

IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT HIGH COURT MAITAMA –ABUJA

BEFORE: HIS LORDSHIP HON. JUSTICE S.U. BATURE

COURT CLERKS:	JAMILA OMEKE & ORS
COURT NUMBER:	HIGH COURT NO. 33
CASE NUMBER:	SUIT NO. FCT/HC/CV/1977/19
DATE:	16TH SEPTEMBER, 2020

BETWEEN:

HENRY ESEMONYEAPPLICANT

AND

**PETROLEUM AND NATURAL GAS SENIOR STAFF ASSOCIATION OF OF NIGERIA
(PENGASSAN) & 5 ORS.....RESPONDENT**

APPEARANCE

E.S. Ochenehen Esq with plaintiff J. A. Akusan Esq for the plaintiff.

Counsel (Ochenehen Esq): The matter is slated for judgment.

JUDGMENT

By a writ of Summons dated 22nd day of May, 2019 and filed on the same date, the plaintiff commenced an action against the defendants jointly and severally and claimed therein as follows:-

- A. An order of this Honourable Court declaring that the act of the Defendants not completing and handing over to the plaintiff the purchased 4- Bedroom fully detached bungalow with necessary Estate infrastructure in the PENGASSAN HOUSING Estate at Plot 25, Galadimawa District (house no 25,

B Crescent), site 3, Abuja amounts to a breach of contract the plaintiff and the Defendants entered into as disclosed in the statement of claim.

- B. An order of this Honourable Court directing the specific performance of the contract the plaintiff and the Defendants entered into as disclosed in the statement of claim.
- C. An order of this Honourable Court restraining the Defendants themselves or through any other person acting/claiming through the defendants from further selling the property disclosed in the statement of claim.
- D. An order of this Honourable Court directing the defendants to complete in full the 4-Bedroom Detached Bungalow with necessary Estate infrastructure as approved by the authorized Government Agency as described in order "A" above with complete title documents of ownership property issued by the authorized authority and handed over to the plaintiff no later than two weeks from the date of the order of this Honourable Court or Alternatively an order of this Honourable Court directing the Sum of Eleven Million Eight Hundred and Eighty Five Thousand Naira ~~₦~~11, 885,000.00 paid to PENGASSAN by Plaintiff worth 20% interest monthly from the day of last payment till date be refunded to the plaintiff with 20% interest on the total sum of Eleven Million Eight Hundred and Eighty Five Thousand Naira only ~~₦~~11,885,000.00 from the date of Judgment till final liquidation of the Judgment debt.
- E. An order of this Honourable Court directing the plaintiff to pay general damages of the Sum of Ten Million Naira Only (~~₦~~10,000,000).
- F. An order of this court commanding the Defendants to pay to the Plaintiff the Sum of One Million Naira only (1,000,000.00) as cost of this litigation.
- G. And for such other order or orders as this Honourable Court may deem just to make in the circumstance of this case.

From the records in the court's file, the 1st, 2nd and 3rd Defendants were duly served with the writ of Summons, as well as hearing notices on the 18th of June, 2019, as evidenced by acknowledgement of Service by one Achimugu Abdulmalik, Admin Assistant of PENGASSAN, at NO. 20 Lome Crescent Wuse Zone 7, Abuja, F.C.T while, the 4th, 5th and 6th defendants were served by

substituted means pursuant to an ex parte Application with motion No. M/9509/19, sought and obtained on 15th of October, 2019.

As stated earlier the Writ of Summons and all other processes in this suit were served on the 4th, 5th and 6th defendants via substituted means to wit: by pasting same at PENGASSAN office, at NO. 20 Lome Crescent, Zone 7, Abuja.

Despite being duly served with the Writ of Summons and other processes of Court including further fresh hearing Notices, the defendants were absent and unrepresented on 15th of January, 2020 when hearing commenced in this suit.

The first plaintiff witness (Pw1) is one Ayogu Nnamdi Christian Daniels, a compliance officer with United Bank for Africa (UBA) PLC. The witness (Pw1) being a subpoenaed witness testified that they were subpoenaed to come and testify in this suit and also to tender some documents.

