

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**  
**HOLDEN AT ABUJA**  
**ON TUESDAY 12TH DAY OF MAY 2020**  
**BEFORE HIS LORDSHIP: HON. JUSTICE O. A. ADENIYI**  
**SITTING AT COURT NO. 14 APO - ABUJA**

SUIT NO. CV/1853/14

**BETWEEN:**

KENVICOF NIG. LIMITED ... .. CLAIMANT

**AND**

ARQUITETURA ENGENIARIA COMMERCIAL LTD. .. .. DEFENDANT

**JUDGMENT**

The *res* of this action are three units of landed properties known as **Blocks A3, A4 and A7**, situate at **Copa Cabana Estate, Wumba District, Abuja**. The Claimant claimed to have purchased the units of properties originally from three different individuals to whom she claimed the Defendant sold at various times in 2008, through her agents, **Saraha Homes**

**Limited.** The Claimant further contended that sometime in 2012, the Defendant demanded from her, outstanding payments on the plots and further disrupted her construction activities on the plots. As a result, the Claimant got the Police involved and both parties thereafter resolved that the Claimant paid the sum of ₦15.5 Million to the Defendant in final settlement of the outstanding payments, which the Claimant purported to have settled. According to the Claimant the Defendant thereafter continued to make demands of yet another outstanding sum of ₦65 Million from her on the three plots; and had continued to disrupt her quiet enjoyment of the plots, by further threatening to sell the plots.

Being apprehensive of the Defendant's threats and aggrieved of her actions, the Claimant commenced the present action, vide Writ of Summons and Statement of Claim filed in this Court on

23/06/2014, whereby she claimed against the Defendant, the reliefs set out as follows:

- 1. A declaration that the Plaintiff is the rightful and beneficial owner of the property described as Blocks A3, A4 and A7, Copa Cabana Estate, Cadastral Zone B03, Wumba District, Abuja.***
- 2. A declaration that the Defendant having received the sum of ₦15,500,000.00 (Fifteen Million Five Hundred Thousand Naira) only on 22<sup>nd</sup> February, 2012, from the Plaintiff as full and final payment, the Defendant is estopped from demanding further money from the Plaintiff.***
- 3. A declaration that the Defendant is not entitled to the sum of ₦69,000,000.00 (Sixty Nine Million Naira) only demanded from the Plaintiff or any sum at all.***
- 4. A declaration that the Plaintiff is not indebted to the Defendant in whatsoever manner with respect to the purchase of the properties properly described as***

**Blocks A3, A4 and A7, Copa Cabana Estate, Cadastral Zone B03, Wumba District, Abuja.**

**5. An order of this Honourable Court restraining the Defendant either by itself and/or its agents, privies, servants, member and/or successors however so called from further Molesting, intimidating, harassing, interfering and or engaging in any act that will run contrary to the Plaintiff's Right to possession on the Plaintiff's properties properly described as Blocks A3, A4 and A7, Copa Cabana Estate, Cadastral Zone B03, Wumba District, Abuja.**

**6. An order of Perpetual Injunction restraining the Defendant, its agents, servants, privies, or through any person or persons however harassing, embarrassing, intimidating, oppressing, the Plaintiff, its agents, servants, privies, workers or through any person or persons however working/residing in the property described as Blocks A3, A4 and A7, Copa Cabana Estate, Cadastral Zone B03, Wumba District, Abuja.**

7. **An order of Perpetual Injunction restraining the Defendant either by itself, its agents, servants, members or assigns from converting/further converting, selling or attempting to sell and or interfere in any way with the Plaintiff's property properly described as Blocks A3, A4 and A7, Copa Cabana Estate, Cadastral Zone B03, Wumba District, Abuja in whatever manner.**
8. **The sum of ₦10,000,000.00 (Ten Million Naira) as general and aggravated damages.**
9. **The cost of this action assessed at ₦5,000,000.00 (Five Million Naira).**

The Defendant joined issues with the Claimant. By the operative Amended Statement of Defence and Counter Claim filed by the Defendant on 15/05/2018, pursuant of the order of this Court of 09/05/2018, the Defendant contended that **Saraha Homes Limited** was only a marketing agent whose instructions did not exceed selling application Forms

to prospective property buyers at **Copa Cabana Estate**; that the said **Saraha Homes Limited** had no authority to enter into contracts with the Claimant or any prospective house buyer for purchase of houses at the Estate; that she issued fresh offers to the Claimant with respect of purchase of the properties in dispute in this suit but that the Claimant failed to pay the sum of ₦75,000,000.00 for which the houses were offered to her. Whereof the Defendant in turn Counter claimed against the Claimant as follows:

- 1. A declaration that the Defendant is not bound by the purported agreement imposed on it under duress and threat by the Plaintiff using the Special Anti-Robbery Squad (SARS) Police officers loyal to the Plaintiff's directors.***
  
- 2. Injunction restraining the Plaintiff by itself, its agent, servant and/or privies or however from further claiming ownership or possession of Blocks A3, A4***

*and A5 situate at the Defendant's Copa Cabana Estate, plot 5 Cadastral Zone, Wumba District, Abuja.*

**IN THE ALTERNATIVE**

- 3. An order compelling the Plaintiff to pay the Defendant the sum of ₦71,100,000 (Seventy- One Million, One Hundred Thousand Naira) net for Blocks A3, A4 and A7 situate at Copa Cabana Estate, Wumba District, Abuja which the Plaintiff expressed interest to purchase.***

The Claimant filed a Rely to the Defendant's Statement of Defence and Defence to Counter – Claim on 01/02/2016.

At the plenary trial the Claimant called three witness. The **PW1** is **Eddie Onyile Onofiok**, Director in the Claimant company. He adopted two statements on oath deposed to in support the Claimant's claim. He tendered a total of twenty seven (27) sets of documents in evidence. The Claimant's other two witnesses were summoned by *subpoena*. They are

**Anselem Okere** and **Ethel Odimegwu**. Both witnesses gave oral evidence and claimed to have sold houses they respectively bought from **Saraha Homes**, subject of dispute in this case, to the Claimant at the material time. The Claimant's three witnesses were subjected to cross-examination by the Defendant's learned counsel.

The Defendant in turn called a sole witness by name **Solomon Adeyemi Adekunle**, one of her Directors. He adopted his written statement on oath as his evidence-in-chief. The only document he sought to tender in evidence was rejected on grounds of lack of pleading. He was in turn subjected to cross-examination by the Claimant's learned counsel.

