

**IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY  
IN THE ABUJA JUDICIAL DIVISION  
HOLDEN AT MAITAMA – ABUJA**

**BEFORE HIS LORDSHIP: JUSTICE SALISU GARBA  
COURT CLERKS FIDELIS T. AAYONGO & OTHERS  
COURT NUMBER: HIGH COURT TWO (2)  
CASE NUMBER FCT/HC/CV/238/2016  
DATE: 24<sup>TH</sup> SEPTEMBER, 2020**

**BETWEEN:**

**MR. JOE NDUBUISI CHUMA AJAEGBU - PLAINTIFF**

**AND**

**MRS. BOMA ATERITE - DEFENDANT**

Parties absent.

A.S. Amao for the Defendant.

Defendant's Counsel – The matter is for judgment and we are ready to take same.

## **J U D G M E N T**

By a writ of summons dated 18/11/2016 and an amended statement of claim dated 23/3/2018, the Claimant claim against the Defendant as follows:

1. An Order compelling the Defendant to forthwith hand over all title documents of Plot AMVE 1044 Apo Layout, Abuja Municipal Area Council (AMAC), FCT, Abuja and that the Defendant should forthwith put the Claimant into immediate possession and occupation of the said property.
2. An Order compelling the Defendant to forthwith pay the Claimant the sum of N1,050,000.00 (One Million, Fifty

Thousand Naira) only being the balance sum owed the Claimant by the Defendant over Plot 1904, Jikwoyi Village Extension, FCT, Abuja.

3. General damages in the sum of N20,000,000.00 (Twenty Million Naira) only for breach of contract.
4. The sum of N1,500,000.00 (One Million, Five Hundred Thousand Naira) as cost of litigation.
5. Thereafter, Ten (10%) monthly interest on the total judgment sum from the date of delivery of judgment until final liquidation thereof.
6. Any other order or orders as the court may deem fit to make.

In prove of the above claims, the Claimant filed a 16-paragraph Amended Statement of Claim dated 23/3/2018 and a 14-paragraph Reply to the Statement of Defence; the said reply is dated 17/5/2017 and called the following witnesses:

The Claimant himself testified as PW1. In his evidence-in-chief, he adopted a 17-paragraph Witness Statement on Oath dated 23/3/2018 as his evidence; the said PW1's statement on oath is accordingly adopted as forming part of this judgment.

The gist of the PW1's evidence is that sometime in 2018, the Defendant made him to believe that she had authority to sell on behalf of an undisclosed principal a parcel of land known as Plot AMVE 1044, Apo Layout, Abuja and Plot 1904, Jikwoyi Village Extension FCT, Abuja and the Claimant indicated interest to buy the two properties and the Defendant agreed to sell. The Claimant paid the sum of N950,000.00 for Plot AMVE 1044 Apo

Layout and the sum of N1,000,000.00 for Plot 1904, Jikwoyi Village Extension, Abuja to the Defendant.

It is the testimony of the PW1 that he was getting ready to develop Plot 1904, Jikwoyi Village Extension, Abuja, he discovered that the land had been encroached by persons unknown to him by building a fence and security post.

That upon enquiry he discovered that the unknown persons were also laying claim to title over the said plot. That he brought this development to the notice of the Defendant and it was resolved that the Defendant will pay him the current value of similar land within Jikwoyi. That the sum of N3,000,000.00 was agreed upon as settlement for the Jikwoyi plot only being the current value of similar plot in the area. That the Defendant has since paid the sum of N1,950,000.00 thereby leaving an outstanding balance of N1,050,000.00 which the Defendant refused to pay upon several demands.

The Claimant further testified to the effect that he was earlier given all the title documents by the Defendant over both lands but that he later handed them back to the Defendant for sorting when issues arose. However, the Defendant has since refused to return them despite repeated demand.

That the act of the Defendant has caused him a lot of losses and damages.