The following Documents were tendered in evidence by the plaintiff through Pw1: They are as follows:-

- 1) A U.B.A statement of Account of ESOMONYE HENRY IFEANYICHUKWU marked as Exhibit A.
- 2) A certificate pursuant to Section 84 of the evidence Act 2011 marked as Exhibit B.
- 3) A four page transaction receipt is marked as Exhibit B1.
- 4) A payment confirmation letter issued by U. B. A dated 14th January, 2020 addressed to this court marked as Exhibit B2.

The plaintiff himself gave evidence as Pw2 on the same date which is 15th of January, 2020.

He adopted his witness statement on Oath and the following Document was tendered and admitted in evidence through him.

The document is as follows:-

- a. An Allocation letter issued by Petroleum and Natural Gas Senior Staff Association (PENGASSAN) an Affiliate of Trade Union Congress of Nigeria (TUC) addressed to Henry Esomonye dated 27th April, 2013 marked as Exhibit C.

Thereafter Counsel applied for the matter to be further adjourned for Cross-Examination of the two Plaintiff's witnesses in the interest of Justice and fairness.

The matter came up for Cross-Examination of Plaintiff's witnesses on the 16-6-2020, the defendants were absent and unrepresented and had not filed any processes to challenge this suit. Although learned plaintiff counsel applied for forclosure of the defendants right of Cross-Examination, this court did not grant Counsel's Application but rather further ordered that fresh service of the originating process and hearing Notices be served again on all the defendants, and further adjourned the matter to 25/6/2020.

Now, although the court was on official assignment and did not sit on 25/6/2020, when the matter came up for hearing/cross-examination on 30-6-2020, learned plaintiff's counsel D.S Ochene Esq informed the court that the defendants yet again were duly served with all the processes as ordered by the court but yet again failed to file any processes or appear in this matter.

Learned counsel drew the attention of the court that the court on that date was sitting in respect of this matter for the eleventh time, and the defendants attitude of choosing to disrespect the court clearly shows that they do not intend to defend this suit, counsel then applied for forclosure of both cross-examination of Pw1 and pw2 as well as defence.

The court granted the application and further adjourned the suit to 8-7-2020 for adoption of final written address.

Consequently, the plaintiff filed his written address dated and filed 3/7/2020.

Addressing the court on the 8-07-2020, learned plaintiff's counsel adopted the plaintiff's final written address and also informed the court that the said

address had been duly served on all the defendants. Learned counsel urged the court to resolve all the issues raised in their address in the plaintiff's favour.

Now, I have carefully perused the writ of Summons, the statement of claim, the reliefs sought, the unchallenged evidence of the two plaintiff's witnesses, the entire Exhibits tendered and admitted in evidence, as well as the final written address adopted by plaintiff's counsel. In my view, although the defendants have neither entered appearance nor filed any defence in this suit, the issue for determination is whether from the evidence adduced, the plaintiff has proved his case to be entitled to the reliefs sought.

It is trite law that he who asserts must prove with credible and admissible evidence. In this respect I refer to Section 131 (1) of the Evidence Act, 2011 which provides thus:-

“Whoever desires any court to give Judgment as to any legal right or liability dependant on the existence of facts which he asserts, must prove that those facts exist”.

Similarly, the Supreme Court held in the case of SOKINA VS KPONGBO (2008)7 NWLR (PT. 1080) 342 AT 362 PARAGARPHS C-E thus:-

“It behoves the appellant to give testimony in support of the pleadings if he wants to succeed in his case.

A cardinal principle of law is a plaintiff who asserts must prove his case with credible and unchallenged evidence. In civil cases a party who wishes to succeed in obtaining judgment in his favour must adduce such credible evidence for such cases are decided on preponderance of evidence and balance of probability.”

See also the case of INIAWA VS AKPABIO (2008) 17 NWLR (PT. 116) 225.

As made out in the sworn Deposition on Oath of Pw1 the plaintiffs Henry Esomonye, he informed the court that he is a former staff of SPDC (Shell Petroleum Development Company) with residential address at No. 12 Ipaye Close, Surulere, Lagos State and Boundary road Nyanya Abuja.