Upon conclusion of plenary trial, parties filed and exchanged their written final addresses pursuant to the **Rules** of this Court.



In the final address filed on behalf of the Defendant/Counterclaimant on 24/12/2018, by **Akinyemi Olujinmi, Esq.**, of counsel, two issues were formulated as having arisen for determination in this suit, namely:

- 1. Whether the purported sale of Blocks A3, A4 and A7, Copa Cabana Estate to PW2, PW3 and Suraja Mato by Saraha Homes Limited is valid and binding on the Defendant.***
- 2. Whether there exists a valid and subsisting contract of sale in respect of Blocks A3, A4 and A7, Copa Cabana Estate, Abuja between the Plaintiff and the Defendant to entitle the former to the reliefs sought in this suit.***

The Claimant in turn filed her final address on 25/01/2019, wherein her learned counsel, **J. J. Usman, Esq.**, formulated a broad sole issue for determination in this suit, namely:

***Whether the Plaintiff has proved its case against the Defendant and it is entitled to the reliefs sought.***

The Defendant thereafter filed a Reply on points of law in response to the Claimant's final address on 01/02/2019.

Upon a calm appraisal and consideration of the totality of the pleadings filed by the parties, the admissible evidence adduced at the trial; and the totality of the circumstances of this case, it seems to me that the issues that have arisen for determination in this suit, without prejudice to the issues formulated by the respective learned counsel for the contending parties, are:

- 1. Whether the Claimant established that Saraha Homes Limited acted as agent for or on behalf of the Defendant with respect to sale of Blocks A3, A4 and A7, Copa Cabana Estate, the properties in dispute in this suit, to the Claimant's purported vendors?***

2. *Whether or not the Claimant established that she fully discharged her contractual obligations to the Defendant with respect to the properties in dispute in order to be entitled to the reliefs claimed?*
3. *Whether or not the Defendant established her entitlement to her Counter-Claim?*

In determining these issues, I had carefully considered the totality of the arguments canvassed by learned counsel on both sides in their written addresses and their oral adumbrations. I shall endeavour to make specific reference to learned counsel's arguments as I deem needful in the course of this judgment.

### **ISSUE ONE:**

**DID THE DEFENDANT AUTHORIZE SARAHA HOMES LIMITED TO SELL THE PROPERTIES IN DISPUTE ON HER BEHALF?**

The properties in dispute in this case are described as **Blocks A3, A4 and A7, Copa Cabana Estate, Cadastral Zone B03, Wumba District, Abuja.**

In paragraph 3 of her Statement of Claim, the Claimant conceded that the Defendant owned **Copa Cabana Estate**, where the properties in dispute are located. The Defendant in turn affirmed this position in paragraph 1 of her Amended Statement of Defence. As such the fact that the Defendant is the owner of **Copa Cabana Estate** needs no further proof. In other words, the Defendant's title to the expanse of land on which the said **Copa Cabana Estate** is built is not contested. I so hold.

The Claimant further pleads in paragraph 4 of the Statement of Claim that **Saraha Homes Limited** was an agent of the Defendant for the purpose of selling the plots in dispute and developing **Copa Cabana**

**Estate** at all material times of the transactions leading to the dispute in this suit.

The Defendant denies this averment in *paragraph 3(a)* of her *Amended Statement of Defence* and contends that **Saraha Homes Limited** was only her marketing agent whose instructions was to sell application Forms to prospective buyers of houses at the said **Copa Cabana Estate** and refer such prospective buyers to her.

Since it is trite law that the burden of proof rests on the party that asserts a fact, as correctly submitted by learned counsel on both sides; it is incumbent on the Claimant to adduce satisfactory evidence to support her assertion in *paragraph 4* of her *Statement of Claim* under reference.

The **PW1**, a Director in the Claimant company, testified that pursuant to a Board Resolution of the Claimant of 4<sup>th</sup> June, 2009, which Resolution he

tendered in evidence as **Exhibit P1**, he was appointed to undertake all transactions in connection with the purchase of five (5) duplexes from the Defendant at the **Copa Cabana Estate**.

The **PW1** further testified that the properties in dispute, **Blocks A3, A4 and A7** were originally sold by **Saraha Homes Limited** to three different individuals, namely **Ethel Odimegwu (PW3); Anselem Okere (PW2)** and **Surajo Mato**; and that subsequently, the Claimant purchased the properties in dispute from these three individuals.

According to the **PW1**, **Saraha Homes** sold **Block A3** to **Ethel Odimegwu** for a total sum of **₦5,000,000.00**; out of which the said **Ethel** paid a total of **₦2,500,000.00** to **Saraha Homes** on **19/05/2008**; whilst the balance of **₦2,500,000.00** was paid to the Defendant on **25/03/2009**.

The **PW1** also testified that the said **Block A3** was vacant when the same was sold by **Saraha Homes** to **Ethel Odimegwu** and that it had been developed to a certain level before **Ethel** sold to the Claimant.

In support of his oral testimony on the foregoing, the **PW1** tendered in evidence as **Exhibit P21**, copy of Application Form filled by **Ethel Odimegwu** on 19/05/2008, indicating interest to purchase a 4 bedroom duplex from **Saraha Homes (Nig.) Ltd.**

The witness further tendered in evidence as **Exhibits P2F, P2G** and **P2H** respectively, the original official receipts issued by **Saraha Homes (Nig.) Ltd.** to **Ethel Odimegwu** for the payment of cash sum of ₦10,000.00 on 19/05/2008 (for Application Form); the sum of ₦600,000.00 on 19/05/2008; and the sum of ₦1,900,000.00 also on 19/05/2008 as payment for 4 bedroom duplex.

The Claimant further tendered in evidence as **Exhibit P18**, original Allocation Letter dated 3<sup>rd</sup> November, 2008, issued by **Saraha Homes** to **Ethel Odimegwu** by which the said 4 Bedroom Detached Duplex, **Block A3**, situate at **Copa Cabana Estate**, was allocated to him at a cost of ₦25,000,000.00.

With respect to **Block A4**, the **PW1** testified that the plot was empty when the same was sold by **Saraha Homes** to **Anselem Okere**; that **Anselem** paid the sum of ₦2,500,000.00 to **Saraha Homes** on 19/05/2008; that **Anselem Okere** developed the plot to a point before selling the same to the Claimant.

