privately to undertake his building project. The Claimant further testified that the 1<sup>st</sup> Defendant had not tarred any roads in the Estate; and that the perimeter fence of the Estate was

very low; that it was after he made a further payment of ₦2,000,000.00 of his infrastructural fees that the 1<sup>st</sup> Defendant tarred a part of the Road and also raised some parts of the perimeter fence.

The Claimant further testified that by the time he completed his building and moved into the house, the 1<sup>st</sup> Defendant had still not provided central waste disposal facility, central sewage and security in the Estate; that sometimes in November, 2013, thieves entered his premises and pulled out the armoured cable that connected electricity to his house; and also attempted unsuccessfully to gain entrance to his house; that he complained to the 1<sup>st</sup> Defendant and demanded that he be allowed to use the balance sum of ₦1,000,000.00 he owed the 1<sup>st</sup> Defendant to set off for the items stolen by thieves from his compound. He tendered in evidence as **Exhibit P15**, copy of an undated letter he purportedly wrote to the 1<sup>st</sup> Defendant in that regard.

The Claimant further testified that as a result of the insecurity in the Estate, he convened a meeting of owners of plots in the Estate and formed an association called **“Ipent VI, Legislative Villa Owners Association;”** for purposes of coming together to protect their common interests in the Estate. He testified further that the Association agreed to and had engaged the services of security men to patrol the entire Estate in the nights and that the decision of the Association was communicated to the 1<sup>st</sup> Defendant; and that the Association further invited the 1<sup>st</sup> Defendant to attend her meetings; and that the 1<sup>st</sup> Defendant’s representatives at the meeting expressed support for the decision of the Association to engage security in the Estate. The Claimant tendered in evidence as **Exhibits P16, P17 and P19** respectively, copies of Notices purportedly extended to the 1<sup>st</sup> Defendant’s Managing Director in December, 2013 and January, 2014, to attend the

Association's meetings; and copy of purported Minutes of meeting held on 13/12/2013. He also tendered as **Exhibit P20**, copy of letter written by the 1<sup>st</sup> Defendant's Managing Director to acknowledge receipt of the invitation to attend the meeting fixed for January, 2014.

The Claimant alleged that sometime in May, 2015, the 2<sup>nd</sup> Defendant called him on the phone to make a demand of the balance of the sum of ₦1,000,000.00 remaining unpaid in respect of the plot; but that he insisted on not paying the balance unless and until the 1<sup>st</sup> Defendant puts in place all the infrastructure she is under obligation to put in place in the Estate; that thereafter the 2<sup>nd</sup> Defendant threatened to sell his house; that the 2<sup>nd</sup> Defendant later pasted a "**For Sale**" Notice on the entrance gate of his house.

The **DW1**, in his testimony, confirmed that the Claimant was yet to pay the balance of ₦1,000,000.00 on the

plot sold to him. He further stated that the refusal of the Claimant and other subscribers in the Estate to pay up their various debts had contributed to the stalling of the provision of infrastructures at the Estate. He further testified that contrary to the claim of the Claimant, the infrastructures in the Estate are now complete and that building approvals have been obtained to allay the fears of the Claimant.

Now, the contract between the Claimant and the 1<sup>st</sup> Defendant is circumscribed in **Exhibit P6**, tendered by the Claimant. It is the provisional offer of allocation of Housing Unit in **Ipent VI Estate (Legislative Villa)** to the Claimant by the 1<sup>st</sup> Defendant.

In view of its focal relevance to the issue at hand, I take liberty to reproduce portions of the letter as follows:

***“We refer to your expression of interest in respect of the above subject matter.*”**

***In partnership with LAND BASE ENTERPRISE, we are pleased to inform you that you have been offered a Provisional Allocation of PLOT C3 in I PENT VI ESTATE at GADUWA DISTRICT, ABUJA – FCT. You are hereby informed that this allocation is provisional and subject to the terms contained herein and in the application form earlier submitted by your humble self. ...***

### **CONFIRMATION OF TITLE**

***This Provisional Allocation is hereby confirmed and will become Valid upon full payment of the prescribed fees and upon strict compliance with all other terms and conditions on the application form.***

### **OTHER TERMS**

***i.***

***ii.***

***iii.***

***iv. Note that this Allocation is subject to a formal contract to be executed upon the completion of the***

*House type by the Allottee and on full payment of the required fees to the Developer. ...”*

(Underlined portions for emphasis)

Other salient terms of the offer letter as shown on **Exhibit P6** is that the Claimant is required to pay total sum of ₱14,000,000.00 as Commitment and Infrastructure Fee, payable in two instalments of ₱7,000,000.00 each within six (6) months after the allocation.