That the 1st Defendant is an Association of Senior Staff affiliated to the Trade Union Congress of Nigeria (TUC) with its head office at No. 288 Ikorodu Road Anthony, Lagos with an operation/liaison office at No. 20, Lome Crescent by NAFDAC Wuse, Abuja within the Jurisdiction of this Honourable Court.

In paragraphs 3-12 of the sworn deposition of Pw1, he outlined the history of the contract entered into between himself and PENGASSAN sometime in October, 2019 which is for the sale of a 4-Bedroom Bungalow in PENGASSAN Estate site 3 at Plot 25 Galadima District, Abuja at the Sum of ₦8,500,000.00 (Eight Million Five Hundred Thousand Naira) only. To which several payments were made by the Plaintiff to PENGASSAN in furtherance of the contract.

In paragraph 13 thereof, the Plaintiff states:-

“That PENGASSAN imposed an infrastructure levy unilaterally which led to a review up ward of the amount we are ordinarily expected to pay at the point of negotiation, because I had made part payment already, agreed to the upward review and I paid the total Sum of Eleven Million, Eight Hundred and Eighty Five Thousand Naira only (₦11,885,000.00) for both the 4-Bedroom Detached Bungalow and infrastructures in the Estate as requested by the defendants i.e ₦2,535,000 (Two Million, Five Hundred Thousand Naira) only paid for infrastructures and ₦9, 350,000.00 (Nine Million, Three Hundred and Fifty Thousand Naira) only for the 4-Bedroom Detached Bungalow, making the total of ₦11, 885,000.00 (Eleven Million, Eight Hundred and Eighty Five Thousand Naira) only paid by me to the Defendants.”

Pw1 went on to state that despite making full and final payment for the house and Estate infrastructure, he is yet to get his house nor proper and meaningful communication to him.

Pw1 also states that after he received the provisional allocation letter as contained in paragraph 12 from the Defendants and made final payment, he went to search for the allocated building in the Estate and discovered that the said

allocated Bungalow in the provisional allocation letter is non-existent and could not be found in the Estate as allocated after waiting endlessly.

That upon this discovery, he demanded from the defendants to refund his money or a completed 4-Bedroom Bungalow Detached with its infrastructure as advertised by the defendants but all to no avail.

Pw1 informed the court that the action of the defendants has caused him untold hardship and misery even to the point of writing letters to Government agencies i.e the inspector General of Police, Chairman I.C.P.C, the D.G DSS &, the Commandant General Nigeria Security, and Civil Defence Corps (NSCDC), For intervention.

Pw1 states further that pursuant to the above, he wrote a gentle reminder and a pre-action notice through his lawyer Ochenehi Dominic & co which was duly sent to PENGASSAN through Red star Express, a letter dated 4th December, 2018 for delivery to PENGASSAN on the 7th day of December, 2018 at about 14:33 pm, which he believes was delivered to PENGASSAN by Red Star Express plc.

All these facts are succinctly captured in the plaintiffs statement of claim in support of the writ of Summons dated and filed 22-5-2019.

In paragraphs 3 to 7 of the statement of claim, the Plaintiff lists therein the 2nd-6th Defendants as follows:-

1. That 2nd defendant is the deputy National President/Chairman and Head of the 1st Defendant's project committee that handles the Housing Estate projects.
2. That the 3rd Defendant is the National Chairman/President of the 1st Defendant who sees to the day to day affairs of the Defendants as an organization.
3. That the 4th Defendant is the former National President/Chairman of the 1st defendant who monies were collected through him during his tenure as National President/Chairman for the construction and Development of the cause of action.

4. That the 5th Defendant is the former Deputy President/Chairman of the 1st Defendant who was also Head of the Project Committee of the 1st Defendant who was directly involved in the collection of money for the 1st Defendant for the development of the cause of action.
5. That the 6th Defendant is the former National Secretary General of the 1st Defendant who Heads the Secretariats of the 1st Defendants and was part of those communicating to the plaintiff and other subscribers and coordinating the collection of money for the 1st Defendant for the continuation of the Housing Estate.