To support his oral testimony, the **PW1** tendered in evidence as **Exhibit P22**, copy of Application Form filled by **Okere Anselem** on 19/05/2008, indicating interest to purchase one unit of 4 bedroom duplex from **Saraha Homes (Nig.) Ltd.**



The witness further tendered in evidence as **Exhibits P2J** and **P2I** respectively, the original official receipts issued by **Saraha Homes (Nig.) Ltd.** to **Anselem Okere** for the payment of cash sum of ₦10,000.00 on 19/05/2008 (for Application Form); and the sum of ₦2,500,000.00 on 19/05/2008, as part payment for 4 bedroom duplex.

The **PW1** further tendered in evidence as **Exhibit P2E**, receipt issued on 22/05/2008 to **Mr. Anselem Okere** for the sum of ₦260,000.00, being payment for excavation, building plan and supervision fee.

With respect to **Block A7**, the **PW1** also testified that the vacant plot of land was originally sold by **Saraha Homes** to **Surajo Mato** who made a payment of ₦3,000,000.00 on 21/07/2008; and that the said **Surajo Mato** developed the property to a certain level before selling the same to the Claimant.

In support of his oral testimony in this regard, the witness tendered in evidence as **Exhibit P19**, original Allocation Letter dated 28<sup>th</sup> August, 2008, issued by **Saraha Homes** to **Suraja Mato** by which the said 4 Bedroom Detached Duplex, **Block A7**, situate at **Copa Cabana Estate**, was allocated to him at a cost of **₦25,000,000.00**.

According to the **PW1**, the said **Ethel Odimegwu** later sold his interest in **Block A3** to the Claimant on 27<sup>th</sup> January, 2009, for the sum of **₦23,000,000.00**; whilst on the same date **Anselem Okere** sold his interest in **Block A4** to the Claimant for the same sum of **₦23,000,000.00**; whilst **Surajo Mato** sold his interest in **Block A7** to the Claimant on 12<sup>th</sup> January, 2009, for the sum of **₦19,000,000.00**.

Although the **PW1** testified that the said original allottees respectively donated Powers of Attorney to her and executed Deeds of Assignment to her with

respect of the three plots, the only admissible documentary evidence he tendered with respect to the purported sale was copy of receipt issued by **Suraja Mato** to the Claimant on 13/01/2009, for the payment of **₦19,000,000.00** as full payment of one unit of 4 bedroom duplex at **Copa Cabana Estate**, to the Claimant.

The witness further testified that the Claimant was in peaceful possession of the properties until sometime in August, 2011, when the Defendant began to disturb and threaten her possession of the properties and the ongoing construction thereon, on the ground that there were outstanding payments to be paid on the properties; as a result of which the Claimant had to petition the Commissioner of Police, FCT Command. In further support of her claim, the Claimant caused to be summoned by *subpoena*, **Messrs. Anselem**

**Okere** and **Ethel Odimegwu**, to give oral testimonies.

In his testimony, **Mr. Anselem Okere (PW2)**, stated that it was **Ethel Odimegwu** that informed him sometime in 2008, that **Saraha Homes** was selling empty plots of land at **Copa Cabana Estate** for mass housing project.

He testified further that he met the Managing Director of the said **Saraha Homes**, one **Mr. Kabiru**; that after he was assured that the land was genuine, he collected application Form for the sum of ₦10,000.00; that the plot was offered to him for ₦5,000,000.00; that he was given eighteen (18) months to make the payment. He identified the receipts already tendered by the **PW1**, which were issued to him for the payments he made to **Saraha Homes**.

The witness claimed that he finished building the 4 bedroom duplex building on **Block 4** sold to him under one year, in 2009; that it was his friend, **Ethel** who convinced him to sell his property and that he sold same to the Claimant for ₦23,000,000.00; that at the time he sold **Block A4**, he informed the Claimant that he still had an outstanding sum of ₦2,500,000.00 to pay to **Saraha Homes**, which the Claimant undertook to pay.

The witness further testified that **Saraha Homes** informed him that she was acting as agents or consultants for **Copa Cabana** at the time he made the payment.

The witness also testified that the Defendant later invited him for a meeting with respect to the plot, where he informed the meeting that he had sold his interest in the plot to the Claimant; and that the

Defendant confirmed to him that the Claimant paid the balance of ₦2,500,000.00 to them.

In turn, **Mr. Ethel Odimegwu**, also on *subpoena*, testified as **PW3**. He also narrated how he saw fliers printed by **Saraha Homes** with respect to sales of plots of land at **Copa Cabana Estate**; and how he obtained an Application Form for the sum ₦10,000.00; how it was explained to him by **Saraha Homes** that the plots were vacant and that he will build on it by himself. He testified also that he was offered **Block A3** for the sum of ₦5,000,000.00 by **Saraha Homes** with an option to pay twice; that he paid an initial sum of ₦2,500,000.00; that prior to his purchasing the plot he made enquiries about the land and was made to understand that **Saraha Homes** had a joint agreement with the Defendant, the original allottee.

The witness testified further that he was taken to the site by the Engineer; that he was informed that the company Engineer shall undertake the excavation, for which he paid the sum of ₱260,000.00; that after the excavation the site was handed over to him and he began to construct his building on the land; that it was at the point of roofing that he valued the house and sold the same to the Claimant for ₱23,000,000.00; that the Claimant agreed to settle the balance of ₱2,500,000.00 which he owed **Saraha Homes** for the purchase of the house.

The **PW3** further testified that some years later he and the **PW2** were invited to a meeting by the management of **Copa Cabana Estate** over the plots sold to them by **Saraha Homes**; that they informed the meeting that they had sold their rights in the plots to the Claimant; and that the management of **Copa Cabana** confirmed to him that the Claimant had paid the balance of ₱2,500,000.00 to them.

The witness was shown the receipts issued to him for the payments he made to **Saraha Homes**, already tendered in evidence by the **PW1** and he identified them.

Now, from the evidence adduced by the Claimant's witnesses, it is not in doubt that it was not the Defendant that put the Claimant in possession of the properties in dispute. Her case is that she purchased the properties from persons to whom the Defendant's purported agent, **Saraha Homes**, sold.