In the cause of PW1's evidence, the following documents were admitted in evidence as Exhibits:

1. Acknowledgment dated 15/8/2007 – Exhibit A
2. Offer of Terms of Grant/Conveyance of Approval dated 14/8/06 – Exhibit B.
3. Receipts – Exhibit C.
4. AGIS Deposit Slip – Exhibit D.
5. Acknowledgment dated 31/12/08 – Exhibit E.
6. Copy of Offer of Terms of Grant/Conveyance of Approval – Exhibit F.
7. Copy of Conveyance of Provisional Approval dated 10/11/98 – Exhibit G.
8. Copy of Declaration of Age dated 16/6/04 – Exhibit H.
9. Bank Deposit Slip dated 16/5/08 – Exhibit I.
10. Cash Receipt dated 10/11/16 – Exhibit J.

Under cross-examination of PW1 by the Defence counsel, the PW1 stated that he is claiming the sum of N1,050,000.00 from the Defendant with respect of one of the transactions. That the sum of N2,950,000.00 was involved in the two (2) transactions. One of the transactions was in respect of a land in Jikwoyi for N1,950,000.00 while the 2<sup>nd</sup> transaction was in respect of land at Apo for the sum of N1 Million.

The PW1 further stated that they had misunderstanding in respect of the transaction in Jikwoyi. The Defendant failed to put him in possession of the plot at Apo. PW1 said he arrived at a refund of N3 Million with respect to Jikwoyi's land because the transaction took place in 2008 and the payment was supposed to be in 2016.

The cost price of the land in 2016 was N3 Million. That was what the parties agreed on during the meeting with Chief Amakarie.

It is the testimony of the Claimant that the Defendant sold the land to him in 2008 but he could not do anything on the land because the land was encumbered.

And that he is asking the Defendant to give him the documents in respect of land in Apo. He is not aware that the Apo land allocation has been revoked by the government. But he was told that the people at Apo were re-located to Kubwa.

Finally, the PW1 said it was his duty to pay for the services of his lawyer.

No re-examination, PW1 was discharged.

Mrs. Ngozi Chima-Ajaegbu the wife of the Claimant testified as PW2. In her evidence-in-chief, she adopted a 14-paragraph witness statement on oath dated 25/5/2017 as her evidence; the said PW2's statement on oath is further adopted as forming part of this judgment.

The gist of the PW2's evidence is that the Claimant paid for both properties in dispute sometime in 2008 but the Defendant only delivered the title documents in 2011. And that the title documents were returned to the Defendant by the Claimant to sort out as the Power of Attorney was not signed by the Donor.

The PW2 further stated that it is the agreement of parties herein that since the property at Jikwoyi was in dispute, the Defendant

would pay the Claimant the sum of N3 Million as full and final settlement over the Jikwoyi land while the Claimant awaits the Defendant to hand over the title documents and possession for the reallocated Apo property.

Under cross-examination by the Defence Counsel, the PW2 stated that the Claimant never decline to acquire the property. They went to the site and found that the plot had been fenced with gateman's house.

That after the purchase of the land in 2008, the Defendant only handed over the paper of the plot to the Claimant in 2011; that was why the Claimant could not develop it.

PW2 stated that they agreed that the Defendant should pay the sum of N3,000,000.00 with respect to the Jikwoyi land of which the Defendant had paid the sum of N1,050,000.00.

With respect to the land at Apo, the witness stated that the defendant told them that the Minister had not sign the Certificate of Occupancy of the land at Apo Layout. That she is not aware of any revocation of allocation at Apo Layout.

Under re-examination, the PW2 stated that the N3 Million was agreed by both parties and not her expectation.

PW2 was discharged and that is the case for the Claimant.

In defence of this suit, the Defendant filed a 16-paragraph statement of defence dated 6/4/2017 and testified as the sole witness on 20/6/2019 the Defendant herself testified as the DW1.

In her evidence-in-chief, she adopted a 16-paragraph witness statement on oath dated 6/4/2017 as her evidence; the said DW1's statement on oath is accordingly adopted as forming part of this judgment.