Exhibits referenced and attached to the statement of claim are pleaded and marked Exhibits A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P & LB respectively.

As averred in the said statement of claim, the Documents are as follows:-

1. Exhibit A- first payment for Registration to participate and register for the Estate expression of interest.
2. Exhibit B- Bank Statement.
3. Exhibit C Evidence of payment in Bank statement.
4. Exhibit D- Evidence of payment in a Bank statement.
5. Exhibit E- Evidence of payment in a Bank statement.
6. Exhibit F- Payment Evidence in a Bank Statement.
7. Exhibit G Provisional Allocation letter.
8. Exhibit H- Minutes of meetings with PENGASSAN.
9. Exhibit I- A letter written by plaintiff's lawyers to PENGASSAN dated 10th of November, 2016.
10. Exhibit J- Letter and memo minutes of meeting with PENGASSAN dated October, 6, 2015 and February 6, 2017 respectively.
11. Exhibits K- and L- letters to PENGASSAN dated 10th of November, 2016, and 4th December, 2018 respectively.
12. Exhibit M- letter to the inspector- General of Police dated 21st July, 2017.
13. Exhibit N- letter to the Chairman ICPC, independent corrupt practices and other related offences commission dated 21st July, 2017.

14. Exhibit O- letter to the Director General DSS, Department of State security services dated 21st July, 2017.
15. Exhibit P- letter to the Commandant General, Nigeria Security and Civil Defence Corps NSCDC, dated 21st July, 2017.
16. Exhibit LB- letter to PENGASSAN delivery through Red star Express dated 4th December, 2018, for delivery to PENGASSAN on the 7th day of December, 2018 and evidence of payment of same.

Now, I have taken a critical look at all the Exhibits tendered by the plaintiff in this case, particularly Exhibit C which is a letter of provisional allocation of House A, PENGASSAN Housing Complex Plot 25 Co7, Cadastral Zone Galadimawa District, Abuja, dated April, 27th 2013, addressed to Henry Esomonye (the Plaintiff) by Petroleum & Natural Gas Senior Staff Association of Nigeria (PENGASSAN) written and signed by one Mustapha Nuhu Wali Deputy President & Chairman Project Committee, which same was Counter signed by the General Secretary. One Bayo Olowoshile.

This clearly supports the averments contained in paragraph 18 of the statement of claim as well paragraphs 12 and 16 of the sworn Deposition on Oath of the Plaintiff, which clearly shows that there was indeed an offer made to the plaintiff by PENGASSAN on the provisional Allocation in respect of the subject matter of this suit. i.e a 4-Bedroom fully detached Bungalow in PENGASSAN HOUSING ESTATE site 3, Plot 25, Galadimawa District, Abuja.

Also, according to the plaintiff, in his sworn Deposition on Oath as well as the statement of claim, he had made several payments to PENGASSAN in furtherance of the offer/agreement as stated above. Here I refer to paragraphs 8-17 of the statement of claim as well as paragraphs 4-14 of the plaintiff's sworn deposition on Oath.

Likewise, the plaintiff has tendered Exhibit A through pw1, which is his U.B.A, Bank statement showing evidence of the monies paid to PENGASSAN in furtherance of the said agreement.

According to pw1 in his testimony before the court, the said statement of account of Henry Esemoye is in respect of transactions from 20th September, 2006 to 31st December, 2018.

Likewise according to pw1, he has confirmed that the transaction passed through the Bank account of the Plaintiff to PENGASSAN as indicated in their confirmation letter i.e Exhibit B2.

The witness pw1 also informed the court that the Bank has tickets evidencing payment from plaintiff's account with No. 1001937269 to PENGASSAN as shown in Exhibit D1, the four pages transaction receipts, Exhibit B2 U. B. A confirmation letter and Exhibit-A authenticated by certificate pursuant to Section 84 of the Evidence Act i.e Exhibit B.