I have carefully combed the totality of the evidence adduced by the Claimant's witnesses. I do not seem to find any evidence pointing convincingly to the fact that **Saraha Homes Limited** indeed acted as lawful agents of the Defendant to sell **Blocks A3, A4 and A7** respectively to the Claimant's purported vendors.

I had considered the arguments of the Claimant's learned counsel to the extent that some portions of



the pleadings of the Defendant amounted to admission of the Claimant's case. However, those arguments overlooked the nature of the claim of the Claimant before the Court. The Claimant claims four (4) declaratory reliefs in the present action. The position of the law is well settled that declaratory reliefs sought in an action are granted principally on the evidence adduced by the claimant without relying on the evidence called by the defendant. The burden of proof on the claimant to establish a declaratory relief to the satisfaction of the Court is somewhat heavy in the sense that such relief is not granted even on the admission of the defendant. The claimant must lead credible evidence in proof of the declaration of right he has invited the Court to make in his favour. In other words, even though it is an elementary rule of pleadings that what has been admitted requires no further proof, one exception to that rule is that a declaratory relief cannot be

granted without evidence; and it is not granted based merely on default of defence or on admission by the adverse party. Declarations are granted upon proof by cogent and credible evidence. See the authorities of Motunwase Vs. Sorungbe [1988] 5 NWLR (Pt. 92) 90; Kwajaffa Vs. B. O. N. Ltd. [2004] 13 NWLR (Pt. 889) 146; Ogolo Vs. Ogolo [2006] 5 NWLR (Pt. 972) 163 [also reported in [2006] All FWLR (Pt. 313) 1; Dumez Nigeria Ltd. Vs. Nwakhoba [2009] All FWLR (Pt. 461) 842.

I am also mindful that in an action for declaration, where the evidence adduced by the defendant supports the case of the claimant, the claimant is entitled in law to take advantage of it. See Anukam Vs. Anukam [2008] 5 NWLR (Pt. 1081) 455, cited by the Claimant's learned counsel.

As I had stated earlier on, the Claimant led no direct or convincing evidence to support her contention that

**Saraha Homes** from whom her supposed predecessors in title (so to say) bought the properties in dispute, had the authority of the Defendant, either direct or implied, to sell the properties.

I had examined the totality of the documents emanating from the said **Saraha Homes Limited**, including receipts of monies paid by the trio of **Ethel Odimegwu; Anselem Okere** and **Suraja Mato**, for the respective sale of **Blocks A3, A4** and **A7**, as tendered by the **PW1**. My finding is that none of the documents bore any reference to the Defendant whatsoever. Of particular relevance are the Application Forms, **Exhibits P21** and **P22**, filled by **PW2** and **PW3** respectively; as well allocation letters, **Exhibits P18** and **P19**, issued to **PW3** and **Suraja Mato**. By these documents, the said **Saraha Homes Limited** represented herself as selling the properties at **Copa Cabana Estate** in collaboration with the Federal Capital Territory Development Authority

under the Public/Private Partnership Scheme on Mass Housing Development. I make specific reference to the imprints on the Application Forms, **Exhibits P21** and **P22**. Equally in the allocation letters, **Exhibits P18** and **P19** respectively, the said **Saraha Homes** failed to indicate that she acted as agent for the Defendant in issuing the letters.

The Claimant also failed to adduce any shred of evidence to establish that the Defendant received or took benefits of the payments made by her supposed predecessors in title to **Saraha Homes**.

The **PW2** and **PW3**, to whom **Saraha Homes** originally sold **Blocks A3** and **A4** were also unable to give any satisfactory evidence that the said **Saraha Homes** acted as agent of the Defendant for the transactions.

Under cross-examination by the Defendant's learned counsel, the **PW3, Ethel Odimegwu**, testified as follows:

*“I conducted search before I bought the property (Block A3). I conducted the search at Saraha Homes office. They showed me an agreement they had with Copa Cabana, appointing them as consultants to sell the land. I did not know the details of the agreement.”*

However, the Claimant, who desired the Court to so declare that the sale between **Saraha Homes Limited** and her supposed predecessors in title to the properties in dispute was with the knowledge and consent of the Defendant, failed to produce any such agreement at the trial. Neither was **Saraha Homes**, who could have been in a better position to throw more light on the issue, called to give evidence in the case.

In the circumstances, I must hold that the Claimant has failed to discharge the legal burden on her to establish her claim that **Saraha Homes Limited** acted as agents for the Defendant, for purposes of selling the properties in dispute to her supposed predecessors in title.

The Claimant again pleaded in *paragraph 16* of the Reply to the Statement of Defence that the Defendant had ratified the acts of **Saraha Homes** by accepting money from the Claimant in completion of the financial obligations of her supposed vendors to **Saraha Homes**. The **PW1** also gave evidence along the same lines.

I had also considered arguments canvassed by the Claimant's learned counsel with respect to the issue of ratification of contract.

The doctrine of ratification by principal of acts of his agent is defined by the Court of Appeal in SPDC Vs.

Awillie-Odeleke-Okogbo & Ors. [2011] LPELR-4951(CA), cited by the Claimant's learned counsel, where it was held, per **Awotoye, JCA**, as follows:

***“Ratification is the approval of the principal of an act of its agent where the agent lacked authority to so do.”***

The Supreme Court also captured the effect of ratification in the authority of Vulcan Gases Ltd. Vs. G. F. Ind. A. G. [2001] 9 NWLR (Pt. 719) 610, where it was held as follows:

***“The effect of ratification of an agent's act is to put the parties concerned in the same position as that in which they would have been if the act ratified had been previously authorized.”***

The punch line, by my reckoning, is therefore that by pleading ratification, the Claimant has tacitly conceded that there is no direct or clear evidence to establish that the said **Saraha Homes** acted legally on behalf of the Defendant in selling the properties

in dispute to the Claimant's supposed predecessors in title in the first place. I so hold.

Now, the question that follows is whether the Claimant led satisfactory evidence of ratification in the circumstances of this case?

The only evidence adduced by the Claimant on the issue of ratification is contained in *paragraph 17* of the additional *Statement on Oath* of the **PW1** dated 01/02/2016, where he stated as follows:

***“17. That even if the transfer of the ownership to the Plaintiff by Ethel, Surajo and Anslem were wrong (which is not conceded), the Defendant has ratified same by accepting money from the Plaintiff in completion or fulfillment of the financial obligation of these three original allottees.”***

I had painstakingly examined all the receipts issued by the Defendant to the Claimant in this suit, as tendered by the **PW1**, in order to ascertain the



veracity of his oral testimony reproduced in the foregoing.