The gist of the DW1's evidence is that the Claimant sought her assistance to acquire landed property in Abuja. She agreed and sequel to the agreement, a piece of land situate at Apo layout which is/was marked as Plot No. AMVE 1044 was acquired for the Claimant through AMAC at the total cost of N950,000.00 and the title Deed and other documents of title were delivered to the Claimant through the PW2.

That another piece of land situate at Jikwoyi was bought for the Claimant at the sum of N1 Million. It is the testimony of DW1 that no payment was paid to her by the Claimant personally, rather the payments were for the two parcels of land which were bought by the Claimant through her sometimes in 2008.

The DW1 further stated that when the land bought for the Claimant was trespassed upon by unknown person, the DW1 decided on her own to make refund of the monies paid through her by the Claimant for the subject matter of this suit in the interest of peace.

Having made the payment, the DW1 through her solicitors wrote a letter on 6/9/16 to the Claimant.

The Defendant testified to the effect that she had refunded the sum of N1,950,000.00 being the total sum of money she received

from the Claimant and she is not owing any outstanding balance of N1,050,000.00 due to the Claimant.

The DW1 further stated that she has put the Claimant into possession on both lands and that the original copy of the allocation papers are with the Claimant.

That the assistance she rendered to the Claimant in the buying of the land both at Apo and Jikwoyi were in good faith and without expectation of any monetary reward. The Defendant denied liability to all the reliefs claimed by the Claimant in this suit and urged the court to dismiss the claimant's suit.

In the cause of DW1's evidence the copy of a letter dated 10/10/2016 and CTC of Statutory Declaration of Age dated 16/6/2004 were admitted in evidence as Exhibits K and L respectively. Also copy of letter dated 26/10/16 and letter dated 6/9/16 were admitted in evidence as Exhibits M and N respectively.

Under cross-examination of DW1 by the Claimant's counsel, the DW1 stated that the transactions for the Apo and Jikwoyi land took place in the year 2008. That the payment in respect of Apo land was sent to her by Chief Amacharie while the payment for Jikwoyi land was paid into the DW1's account by the Claimant.

The Defendant further stated that she saw the owner of the land at Jikwoyi last before the institution of this suit.

The Defendant's counsel filed a written address dated 27/2/2020 wherein counsel formulated a lone issue for determination, to wit:



***“Whether on the totality of the evidence led and synthesized by both parties at the trial, the Claimant has proved his case and he is therefore entitle to judgment accordingly”***

On this singular issue, it is the submission in every breach of contract, in law is that damages are to be compensatory. What the party in breach is to compensate the other party for is the actual loss of the other party, resulting from the failure of the contract breaker to perform the contract. See HADLEY v BAX ENDALE (1854) 9 EXH 301 at 354; CBN v BECKITI CONSTRUCTION LTD (2012) All FWLR (Pt 620) 1266 at 1297.

It is submitted that from the evidence adduced by PW1 and PW2, there are material contradiction in the said evidence. It follows that the Claimant has failed to prove his case on the preponderance of evidence.

It is the contention of the Defendant that on the prayer for specific performance, it is the evidence of the Claimant that the entire parcel of land at Apo has been revoked and the allottees have been relocated to Kubwa. The Claimant confirmed it himself, what is more, the Defendant has given or delivered the necessary papers to the Claimant. The law is settled that upon performance of a contract, the parties are discharged of their obligations. Aside from the fact that the Defendant has been discharged by performance, the relief is not grantable, the allocation having been revoked by the government. See HELP (NIG) LTD v SILVER ANCHOR (NIG) LTD (2006) 5 NWLR 9Pt 972) 196 at 218/219.

On the Claim of N1,050,000.00, it is the submission of the Defendant that the claim is based on speculation. The position of the law is to the effect that such expected and/or anticipated income, to be claimable, the onus is on the Claimant to establish same by leading credible evidence to prove his entitlement to it. This, the claimant has failed to so do. See *BARAU v CUBITIS (RUG)* (1990) NWLR (Pt 152) 630 at 649.