The letter **Exhibit P6** is clear and unambiguous. It is made subject to the Claimant fulfilling certain conditions. Some of these conditions are:

1. That the Claimant shall pay the prescribed sum stated in the offer letter within six (6) weeks of the allocation;
2. That a formal contract shall be executed in favour of the Claimant upon completing his



house type and upon full payment of the required fees to the Developer.

The position of the law is that where contract is made subject to the fulfillment 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. See Best (Nigeria) Ltd. Vs. Blackwood Hodge (Nigeria) Ltd. [2011] 5 NWLR 95 or [2011] LPELR-776(SC); Tsokwa Oil Marketing Co. Vs. B.O.N. Limited [2002] 11 NWLR (Pt. 777) 163.

The Court of Appeal expatiated on the meaning of the term “**subject to contract**” in Acmel Nigeria Limited Vs. FBN Plc [2014] LPELR-22444(CA) where it was held as follows:

***“The phrase ‘Subject to Contract’ is one which makes it clear that the intention of the parties is that neither of them is to be contractually bound until a contract is signed in the usual way. When the phrase is employed in an appropriate situation, with a clear***

*measure of intention, there can be no valid contract until formal contracts are exchanged.”*

My understanding of the offer letter, **Exhibit P6** is that there is no obligation on the part of the 1<sup>st</sup> Defendant to fulfill until the Claimant paid in full the agreed infrastructure/commitment fees and until he completes the construction of the house on the plot. According to **Exhibit P6**, it is upon the fulfillment of these basic terms by the Claimant that the allocation becomes valid and a formal contract will be executed between the parties in that regard; including issuance of Deed of Assignment and other title documents to him.

In the instant case, the consensus evidence on both sides is that even though the Claimant has fully built up the plot and moved in, he is however yet to fully pay the infrastructure fees charged on the house. The Claimant's justification for refusing to pay the balance of ₦1,000,000.00 is that the 1<sup>st</sup> Defendant failed to

provide all the infrastructures agreed and under obligation to provide at the Estate.

However, my finding is that the Claimant's justification is tantamount to putting the cart before the horse, in that it is not backed up by the terms of **Exhibit P6**, which makes it explicitly clear that the Claimant must pay up the infrastructure fee after which the 1<sup>st</sup> Defendant will enter into a formal contract with him with respect to the sale of the plot. I so hold.

My finding is further that there is nothing in **Exhibit P6** that places obligation on the 1<sup>st</sup> Defendant to provide all infrastructures in the Estate before the Claimant can make full payment of the infrastructure/commitment fee on the plot.

I noted the oral evidence of the Claimant which contradicted the clear terms of **Exhibit P6**, to the extent that the Defendants agreed that he could pay balance of the infrastructure fees as the Defendants

provided the infrastructures in the Estate. However, such oral evidence cannot be tenable on the trite position of the law that oral or extrinsic evidence cannot be adduced to vary or contradict the contents of a written agreement. See Koiki Vs. Magnusson [1999] 8 NWLR (Pt. 615) 492. See also the provision of s. 128(1) of the **Evidence Act**.

It must also be remembered that part of the 1<sup>st</sup> Defendant's obligations on the Estate, as provided in the Estate Development Agreement, **Exhibit P2**, is to “**manage, sublease and deal with the plot as it deemed (sic) proper.**” See *paragraph 2(b)* of **Exhibit P2**.

On the basis of the clear construction of the letter of offer, **Exhibit P6**; and the Estate Development Agreement, **Exhibit P2** therefore, I must hold that the Claimant's contract with respect to the plot sold to him is yet to be crystallized. As such, he lacked the *locus* or

legal competence to demand that the Defendants be prevented from taking over management of the Estate or to contend that the 1<sup>st</sup> Defendant is not entitled to receive the balance of the infrastructure fees until full infrastructures are provided in the Estate. I further so hold.

The Claimant has also alleged that the Defendants trespassed into his plot at various times, destroying his building materials and in that regard has claimed the sum of ₱30,000,000.00 as general and exemplary damages.

He testified that on 08/08/2015, the 2<sup>nd</sup> Defendant, accompanied by three armed mobile Policemen, entered the Estate, locked the main entrance and ordered that no one (including him), be allowed ingress or egress; that this lasted for about two hours; that the 2<sup>nd</sup> Defendant came to his house, placed a **“For Sale”** banner on his house for the reason,

according to the 2<sup>nd</sup> Defendant, that he had not finished paying the infrastructure fees.