With respect to the receipt, **Exhibit P2A**, dated 22/02/2012, issued by the Defendant to the Claimant for the payment of the sum of ₦15,500,000.00, it is stated on its face that the said sum was payment for **“5 bungalows.”** I reckon that the properties in issue in this case were 3 units of 4 bedroom detached duplex and not bungalows. As such, that payment for which the receipt was issued by the Defendant has not been proven to be connected to the properties in dispute in this suit. I so hold.

Again, the **PW1** tendered in evidence the receipt, **Exhibit P2B**, issued by the Defendant on 04/02/2009 to the Claimant for the sum of ₦8,000,000.00. As stated on the face of the receipt, the payment is meant for **“Part payment for two 4 Bedroom Duplex.”** Apparently, this payment and

receipt are in relation to the two units of 4 Bedroom duplex (**Blocks A5 and A6**), which the **PW1** stated that the Claimant purchased directly from the Defendant in February, 2009.

As correctly noted by the Defendant's learned counsel, the sale of **Blocks A5 and A6** were not in contention or formed part of the cause of action in this case. As such, I must also hold that **Exhibit P2B** bears no relevance to the properties in dispute.

Again, the **PW1** tendered in evidence as **Exhibit P2C**, receipt dated 25/03/2009, issued by the Defendant to the Claimant for the sum of ₦2,500,000.00. Even though the **PW1** purported to tender the receipt as evidence of payment made by the Claimant to the Defendant, as balance for the sale of **Block A4**, owed by the **PW3** to **Saraha Homes**; however this piece of evidence seem to be at variance with the content of the receipt itself. On

the face of the receipt, the said payment is stated to be **“Part payment for 4 bedroom bungalow.”** The properties in dispute in this case are clearly not bungalows. As such the receipt cannot be said to bear relevance to the case. I so hold.

I have also examined the document, **Exhibit P4**, captioned **“AGREEMENT”**, issued by the Defendant to the Claimant on 30<sup>th</sup> January, 2009; and the official receipts issued by the Defendant to the Claimant for various payments in February, March and July, 2009, also tendered by the **PW1** as **Exhibits P4A – P4D** respectively.

**Exhibit P4** is an agreement purported to have been made between the **“Management”** of the Defendant and the Claimant for the payment of ~~₱~~16,000,000.00 **“for two plots.”** The document made no reference whatsoever to the properties in

dispute and to that extent is irrelevant to the case at hand. I so hold.

I also agree with the arguments of the Defendant's learned counsel that the **DW1** was right to have disowned the agreement by maintaining that even though the agreement was purported to have been signed by "**Management**" of the Defendant; no one is known as "**Management**" in the Defendant company. A letter that is not shown to have been signed by a named officer of a registered company, on behalf of the company cannot be accepted as a credible letter written with the authority of the company. In the circumstances, I further agree with the Defendant's learned counsel that **Exhibit P4** had no probative value and I so hold.

Again, whilst the receipt, **Exhibit P4C** makes specific reference to **Blocks A5** and **A6**; the others did not indicate any relation whatsoever to the properties in

dispute. To that extent, I further hold that the receipts, **Exhibits P4A – P4D**, bear no relevance whatsoever to the dispute between the parties in this case with respect to **Blocks A4, A5 and A7** respectively. I so hold.

Of all the payment receipts issued by the Defendant and tendered by the **PW1**, only **Exhibit P2E** was issued directly to the **PW2, Mr. Anselm Okere**, for the sum of ₦260,000.00, being payment for Excavation, building plan and supervision fee.

In my view, this receipt, standing by itself and without more, cannot be sufficient evidence that the Defendant ratified and validated the sale of the properties in dispute by **Saraha Homes** to the Claimant's supposed predecessors in title. I so hold.

In his testimony, the Defendant's sole witness, **Mr. Solomon Adekunle**, admitted that **Saraha Homes** was only a marketing agent for the Defendant,

whose instruction was only to sell Application Forms for ₦10,000.00 and to refer prospective house buyers at **Copa Cabana Estate** to her.

The witness stated categorically that **Saraha Homes** had no authority or instruction of the Defendant to sell any of her properties to anyone, including **Ethel Odimegwu, Anselem Okere and Surajo Mato**.

The witness further stated that the sums the Claimant paid to the Defendant, as shown by evidence, were appropriated to settle her indebtedness with respect to **Blocks A5 and A6** that were purchased directly from the Defendant.

Under further cross-examination by the Claimant's learned counsel, the **DW1** maintained his stance that **Saraha Homes** was merely a marketing agent with no authority to sell plots in **Copa Cabana Estate**.

Upon my evaluation of the evidence adduced by the **DW1**, I am unable to find any aspect of his testimony

that supports the contention of the Claimant that **Saraha Homes** acted as agent of the Defendant with respect to sale of **Blocks A3, A4 and A7** at **Copa Cabana Estate** at the material time; or that the Defendant ratified **Saraha Homes'** purported sales. I so hold.

Clearly, the Claimant has failed to establish that the agency mandate of **Saraha Homes** extended beyond sales of Forms to prospective buyers of plots of land at **Copa Cabana Estate**, owned by the Defendant.

I must also agree with the arguments of the Defendant's learned counsel that even if it is accepted that **Saraha Homes** acted on behalf of the Defendant, for purposes of academic postulations, the said trio of **Ethel Odimegwu, Anselem Okere** and **Surajo Mato** clearly breached the tenor of the offer letters given to them, as depicted by **Exhibits**

**P18** and **P19**, which required them to pay the sum of ₦25,000,000.00 on each property; after which formal contracts will be executed with them. Both the **PW2** and **PW3**, admitted under cross-examination that they did not pay the said sum.

As correctly submitted by the Defendant's learned counsel, when an offer is subject to a contract, the formation of the contract is postponed until the happening of the event on which the offer is conditioned. See *Bilante Int'l Ltd Vs. NDIC [2011] 15 NWLR (Pt. 1270) 407(SC)*.

In the instant case, the Claimant failed to lead any *iota* of evidence that the trio of **Odimegwu, Okere** and **Mato** complied with the tenor of the offer letter by paying ₦25,000,000.00 on each property; which would have resulted in the said **Saraha Homes** executing proper formal contracts in their favour with respect to the properties. The Claimant did not



tender any such contracts; neither did she put forward any documents of title issued to the trio by **Saraha Homes** with respect to the plots.