On the claim of N20,000,000.00, it is submitted that general damages cannot be awarded in an action for breach of contract as general damages belong to the realm of torts. See *P. Z. & CO. LTD v OGEDENGBE* (1972) 1 All NLR 202.

On the claim of cost of litigation, the Claimant under cross-examination admitted that it is his duty to pay for the services of his counsel. Court is urged to so hold.

It is finally submitted that there are no legal basis for the entire reliefs been sought by the Claimant. The general principle of assessment of damages for breach of contract is that of restitution in *intergrum* as against restitution in *opulentiam*, which is not applicable to the circumstances of this case. See *NWUODU v UNIVERSITY OF BENIN* (1997) 7 NWLR (Pt 512) 325. Court is urged to dismiss this suit.

The Claimant's Counsel on his part filed a final written address dated 22/6/2020 wherein counsel also formulated sole issue for determination, thus:

***“Whether the Claimant proved his case thereby entitled to the judgment of this Honourable Court”***

On this issue, it is the submission that it is the law that facts admitted need no further proof. See *NARINDER TRUST v N.I.C.M.B. LTD* (2001) FWLR 1546 at 1558.

In the instant case, the Defendant admitted and it became established that indeed the Claimant paid her monies for the Jikwoyi and Apo properties, she later admitted that another person owns the land and went on to agree on refunding the Claimant.

It is the contention of the Claimant that he is entitled to a refund of the value of the Jikwoyi property at its current market value which the parties all agreed to peg at N3,000,000.00 only of which the Defendant only advanced him the sum of N1,950,000.00 only.

On the claim of general damages, it is submitted that the law regarding to general damages presumes damages as flowing from the wrong complained of by the victim, it need not be strictly proved. See *UBN PLC v AJABULE* (2011) 18 NWLR (Pt 1278) 152.

It is further submitted that going by the entire facts of this case, the Claimant has made out a case for general damages.

By way of special damages, the Claimant contended that he had evidence to the effect that courtesy of the act of the Defendant, he has suffered special damages in his recruitment of a law firm to prosecute this case for him. See case of *AGUNWA v ONUKWE* (1962) 1 ALL NLR 537. Court is urged to hold that the Claimant has

established that he is entitled to both general and special damages as claimed in his pleadings and evidence via the production of the receipt of payment to the law firm of Tawo & Tawo SAN & Co. for the legal services.

On the claim of 10% interest on the judgment sum, it is the submission that it is permitted by the Rules of this court. Court is referred to Order 39 Rule 4 of its Rules 2018.

It is the contention of learned counsel to the Claimant that the principle of the objective test as argued by the defendant does not help the Defendant's case. That going with the objective test no one will expect the Claimant to simply collect the same amount of money he paid for land after 8 years as a refund knowing that the value of land is rarely static but ever increasing.

On the issue on whether general damages is granted in breach of contract, it is submitted that once a breach of contract is established damages follow. See case of U.B.A. PLC v SALMAN (2018) LPELR – 45698 (CA). Court is urged to enter judgment for the Claimant.

On the part of the court, after a careful consideration of the processes filed, evidence of PW1, PW2 and DW1 and the addresses of learned counsel on both sides reveals that the case poses no complexity. The sole issue for determination by the court is whether the claimant proved his case to entitle him to the judgment of this court in his favour.

It is trite law that he who asserts must prove. Therefore, the onus is on the Claimant to establish the claim by adducing credible evidence.

It is the averment in paragraph 2 of the Amended Statement of Claim and paragraphs 4 of PW1's statement on oath that the Defendant made the Claimant to believe that she had authority to sell on behalf of an undisclosed principal a parcel of land known as Plot AMVE 1044, Apo Layout Abuja. However, there is no scintilla of evidence of such an authority given to the Defendant.

It is common grounds of the parties that the sum of N950,000.00 was given to the Defendant for the purchase of the Apo land with Plot No. AMVE 1044; while the sum of N1 Million was given to the Defendant for the purchase of land at Jikwoyi.

