IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION
HOLDING AT MAITAMA
BEFORE HIS LORDSHIP: HON. JUSTICE H. B. YUSUF

SUIT NO: FCT/HC/CV/234/2007

BETWEEN:

TRANSPROJECT NIGERIA LIMITED ……..PLAINTIFF

AND

1. HON. MINISTER, FEDERAL CAPITAL TERRITORY)
2. FEDERAL CAPITAL DEVELOPMENT AUTHORITY)
3. SONA BEVERAGES LIMITED).DEFENDANTS

JUDGMENT

This suit was originally commenced against the 1st and 2nd Defendants before my learned brother Garba, J. sometimes in 2007. Before the matter proceeded to trial, the Defendants filed a notice of preliminary objection challenging the jurisdiction of the Court. The objection was upheld by His Lordship and the Plaintiff's suit was dismissed in its entirety. On appeal to the Court of Appeal, the Ruling of His Lordship Garba J. was upturned and the file returned to this Court for trial denovo.

The facts of this case as may be garnered from the Further Amended Statement of Claim filed by the Plaintiff's Company, is that sometimes in 2005 the 1st and 2nd Defendants offered to the Plaintiff under the FCT Accelerated Development Scheme, Plot 43 measuring approximately 2000 Hectares and situate in Cadastral Zone C16 Phase 3 within Idu Industrial Area, Idu District, Abuja. Parties executed a Development Lease Agreement dated 15/12/2005 (Exhibit TN1). The agreement was duly registered at the Land Registry on 25/05/2006 (Exhibit TN1A). In line with the Development Lease Agreement, the Plaintiff forwarded building plans (Exhibit TN3) to the 2nd Defendant for approval which approval was conveyed vide a letter dated 22/11/2006 (Exhibit TN4) with a directive that the Plaintiff pay a fee of N672,974.10k (Six Hundred and Seventy-Two Thousand, Nine Hundred and Seventy-Four Naira, Ten Kobo) for the approval of the building drawing. That the Plaintiff made payment on 22/01/2007 and was duly issued a treasury receipt to cover the payment (Exhibit TN15). However, the Plaintiff was shocked when a day after the aforesaid payment was made, the 1st Defendant dispatched a letter (Exhibit TN5) to the Plaintiff stating that Plaintiff's offer has been withdrawn/revoked without stating the nature of breach leading to the withdrawal/revocation. That Plaintiff wrote a letter of appeal to the 1st Defendant (Exhibit TN8) for the restoration of its offer but it

turned out to be an exercise in futility. Plaintiff stated that it obtained preservatory Order by way of Interlocutory Injunction to preserve the res. It later turned out that the subject plot was re-allocated to the 3rd Defendant vide Exhibit D3 and a Certificate of Occupancy (Exhibit D6) issued in favour of the 3rd Defendant to cover the allocation.

The Plaintiff then filed this action against the Defendants to enforce its right and interest over the subject plot. By paragraph 26 of its Further Amended Statement of Claim, the Plaintiff seek the following reliefs:

1. **A DECLARATION that the Plaintiff is entitled to the Statutory right of Occupancy over the property lying, being, situate and known as Plot No. 43 within INDUSTRIAL AREA 1C (16) Idu District, Phase 3, Idu Abuja covered by NEW FILE No. MISC 81966 of 12th August, 2005 pursuant to the offer of 12th March, 2005 and the Registered Lease Agreement dated 15th December, 2005 registered on 25th April, 2006 as FC 130 at P. 130 Vol. 19 and/or FCT/AMMA/DC/BP/ACC/PPP/244 dated 22nd November, 2006 measuring approximately 2.00 Hectares.**

2. **A DECLARATION that the purported "withdrawal" of the allocation of the said Plot and/or revocation of same as evidenced by the letter of withdrawal of allocation of Plot dated 11th January, 2007 is unconstitutional irregular, illegal, fraudulent, unlawful, null and void and of no effect whatsoever.**

3. **A DECLARATION that any Allocation, Offer, Lease, Sale and/or transfer of the Plaintiff's interests in the property in dispute to the 3rd Defendant(s) or any person whatsoever by the 1st and 2nd Defendants prior to and/or while this suit is pending is unconstitutional, illegal and contempt of this Honorable Court, and the Court of Appeal particularly in the face of (a) Pending suit (b) An Appeal (c) An Order of injunction Pending Appeal granted on the 27th April, 2009.**

4. **AN ORDER setting aside the purported withdrawal and/or revocation of the said plot by the Defendants.**

5. **AN ORDER setting aside any allocation, offer, Lease and/or Sale by the 1st and 2nd Defendants of the Plaintiff's Plot in dispute to the 3rd Defendants or any other person(s) whatsoever inconsistent with the Plaintiff's interest.**

6. **AN ORDER for the Rectification of the Register of Deeds in favour of the Plaintiff's interest over the property.**

7. **A MANDATORY ORDER compelling the Defendants to pull down and remove any and all the structure purportedly erected by them on the Plot in dispute.**

8. **AN ORDER of perpetual injunction restraining the Defendants whether by themselves, agents, servants, privies whomsoever and however defined from tampering with the said property and/or interference with the Plaintiff's existing interests.**

9. **₦500,000,000.00 (FIVE HUNDRED MILLION NAIRA) EXEMPLARY DAMAGES for Trespass.**

ALTERNATIVELY

1. **A DECLARATION that the Defendants are in breach of the terms of the registered Lease Agreement between Defendants and the Plaintiff dated 15th day of December, 2005 and registered on 25th April, 2006 at the Defendants Lands Registry FC 130 at page 130 Vol. 19 at 8.25 am and/or FCT/AMMA/DC/BP/ACC/PPP/244 dated 22nd November, 2006 measuring approximately 2.00 Hectares.**

2. **₦1,000,000,000.00 (ONE BILLION NAIRA) SPECIFIC AND GENERAL DAMAGES for Breach of contract in the Lease agreement between the parties dated 15th December, 2005.**

PARTICULARS OF SPECIAL DAMAGES

(i) ₦1,000,000.00 (One Million Naira) paid vide Bank of the North Ltd Bank Draft No. 00050320 of 4/10/2005 for allocation.