As noted by the Defendant's learned counsel, oral testimonies of the Claimant's witnesses that **Saraha Homes** agreed to sell the plots to them at the sum of ₦5,000,000.00 each, to the extent of such oral evidence contradicting the contents of the offer letters, **Exhibits P18 and P19**, will go to no issue; on the principle that extrinsic evidence is inadmissible to vary the terms of a written contract. See the provision of **s. 128(1)** of the **Evidence Act**. See also *Olanloye Vs. Fatunbi* [1999] 8 NWLR (Pt. 614) 203.

In that circumstance, there being no valid and enforceable contracts between **Saraha Homes** and the trio of **Odimegwu, Okere** and **Mato** over the sale of **Blocks A3, A4** and **A7** respectively; the resultant effect is that the foundation of the

Claimant's purported claim of right to the properties is clearly flawed, for the reason that her supposed vendors had no valid titles over the properties. The legal maxim of "**Nemo dat non quod habet**" meaning that "**you cannot give what you do not have,**" is squarely applicable to the circumstances of this case. On the one hand, a person can only convey to another that which he has lawfully acquired. On the other hand, where a party has divested himself of his title to land, he has nothing more in the same land to convey to another. See Adelaja Vs. Fanoiki [1990] 2 NWLR (Pt. 131) 137; Omiyale Vs. Macauley [2009] 7 NWLR (Pt. 1141) 597.

In the instant case, this legal maxim works on two fronts against the Claimant. On the one hand, the Claimant was unable to establish that **Saraha Homes** had the Defendant's authority to sell the properties to the trio of **Odimegwu, Okere** and **Mato**. In that instance, whatever transactions **Saraha Homes** had

with the trio is flawed and it followed that the purported sale made by the trio to the Claimant cannot also stand.

On the other hand, even if it is taken for granted that **Saraha Homes** had the Defendant's authority to sell the properties, the Claimant also failed to establish that there was a valid sale by **Saraha Homes** to the trio, having not shown any contracts executed by the parties in that regard. In that instant too, whatever sales purportedly made by the trio to the Claimant were empty and without any legal foundation. I so hold.

On the basis of the foregoing comprehensive analysis of the evidence adduced on record, I must and I hereby resolve issue one, as set out, against the Claimant.

## **ISSUE TWO:**

Whether or not the Claimant established that she discharged her contractual obligations to the Defendant with respect to the properties in dispute in order to be entitled to the reliefs claimed?

Now, evidence on record revealed that as it turned out, the Defendant did not allow the Claimant to undertake any further construction work on **Blocks A3, A4 and A7** purportedly sold to her by the trio of **Ethel Odimegwu, Anselem Okere and Surajo Mato**, for obvious reasons. As a result, the Claimant involved the Police to resolve the matter, according to the **PW1**. The **PW1** testified that the Commissioner of Police, FCT Command, referred the matter to Special Anti Robbery Squad (SARS), to investigate the matter; that in the spirit of peaceful resolution, parties agreed that the Claimant should pay the sum of ₦15,500,000.00 to the Defendant as full and final payment for the properties in dispute. The **PW1** tendered as **Exhibits P24 and P27** respectively

photocopies of two Skye Bank Manager's cheques, both dated 21 February, 2012, for the respective sums of ₱6,500,000.00 and ₱9,000,000.00; in favour of the Defendant, as evidence of payment of the said agreed sum. **Exhibit P2A** (also tendered as **Exhibit P3L**) is the receipt issued by the Defendant for the said sum of ₱15,500,000.00.

The case of the Claimant, according to the **PW1**, is further that after the payment, the Defendant issued fresh five Application Forms to her to cover **Blocks A3 – A7** at the rate of ₱10,000.00, which sums she paid. He stated that the fresh Forms were meant to regularize the earlier transaction **Saraha Homes** had with her vendors. The **PW1** tendered in evidence as **Exhibits P6 – P10** – the **Copa Cabana Homes** Application Booklets issued by the Defendant to the Claimant with respect to the five (5) plots; and the five (5) Application Forms freshly filled by the Claimant on 22/02/2012 for the five (5) plots, as

**Exhibits P17, P17A – P17D** respectively. The receipt issued by the Defendant to the Claimant on 21/02/2012, for payment of the sum of ₦50,000.00 for the five (5) Forms was also tendered in evidence as **Exhibit P2D**.

According to the **PW1**, the Defendant also issued fresh offer letters to the Claimant with respect to the purchase of the plots in dispute. He tendered the said letters, all dated 24 February, 2012, as **Exhibits P11** (for **Block A3**); **Exhibit P14** (for **Block A4**); and **Exhibit P13** (for **Block A7**). He also tendered as **Exhibits P15** and **P12** respectively, offer letters for **Blocks A5** and **A6**, which are not subjects of contention in this suit.

The **PW1** further testified that the Claimant accepted these fresh offers and tendered in evidence as **Exhibits P16, P16A** and **P16D** respectively, letters of acceptance all dated 25 February, 2012, issued

by the Claimant for the said fresh offers. For **Blocks A5** and **A6** not in contention, the **PW1** also tendered acceptance letters issued by the Claimant for the fresh offers as **Exhibits P16B** and **P16C** respectively.

The **PW1** further testified that upon the issuance of the offer and acceptance letters, the transactions became conclusive and that the Claimant was only awaiting issuance of title documents in her favour by the Defendant; but that to his utmost surprise, the Defendant wrote a letter on 5<sup>th</sup> February, 2014, to demand payment of the sum of ₦69,000,000.00 as the Claimant's outstanding indebtedness; that the Claimant caused her Solicitors to respond to the said letter, by letter of 17<sup>th</sup> February, 2014; and that the Defendant, in turn, through her Solicitors, also responded to the Claimant's Solicitor's said letter, by letter of 10<sup>th</sup> March, 2014. The **PW1** tendered the three letters under reference as **Exhibits P3K, P3** and **P25** respectively.