It is the evidence of PW1 that as he was getting ready to develop the plot at Jikwoyi Village Extension FCT, Abuja, he discovered that the land had been encroached by persons unknown to him by building a fence and a security post. That he brought this development to the notice of the Defendant and it was resolved. That the defendant will simply pay him the current value of similar land within Jikwoyi which was agreed to be N3 Million according to the PW1. That the Defendant had since paid him the sum of N1,950,000.00 leaving an outstanding balance of N1,050,000.00. However, it is the contention of the Defendant that the Claimant sought her assistance to acquire landed property in Abuja.

That through her assistance the Claimant acquired a piece of land situate at Apo layout Plot No. AMVE 1044 at the cost of N950,000.00 and the title documents were handed over to the Claimant through the PW2.

That the Claimant again through the Defendant acquired another piece of land situate at Jikwoyi at the cost of N1 Million. That as a result of the trespass into the Jikwoyi land by unknown persons, the Claimant made some unbecoming utterances as a result of which the Defendant decided on her to make refund of the monies paid through her by the Claimant for the subject matter of this suit in the interest of peace.

The Defendant refunded the sum of N1,950,000.00 being total sum of money she received from the Claimant.

The PW1 under cross-examination testified to the effect that he arrived at N3 Million because the transaction took place in 2008 and the payment was supposed to be in 2016. He also stated that one Chief Amakarie was in the meeting when the parties agreed that the defendant was to pay him the sum of N3,000,000.00.

The Claimant informed this court that the agreement was not reduced into written. I am of the considered view that the only way for the court and infact any reasonable person will come in term with the Claimant that the sum of N3 Million was agreed to be paid to him by the Defendant, is only when the said Chief Amacharie is called as a witness to clear every doubt as to what

was the agreed sum to be paid by the Defendant as refund for the Jikwoyi land.

Accordingly, the failure of the Claimant to call Chief Amakarie is fatal to his case on the strength that Chief Amacharie is a necessary witness.

Under cross-examination of the PW2, she stated that the Defendant called for a meeting at Top Rank Hotel. At the end, all the Defendant offered to pay the Claimant was the value of the land the Claimant paid in 2008 and the Claimant refused.

From the above testimony of the PW2, it follows that there was no agreement that the Defendant will pay the sum of N3 Million for the Jikwoyi land.

With respect to the land at Apo, the PW1 under cross-examination stated that he is aware that the land belongs to the government and that he was told that the people at Apo were relocated to Kubwa.

In the light of all stated above, I am of the considered view that the principal claim for the sum of N1,050,000.00 is based on speculation. The position of the law is to the effect that such expected and/or anticipated income, to be claimable, the onus is on the Claimant to establish same by leading credible evidence to prove his entitlement to it. The Claimant failed to so do.

It is not in contention that the Defendant has refunded the sum of N1,950,000.00 given to her by the Claimant.

The Defendant haven refunded the said sum of N1,950,000.00 and the Claimant haven failed to adduce credible evidence that there was an agreement by the parties that the Defendant will pay the sum of N3 Million to the Claimant, I am of the considered view that the Claimant has failed in his principal reliefs.

Accordingly, the ancillary reliefs cannot stand on nothing, its foundation having bulldozed down by non availability of credible evidence by the Claimant.

The case of the Claimant hereby fails and it is accordingly dismissed.

**(Sgd)**  
**JUSTICE SALISU GARBA**  
**(PRESIDING JUDGE)**  
**24/09/2020**

Defendant's Counsel – We have appeared for a total of 28 in this case. Consequently, I ask for N2,000 per appearance.

The Defendant has spent N550 to file his statement and the accompanied processes; and a further sum of N700.00 for filing her final written address.

We pray the court to award the cost.

Court – It is the considered view of the court that the Defendant in this circumstance is entitle to cost which is assess at N20,000.00 only.



I further ordered the Claimant to pay to the Defendant the sum of N1,250.00 being the cost of filing processes by the Defendant.

**(Sgd)**  
**JUSTICE SALISU GARBA**  
**(PRESIDING JUDGE)**  
**24/09/2020**