The evidence of both pw1 and pw2 has given credence to the documentary exhibits tendered before the court, as such serve as a hanger to access the oral testimony presented in this suit. On this premise I refer to the case of OPEYA VS OLADEDAPE (2011) 11 NWLR (PT. 1259) 505 at 533 paragraph D-G where it was held thus:-

“The law is settled that when documentary evidence supports oral evidence, oral evidence led becomes more credible. This is so because documentary evidence serves as a hanger from which to assess oral testimony.....”

The plaintiff's claims as endorsed in the writ of Summons includes a Claim for breach of contract on the part of the Defendants as well as an order of the court for specific performance.

It is clearly alleged by the Plaintiff in his statement of claim as well as his sworn deposition on Oath, that the defendants despite being fully paid for the 4-bedroom fully Detached Bungalow at PENGASSAN Housing Estate as advertised by them as well as payment of infrastructure by the plaintiff, he is yet to get his house nor any meaningful communication from the defendants and that same has caused him hardship and misery.

In the final written address of Plaintiff, particularly paragraph 2-5, learned counsel submitted that there's a valid contract between the plaintiff herein and the Defendants. Counsel submitted that it is trite that the elements of a valid contract are (a) an offer (b) acceptance (c) consideration (d) capacity to contract, and (e) intention to create legal relationship. Reliance was placed on the case of CHIEF D.S. YARO VS AREWA CONSTRUCTION LTD & ORS (1998) LPELR-3517 (SC).

Learned counsel urged the court to consider and hold that all the above elements are present in this case and to hold that the plaintiff is entitled to the reliefs sought.

Indeed, in the case of OSCAR & ANOR VS ISAH(2014) LPELR-23620 (CA), the court per AKEJU, J.C.A, at page 24, paragraph C-E, held as follows:-

“The essential elements of a valid contract or agreement are that there must be a definite offer and a definite acceptance from one party to, and by the other. There must be consideration and the parties must have intended a relationship in law.”

Furthermore, in the case of BEST (NIG) LTD VS BH (NIG) LTD (2011) 5 NWLR (PT. 1329, PAGE 95 at 127, the Supreme Court defined a contractual relationship as follows:-

“A legally binding agreement between two or more persons by which rights are acquired by one party in return for acts or forbearances on the part of the other. It is a bilateral affair which, requires the ad idem of the parties.”

Similarly, the Supreme Court in the case of BALIOL (NIG) LTD VS NAVCON (NIG) LTD (20110) LPELR, 717, held as follows:-

“The position of the law is that for a contract to exist and be valid there must be offer, acceptance and consideration. According to Halsbury’s Laws of England fourth Edition Reissue page 628 under the title “formation of contract” “A valid contract requires; (1) an agreement (2)an intention to create legal relations; and (3) consideration. There must be a

mutual intention of creating a legal relationship which will emanate from an unqualified acceptance from the offer, and a legal consideration must follow”.

Therefore, having thoroughly considered the evidence adduced by the Plaintiff in this suit, I have no doubt that all the essentials of a valid contract exist in this case, I so hold.

Now, the question to ask at this Juncture is whether the defendants have breached the said contract?

On when a breach of contract will be said to have been committed, the Supreme Court in the case of ADEDEJI VS OBAJIMI (2018) LPELR-44360, held as follows:-

“.....This is because a breach of contract is committed when a party to the contract without lawful Excuse fails, neglects or refuses to perform an obligation he undertook in the contract or either performs the obligation defectively or incapacitates himself from performing the contract.....”.

Again, in the case of LIVING FAITH CHURCH WORLWIDE, INC & ORS VS SUPERIOR CHOICE (NIG) LTD & ANOR (2019) LPELR-46501, the court of Appeal per ONYEMENAM J.C.A, held at page 20, paragraphs A-F as follows:-

“A party is in breach of a contract when he acts contrary to the terms of the contract.....”

In the instant case, it is clear from the evidence adduced by the plaintiff both oral and documentary, that he has fulfilled his own obligation under the contract for the purchase of a 4 Bedroom fully detached Bungalow at PENGASSAN HOUSING ESTATE GALADIMAWA, ABUJA.