The Claimant proceeded to recount the event that he stated that occurred on 15/02/2015, as he gathered from his security man by name – **Desmond**, of how the 2<sup>nd</sup> Defendant came to his premises in company of four (4) thugs, and removed the building materials he kept in front of his house to the neighbouring premises.

He further testified that on 18/02/2015, the 3<sup>rd</sup> Defendant, led by her Supervisor, came to his premises, began to throw his materials into his neighbour's empty plot; that upon his inquiry, he was informed by the 3<sup>rd</sup> Defendant's Supervisor that they had the instructions of the 2<sup>nd</sup> Defendant to throw away his sand. He testified further that the 3<sup>rd</sup> Defendant's staff used some of the materials to block his entrance gate and left. The Claimant testified further that he got a photographer to take snap shots

of the events he described, as stated in the foregoing and tendered the said photographs as **Exhibits P18, P18A – P18F** respectively.

Now, the Claimant's testimony under cross-examination by learned counsel for the 1<sup>st</sup> and 2<sup>nd</sup> Defendants, seemed to be inconsistent with the account he gave in his evidence in chief, with respect to the claim for trespass. Hear him:

***“The first day I was not present when the 2<sup>nd</sup> Defendant started throwing away my materials but I was present when the 2<sup>nd</sup> Defendant came to pack my materials from my house. The 2<sup>nd</sup> Defendant was at my house, supervising some thugs to pack away my materials.”***

Whereas, in his evidence in chief in *paragraph 50* of his *Statement on Oath*, the Claimant testified that it was three officers of the 3<sup>rd</sup> Defendant, led by their supervisor, in their uniforms, that came to his house to throw away his materials to his neighbour's empty

plot; and who used some of the materials to block his gate.

In one breath the Claimant claimed it was officers of the 3<sup>rd</sup> Defendant that trespassed into his premises. In another breath, he stated that it was the 2<sup>nd</sup> Defendant who led thugs to his house. In my view, this is a material inconsistency in the testimonies of the Claimant in his evidence in chief and under cross-examination. The position of the law is that material inconsistencies in the evidence of a witness render such pieces of evidence incredible and as such must not be relied or acted upon by the Court in reaching a determination. See Wusu Vs. David [2014] LPELR-22426(CA).

The position of the law with regards to inconsistent testimonies of a witness was further elucidated by the Court of Appeal in Maraire Vs. State [2013] LPELR-20731(CA), where it was held as follows:



***“The inconsistency rule relates to where a prosecution witness makes a statement on oath which is materially inconsistent with an earlier extra-judicial statement. It also relates to where a witness makes a statement while giving evidence in chief which is materially inconsistent with the witnesses’ evidence during cross-examination.... Where material inconsistency is established by the defence, the Court is not empowered to pick and choose between the contradictory evidence presented, must reject both...”***

See also *Abari Vs. Aduda* [2011] LPELR-19750(CA).

In the present case, having found material inconsistencies as highlighted in the evidence adduced by the Claimant, both in his evidence in chief and under cross-examination, as to his claim of trespass against the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants, I must reject the entirety of the two accounts he gave in that regard and I agree with the contentions of learned counsel

for the 1<sup>st</sup> and 2<sup>nd</sup> Defendants that the Claimant has failed to prove his claim of trespass against the Defendants.

I must quickly note that the testimony of the Claimant in *paragraph 49* of his *Statement on Oath*, to the extent that he received information from his gateman, by name **Desmond**, as to purported acts of trespass committed on his premises by the 2<sup>nd</sup> Defendant on 15/02/2015, constituted hearsay evidence, which is inadmissible in law. As such, the Court places no reliance on that piece of evidence and the same is accordingly expunged from the records.

The Claimant's claim for trespass having failed, it follows that his relief for perpetual injunction against the 1<sup>st</sup> and 2<sup>nd</sup> Defendants must necessarily be refused. This is more so in that from the position of the evidence on record, the Claimant is yet to perfect his contractual relationship with the 1<sup>st</sup> Defendant with

respect to the purchase of the plot in issue. As such, a claim for injunction cannot arise in the circumstances. I so hold.

The Claimant has also alleged that the 1<sup>st</sup> Defendant placed a **“For Sale”** banner at the entrance gate of his house and other buildings in the Estate. He tendered in evidence as **Exhibit P18**, photograph of the said banner. The Notice essentially states that failure to pay up balance due on the plot shall result in revocation of the plot in accordance with the agreement with the 1<sup>st</sup> Defendant; and that failure to pay up within the stipulated time would be interpreted to mean that the Claimant was no longer interested in the plot and that the same shall be reallocated/sold to other prospective applicants.