Testifying in defence of the Defendant, the **DW1** stated that the Claimant approached the Defendant sometime in 2012, to re-purchase **Blocks A3, A4 and A7** in dispute, after which the letters of offer were issued to her, after she purchased and filled the Application Forms; that the offer lapsed without the Claimant making any payment, as a result of which the Defendant retained possession of the properties and started to reconstruct the same to completion; that as a result of the Defendant's refusal to ratify the Claimant's transactions with her supposed vendors for the purchase of the properties in dispute, the Claimant became aggrieved as a result of which one of her Directors, **Mr. Victor Onofiok**, a Commissioner of Police in charge of Works Department instigated the Special Anti-Robbery Squad (SARS) to invite, arrest and detain him and another staff of the Defendant by name, **Lawrence Welle**, in respect of the disputed properties; that the



**PW1** abused his office by using the Police to intimidate, harass and coerce him to accepting the sum of ₱15,500,000.00 as payment for the three disputed properties which proposal he rejected; that the fresh offers made by the Defendant to the Claimant was based on compromise to regularize the earlier illegal transactions over the disputed properties by the Claimant.

The **DW1** further testified that after the Claimant's efforts to use the SARS to intimidate him to accept the sum of ₱15,500,000.00 as settlement sum for the disputed properties did not work, she approached the Defendant again sometime in 2014 for settlement of the dispute and that in the spirit of reconciliation, the Defendant asked the Claimant to pay the sum of ₱69,000,000.00 as against the sum of ₱75,000,000.00 contained in the offer letters issued in 2012, which the Defendant asked the Claimant to pay within twenty-one (21) days, as

captured in the Defendant's letter of 4<sup>th</sup> February, 2014 (**Exhibit P3K**).

Upon proper evaluation of the evidence of parties as recapitulated in the foregoing, there seem to be a conflict in the claim of the Claimant that the Defendant accepted the sum of ₱15,500,000.00 as full and final settlement of the disputes with respect to the properties in issue; and the status of the fresh offers given to her by the Defendant on the same properties.

It must be appreciated that the Claimant and the Defendant are limited liability companies; as such communications between them ought to be formal, as seen from various documents tendered by the **PW1** in this suit. If that is the case, the expectation of normal course of business between corporate entities is that for the parties to agree that the sum of ₱15,500,000.00 be accepted by both parties as full

and final settlement of the purchase price with respect to the disputed properties, such a vital agreement ought to be in writing. The Claimant, who has the burden to establish this fact, failed to do so.

Under cross-examination by the Defendant's learned counsel, the **PW1** merely stated that the Claimant agreed on a certain amount of money to be paid to the Defendant as settlement, which the Claimant did.

The Defendant in turn denied this assertion. The **DW1** admitted that truly the Claimant paid the sum of ~~₱~~15,500,000.00 to the Defendant but that the sum was appropriated to settle the Claimant's indebtedness with respect to other properties she purchased directly from the Defendant.

I had earlier made reference to the receipt issued by the Defendant to the Claimant for the payment of the said sum of ~~₱~~15,500,000.00, **Exhibit P2A** (or **P3L**). I had earlier on evaluated the receipt. Nothing

therein made reference to the properties in dispute. According to the endorsements on the receipt, the said sum of ₱15,500,000.00 is said to be “**payment for 5 Bungalows,**” clearly showing that it has nothing to do with the properties in dispute, which were three (3) 4 Bedroom detached duplexes.

The law is trite that oral evidence cannot be adduced to contradict the content of a document. In the circumstances, I must hold that the Claimant failed to establish that the sum of ₱15,500,000.00 she paid to the Defendant at the material time was meant as final settlement of the dispute with respect to **Blocks A3, A4 and A7** respectively. I so hold.

To further show the inconsistency in the case of the Claimant, the **PW1** tendered in evidence the fresh offer letters the Defendant issued to her with respect to the said properties – **Exhibits P11, P13 and P14** respectively. I had examined these letters. The

contents are the same except that each made reference to the particular property to which it related. It is stated clearly in the letters that the price for each house is ₱25,000,000.00 and no reference is made whatsoever in the letters that the Claimant had made any deposits or any payments whatsoever. If indeed the sum of ₱15,500,000.00 was meant to be settlement for the properties; and if indeed the offer letters were meant to encapsulate the settlement, as claimed by the **PW1** in his oral testimony; the payment, which was made on 22/02/2012, as reflected on the receipt, **Exhibit P2A**, would certainly have been captured in the offer letters, which were issued just two days later, on 24/02/2012. The principles of past consideration; canvassed by the Defendant's learned counsel; is apposite in the circumstances here and does not avail for the Claimant. I so hold.

Furthermore, the Claimant accepted the fresh offers contained in **Exhibits P11, P13 and P14**, by signing the acceptance letters on 25/02/2012, contained in **Exhibits P16, P14A and P16D** respectively.

It is an elementary principle of contract law that parties to an agreement are bound by the terms of the agreement they freely entered into. In the instant case, the moment the Claimant accepted the fresh offers made by the Defendant with respect to the three properties in contention; the Defendant being the owner of the properties; all previous agreements the Claimant made with other persons on the same properties became extinguished; and she is thereby bound by the tenor of the fresh offers, which is that each property was to sell for the sum of ₦25,000,000.00. I so hold.

It seems to me that the testimony of the **DW1** is consistent with the documents tendered by the **PW1**,

particularly the letter, **Exhibit P3K**. The **DW1** testified that it was after the fresh offers given to the Claimant lapsed and the Defendant disallowed her from taking possession of the properties; and that it was when all efforts to get the Police to coerce the Defendant to compromise failed that the Claimant again approached the Defendant for settlement which culminated in another settlement meeting at which the Defendant agreed that the Claimant could pay the sum of ~~₱~~69,000,000.00 on the properties as against the sum of ~~₱~~75,000,000.00 contained in the offer letters. The **DW1** further testified that the Claimant failed to take advantage of the new offers contained in her letter of 5<sup>th</sup> February, 2014 and as such, the original offer of ~~₱~~75,000,000.00 remains binding.

**Exhibit P3K**, tendered by the **PW1**, is the letter of 5<sup>th</sup> February, 2014 referred to by the **DW1** in his

testimony. The letter is explicit. It states in part as follows:

***“Further to our settlement meeting of the 4<sup>th</sup> instant in regard of the above subject matter, the total outstanding sum due to our Company on the three (3) properties which you are interested is in the sum of Sixty – nine million naira (N69,000,000.00) at Twenty-three million naira (N23,000,000.00) each excluding 5% VAT on the total sum. ...***

***To this end, in the true spirit of reconciliation and cessation of the unlawful harassment/intimidation of the Special Anti-Robbery Squad (SARS) in this matter at your instance, we are happy to give you 21 days grace to settle your outstanding indebtedness as detailed in this letter. Thanks.”***

Rather than complying with the tenor of this letter, the Claimant referred the same to her Solicitor, **J. J. Usman, Esq., of J. J. Usman & Co.**, who wrote the



letter dated 17<sup>th</sup> February, 2014, **Exhibit P3**, in response.