However, from the averments contained in the statement of claim as well as the depositions in the Sworn Deposition on Oath, the Plaintiff having made full and final payments for the purchase of the said property, uptil date is yet to be given same by the defendants who it is alleged have refused to perform their part

of the obligations under the contract. Infact, by the averments contained in paragraph 16 of both the statement of claim as well as the Sworn Deposition on Oath the property in question is said to be non-existent.

According to the plaintiff several letters were written to PENGASSAN and Government organisations through his lawyers in a bid to intervene in the matter but all to no avail.

I have noted one of the letters written by plaintiff's lawyers Ochenehi Dominic & co dated 10th November, 2016 (marked Exhibit) (L) addressed to the National Chairman/President PENGASSAN Titled: Request for urgent Handover of flat (4-Bedroom) subscribed to at Petroleum and Natural Gas Senior Staff Association of Nigeria (PENGASSAN) housing ESTATE SITE 3, GALADIMAWA ABUJA, Pre-Action Notice to institute legal action.

In the body of the letter, the payment made by the Plaintiff was clearly stated in paragraphs a, b, c, d, e, and f.

Part of the letter, in the last paragraph of page 2, reads thus:-

"For your kind Notice, a total Sum of (Eleven Million Five Hundred and Sixty Thousand Naira only) 11, 560.00 was paid to subscribe to your PENGASSAN HOUSING COMPLEX in Galadimawa Abuja Site 3."

On page 3, the Second paragraph reads thus:-

"Our letter to your office is to request for the following :-

- 1. To kindly intervene and ensure the release of our client's 4Bedroom Flat in PENGASSAN Site 3, Estate Galadimawa , Abuja, within seven (7) days of the receipt of this letter.***
- 2. To kindly direct a joint evaluation of the property between our client and your organization so as to determine the balance your organization will pay back to our client or discuss additional allocation of land to the Flat in question to replace the outstanding payment due to our client.***
- 3. To kindly take this letter as a pre-action notice in the event of failure on the side of your organization".***

In the address of counsel particularly paragraphs 2: 8, 2: 9 3: 0 and 3:1, it is submitted amongst other things that the plaintiff made payment painfully to purchase a family house for his immediate family and for their use from hard earned and scarce resources.

It is further submitted that from the Documents presented to the court which *res ipsa loquitur* speak for themselves, it is unfortunate that the Defendants who are expected to protect the plaintiff are the ones who are defrauding the plaintiff since there is no house and no funds paid for the house since no certificate of occupancy/ ownership was given to the plaintiff. That because of this, the behaviour of the defendants amounts to fraud of the highest order and a breach of contract. That it is now clear that the defendants are not ready to either refund the payment made by the plaintiff nor provide him with a house.

The plaintiff in paragraph 22 of his statement of claim has averred that there has been no response to his lawyer's letter to PENGASSAN addressed to the National Chairman/President.

I also refer to paragraph 26 of the said statement of claim. The Plaintiff in his statement of claim, particularly paragraphs 20, 21, 22, 23, 24, 25 and 26 a-d and 27, as well as paragraphs 16, 17, 18, 19, 20, 21, 22, 23, and 24 (a-d) of the Sworn Deposition on Oath, has duly pleaded the issue, of fraud and given particulars to ground the plea.

Therefore, looking at the totality of evidence adduced in this case, it is my firm view that the plaintiff has not only proved breach of contract against the defendants but the allegation of fraud as well. I so hold.

On this premise please see the cases of ALIYU VS OKOYE & ORS (2018) LPELR-45429 (CA); OJIBAH VS OJIBAH (1991) LPELR-2374 (SC); OKOLI VS MORECAB FINANCE (NIG) LTD (2007) LPELR-2463 (SC).

On the claim for specific performance, it was held by the court of Appeal in the case of NWACHUKWU VS OKAELU (2015), LPELR-24276, per MBABA, J.C.A at page 37-39, paragraph E, as follows:-

“In the Supreme Court case of OHLAERI VS YUSUF & ORS (2009) LPELR- 2361 (SC) it was held thus, on when the court ought to grant specific performance” it has been established that there was existing valid agreement between the relevant parties in relation to the sale of the property in dispute, coupled with facts and circumstances on which the court can exercise its discretionary powers in equity to order specific performance of same, particularly where the agreement is ex-facie not illegal or offends public policy, the court will definitely enforce same.....”