In my view, the placement of **Exhibit P18** at the entrance gate of the Claimant’s house could not be held to have constituted trespass on the Claimant’s

premises. It is a mere notice issued in consonance with the agreement between the parties. The Notice is equally justified having regard to the fact that the Claimant was still indebted to the 1<sup>st</sup> Defendant to the tune of ₱1,000,000.00 as at the time the Notice was placed on his entrance gate. The Claimant's debt is further confirmed by the list of debtors, **Exhibit P23**, which he tendered to further indicate that he remained indebted to the 1<sup>st</sup> Defendant to the tune of ₱1,000,000.00.

In the final analysis, I resolve issue (1) formulated by the Claimant for determination in this suit against him. The consequence is that the Claimant's action must fail, the same having been found to have lacked in merit and in substance. It is hereby accordingly dismissed.

## **ISSUE TWO:**

## ON THE 1<sup>ST</sup> AND 2<sup>ND</sup> DEFENDANTS' COUNTER-CLAIM

The 1<sup>st</sup> and 2<sup>nd</sup> Defendants have counterclaimed the Claimant basically for the outstanding sum of ₦1,000,000.00 with respect to the plot sold to him.

I adopt my earlier finding that both the Claimant and the 1<sup>st</sup> and 2<sup>nd</sup> Defendants are *ad idem*, from the evidence adduced by both sides, that the Claimant is still owing the sum of ₦1,000,000.00 with respect to the plot he purchased from the 1<sup>st</sup> Defendant, thereby breaching the clear terms of the letter of offer contained in **Exhibit P6**.

As I had earlier on held, the Claimant's allegation that the 1<sup>st</sup> Defendant was yet to fully put infrastructures in place in the Estate cannot be lawful justification for holding back the said amount; since it is the same money that the 1<sup>st</sup> Defendant requires to provide

infrastructures in the Estate, as provided in the letter of offer, **Exhibit P6**.

The Claimant's further contention that the losses he incurred as a result of the invasion of his house by thieves, sometimes in November, 2013, should be applied as set-off from the outstanding debt he owed the 1<sup>st</sup> Defendant, according to his letter, **Exhibit P15**, is clearly untenable for the simple reason that the contract he had with the 1<sup>st</sup> Defendant did not include provision of special security for his house within the Estate. Neither is the 1<sup>st</sup> Defendant a law enforcement agency who is charged with the duty of preventing the activities of men of the underworld, as the **DW1** correctly noted in *paragraph 14* of his *Statement on oath*.

I am therefore in no doubt that the 1<sup>st</sup> Defendant's counterclaim for the sum of ₦1,000,000.00 is clearly legitimate, proved and is accordingly granted.

The 1<sup>st</sup> and 2<sup>nd</sup> Defendants have also claimed the sum of ₦5,000,000.00 as general damages from the Claimant but failed to give any iota of evidence as to the basis of the claim. It is accordingly refused.

The 1<sup>st</sup> and 2<sup>nd</sup> Defendants also claim 10% post-judgment interest on the granted claim. In my view, this relief is justified in that the said sum of ₦1,000,000.00 had been due and payable by the Claimant to the 1<sup>st</sup> Defendant as far back as November, 2011, according to the letter of offer, **Exhibit P6**. I take judicial notice of the dwindling value of the Nigerian currency, which in effect justifies the 1<sup>st</sup> Defendant's entitlement to post-judgment interest should the Claimant fail to promptly comply with the judgment.

In the final analysis, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants' Counter Claim succeeds in part. Accordingly, I hereby order as follows:

- 1. The Claimant shall pay to the 1<sup>st</sup> Defendant the sum of ₦1,000,000.00 being outstanding balance due and payable with respect to the plot of land sold by the 1<sup>st</sup> Defendant to the Claimant, being Plot C3, Ipent VI Estate, Gaduwa District, Abuja, FCT, vide letter of offer dated 01/07/2011.**
- 2. The Claimant shall pay the sum in (1) above at the interest rate of 10% per annum from the date of this judgment until the same is finally liquidated.**
- 3. I make no orders as to costs.**

**OLUKAYODE A. ADENIYI**

**(Presiding Judge)**

**13/05/2020**

**Legal Representation:**



**Paul O. Eshiemomoh, Esq.** (*Claimant appearing in person*)

**Y. G. Haruna, Esq.** – (with **K. N. Jatau, Esq.**) – *for the 1<sup>st</sup> and 2<sup>nd</sup> Defendants.*

**3<sup>rd</sup> Defendant unrepresented**