It is not denied in the letter **Exhibit P3**, that the settlement meeting of 4<sup>th</sup> February, 2014, was held, where it was agreed that the Claimant should pay the sum of ₦69,000,000.00 for the three properties in dispute, as contained in **Exhibit P3K**. **Exhibit P3** merely restated the story as told to the Solicitor by the Claimant, wherein it is contended essentially that the Claimant had paid the Defendant in full for the three properties.

I have also examined the letter dated 10/03/2014, **Exhibit P25**, by which the Defendant's Solicitor, **Akinyemi Olujinmi, Esq.**, responded to the Claimant's Solicitor's letter, **Exhibit P3**. The said letter reconfirmed the Defendant's position as contained in the letter, **Exhibit P3K**.

In the light of the evidence on record, particularly with regards to the offer letters, **Exhibits P11, P13 and P14**; the acceptance of offer letters, **Exhibits P16, P16A and P16D**; and the Defendant's letter to the Claimant, **Exhibit P3K**, respectively; the position as contained in the Claimant's Solicitor's letter, **Exhibit P3**, cannot be valid and correct as relating to the transaction between the parties in this case with respect to the disputed properties. In other words, the position of things between the parties, as related in the Claimant's Solicitor's letter, **Exhibit P3**, is clearly not supported by the overwhelming evidence on record, to the effect that parties agreed to go into fresh transactions with respect to three properties in dispute; and that the Claimant having failed to pay any sum of money to the Defendant after the fresh offers were made and accepted, is in breach thereof. I so hold.

On the basis of the analysis of the evidence on record, as undertaken in the foregoing, I must and I hereby resolve issue (2) as set out, against the Claimant.

The implication therefore is that the Claimant, having not established that she has paid the sums reserved for the disputed **Blocks A3, A4 and A7** to the Defendant; cannot in the circumstances be entitled to beneficial ownership of the properties; and consequently cannot equally be entitled to the reliefs for injunction and damages as claimed. In the final analysis therefore, the judgment of this Court is that the Claimant's claim lacked in merit and in substance. It shall be and it is hereby accordingly dismissed in its entirety.

### **ISSUE THREE:**

This issue is basically to determine whether or not the Defendant has established entitlement to her Counter-Claim.

In determining the Defendant's Counter-Claim, it is needful to point out that the issues arising therefrom have already been exhaustively dealt with in the course of determining the substantive claim; since the issues are interwoven. As such, it will be needless to engage in any further elaborate determination; save to say that the Court's findings with respect of the substantive claim are hereby adopted in determining the Defendant's Counter-Claim.

On the issue as to whether the Defendant was bound by the purported agreement imposed on her under duress and threat by the Claimant with the support of the Police SARS, to accept the sum of ₦15,500,000.00 as full and final cost of the properties in dispute; I had earlier on held that no

such agreement was established by the Claimant. Agreement for sale of land is not drawn up by words of mouth. No document was tendered whatsoever by the Claimant, who relied of such agreement, to establish that parties came to a compromise that the Defendant should accept the said sum of ₱15,500,000.00 as full payment for the properties in dispute and that the Defendant indeed received the said sum for that specific purpose.

The Defendant has also failed to establish that indeed the Claimant used the instrumentality of the Police SARS to coerce her to accept under duress, the said sum of ₱15,500,000.00 as final settlement for the properties in dispute.

Also in his testimony in response to the Counter-Claim, the **PW1** testified that the Police SARS neither determined for parties what should be paid by the Claimant and received by the Defendant nor

imposed any term or amount on the Defendant; but that it was by mutual agreement of both parties that the Defendant should accept the sum of ₦15,500,000.00 as full and final payment for the properties in dispute. Although the Claimant was unable to prove the claim of mutual agreement by both parties; neither did the Defendant also prove that the Claimant used the Police SARS to coerce her to accept a certain sum as final payment for the plots under duress. I so hold.

Even though the implication and effect of the totality of the decision of the Court in the main suit, based on findings of facts from evidence on record, is that the legal titles with respect to **Blocks A3, A4 and A7** remain and rest with the Defendant; I must however note that the Defendant has not specifically or directly claimed declaration of title over the properties in dispute. As such, the Court shall not grant any declarations or injunctions in that regard.

I have also considered the Defendant's alternative relief, asking the Court to compel the Claimant to pay the sum of ₱75,000,000.00 as costs of the disputed plots as contained in the fresh offers given to the Claimant on 24/02/2014, which she accepted on 25/02/2014.

According to the offers letters, **Exhibits P11, P13 and P14**, respectively, the offers were time bound. They were meant to lapse after four (4) weeks if no significant financial commitment is made by the Claimant. There is no evidence that the Claimant made any payment whatsoever after the offers were accepted; not even after the Defendant wrote, the letter, **Exhibit P3K**, on 05/02/2014, asking the Claimant to pay ₱69,000,000.00 within twenty one (21) days of writing the letter. The effect is therefore that the offers have lapsed and parties in that regard would be at liberty to strike a new deal in

the event that the Claimant is still interested in the properties.

On the basis of the foregoing therefore, I must equally find that that the reliefs claimed by the Defendant in the Counter-Claim are inappropriate and unsustainable. It shall be and it is hereby accordingly dismissed.

**OLUKAYODE A. ADENIYI**

**(Presiding Judge)**

**12/05/2020**

**Legal Representation:**

**J. J. Usman, Esq.** – (with **S. M. Abdullahi, Esq.;** **J. A. Sambo (Miss)** & **N. A. Idejoh (Miss)**) – *for the Claimant*

**Akinyemi Olujinmi, Esq.** – (with **Olukayode Ariwoola, Jnr., Esq.;** **Ifeoluwa Ajani (Miss);** **Oluseyi Adetomi, Esq.;** **Temitope Adeyemi (Miss);** **Adewumi Adekunle, Esq.;** **Afolabi Tolulope, Esq.** & **Babagbmileke Odugbesan, Esq.**) – *for the Defendant*