See also the case of UNIVERSAL VOLCANIZING (NIG) (LTD) VS IJESHA UNITED TRADING & TRANSPORT CO LTD & ORS (1992) LPELR-3415 (SC). In the instant case as pointed out earlier and rightly submitted by learned counsel in paragraph 4:2 of the plaintiff’s final written address, the defendants in spite of service of court processes and appropriate hearing notices and being afforded reasonable time to enter their defence, elected not to appear in court and defend the suit which implies that they do not have any defense to this suit.

I’m therefore in agreement with learned counsel’s submission that the testimonies of the plaintiff and his witness remain unscathed, uncontradicted and uncontroverted, and that this Honourable Court ought to act on same in reaching its decision.

I also commend the case of UKWUTOK VS OGBOLO (supra) cited by learned counsel in the witness address, particularly in paragraph 4: 3 thereof, where the court held thus:-

“The Court is entitled to rely on unchallenged evidence if same is not unreasonable “.

As well as the case of MARKET INDUSTRIES LTD VS KENI (Supra) also cited counsel, where the court held, per G. A. OGUNTAPE JSC, as follows:-

“It is trite that when evidence is unchallenged and uncontroverted, the same may be accepted by the trial court for the purpose the evidence is offered provided the evidence itself is in nature credible”.

See also the case of CAMEROON AIRLINES VS MIKE .E. OTUTU (2011) I SCM 70 at 92, paragraphs C-E, per RHODES-VIVOUR JSC, who held thus:-

“My Lords, it is well settled that where evidence given by a party in proceedings is not challenged by the adverse party who had the opportunity to do so, the court ought to act positively on the unchallenged evidence before it.....”.

Therefore, on the whole, it is my considered view based on the unchallenged evidence of the plaintiff, that he has proved his case on the preponderance of evidence to be entitled to the reliefs sought.

On that note and without further Ado, I hereby resolve the issue for determination in favour of the plaintiff against the defendants.

Consequently, Judgment is hereby entered for the plaintiff against the defendants jointly and severally and it is hereby declared and ordered as follows:-

- a. The act of the defendants not completing and handing over the plaintiff the purchased 4-Bedroom Fully Detached Bungalow with necessary estate infrastructure in the PENGASSAN HOUSING ESTATE at Plot 25, Galadima District (House No. 25, B Crescent), site 3, Abuja amounts to a breach of contract the plaintiff and the defendants entered into as disclosed in the statement of claim.
- b. An order is hereby made by the Court Directing the specific performance of the contract the plaintiff and the Defendant entered into as disclosed in the statement of Claim.
- c. An order is hereby made restraining the Defendants by themselves or through any other person Acting/Claiming through the Defendants from further selling the property as disclosed in the statement of claim.
- d. The defendants are hereby ordered/directed to complete in full the 4-Bedroom Detached Bungalow with necessary Estate infrastructure as approved by the authorized Government Agency as described in

order” A” above with complete title documents of ownership properly issued by the authorized authority and handed over to the plaintiff no later than two weeks from the date of the order of this Honourable Court. Or ALTERNATIVELY, this Honourable Court hereby orders/Directs. The Sum of Eleven Million, Eight Hundred and Eighty-five Thousand Naira (~~₦~~11, 885,000.00) paid to PENGASSAN By the Plaintiff worth 20% interest monthly from the day of last payment till date be refunded to the plaintiff with 20% interest on the total Sum of Eleven Million, Eight Hundred and Eighty-Five Thousand Naira only (~~₦~~11, 885,000.00) from the date of Judgment till final liquidation of the Judgment debt.

- e. The Defendants are hereby Ordered/Directed to pay general damages of the sum of ₦8,000,000.00 (Eight Million Naira only)
- f. The Defendants are Ordered/Directed to pay the Plaintiff the Sum of ₦500,000.00 as cost of this litigation.

Signed

HON. JUSTICE SAMIRAH UMAR BATURE.

16/09/2020.

Plaintiff's counsel: We are very grateful.