(ii) ₦21,000.00 (Twenty One thousand Naira), only paid vide AGIS Deposit slip Teller No. 322 dated 23/11/2005 being charges for Opening the file for the Plaintiff by the Defendants.

(iii) ₦672,972.10k (Six Hundred and Seventy Two thousand, Nine Hundred and Seventy Four Naira, Ten kobo) vide AMMAC (DC) Revenue Receipt No. 0000009949 dated 22/1/2007.

(iv) Consultancy Fees for Architects, QS, SE, ME and EE: ₦90,070,799 (Ninety Million, Seventy Thousand, Seven Hundred and Ninety Nine Naira, seventy Six Kobo.

(v) ₦50,000.00 (Fifty thousand Naira) cost awarded by the Court of Appeal in appeal No. CA/A/88/2011.

_____

Total ₦91,814,773.83k.

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3. **21% interest rate on the specific Damages in items (i) – (iv) from the date of each payment thereof until the judgment debt is liquidated.**

4. **10% statutory interest rate on the alternative reliefs 1, 2 and 3 from the date of judgment until the judgment debt is liquidated and/or satisfied.**

5. **Cost of this suit assessed as N50,000,000.00 fifty Million Naira) only.**

The 1st and 2nd Defendants actively participated in the trial of this case, although they did not file pleadings. As a matter of fact, they had ample opportunity to file a defence to the Plaintiff's claim but opted to do otherwise. They were accordingly foreclosed by an Order made on 04/11/2018 upon the application of the learned counsel to the Plaintiff. The 3rd Defendant filed a 36-paragraphs Statement of Defence, where it contended that it acquired interest in the disputed property after the revocation of Plaintiff's title and before the presentation of this action, thereby setting up a defence

of innocent purchaser for value without notice of defect in title of its grantor.

At plenary, the Plaintiff's Company called one Barr. Musa Shugaba Abdullahi (PW1), who is a Director in the Plaintiff's Company and tendered documents marked as Exhibits TN1 to TN20. Attempt by the Plaintiff to tender a document titled "Consultancy Fees Calculation" was resisted by the Defendants, the document having failed the test of admissibility. The document was rejected and marked Exhibit TN1 rejected. The PW1 was duly cross-examined by the learned counsel for the 1st and 2nd Defendants and 3rd Defendant respectively. Similarly, Meenakshi Sundaran, the Project Manager of the 3rd Defendant testified as DW1 and tendered Exhibits D1 to D7 whereupon he was cross-examined on behalf of the Plaintiff. The 3rd Defendant also subpoenaed Mr. Zacchaeus Akano, a Principal Estate Officer with the 2nd Defendant who testified as DW2.

In the final written address filed on behalf of the 3rd Defendant Mr. Richard Ebie of counsel identified six (6) issues for determination. The issues are:

1. **Whether the Development Lease Agreement dated 15th December, 2005, between the Plaintiff and the 1st and 2nd Defendants transfers any legal title over Plot No. 43 within Industrial Area 1C, Idu District, Idu Abuja, to the**

Plaintiff which the Plaintiff can enforce by an action for declaration of title over the land.

2. **Whether the withdrawal/revocation of the Development Lease Agreement dated 15th December, 2005 by the 1st and 2nd Defendant is not proper in the light of the Plaintiff's failure to comply with a fundamental term of the contract within the stipulated time.**

3. **Whether compliance with the Development Lease Agreement dated the 15th of December, 2005 between the Plaintiff and the 1st and 2nd Defendants was not a condition precedent to a grant of Statutory Right of Occupancy to the Plaintiff.**

4. **Whether the Plaintiff is entitled to its claim for specific performance or damages for a breach of contract.**

5. **Whether the 3rd Defendant has not acquired lawful title to Plot No.43 within Industrial Area 1c, Idu District, Idu, Abuja, it being an innocent purchaser for value without notice.**

6. **Whether by virtue of the Development Lease Agreement dated the 15th of December, 2005 (Exhibit TN1 & TN1A) the Plaintiff had any enforceable legal title over Plot No.**

43 within Industrial Area 1C, Idu District, Idu, Abuja, at the time interest in the land was transferred to the 3rd Defendant.

In a related development, Mr. Josiah Daniel-Ebune, of counsel to the Plaintiff is of the view that two issues are germane to the determination of this matter, to wit:

1. **Whether the Notice of Revocation, Exhibit TN5, issued by the 1st and 2nd Defendants is and/or valid to extinguish the Plaintiff's Statutory Right in the plot in dispute.**
2. **Whether the Plaintiff has proved by cogent and credible evidence that it's not only entitled to the grant of the Statutory Right of Occupancy over the plot in dispute, in the absence of failure of the 1st and 2nd Defendants to discharge the burden of valid Revocation but that between it and the 3rd Defendant, it has a better or superior claim to the plot in dispute.**

Taking into account the state of pleadings and evidence led in this case, it appears that at the bottom of the dispute is the alleged non compliance with the terms of the Development Lease Agreement (Exhibit TN1) entered into by the Plaintiff and the 1st Defendant and whether or not the withdrawal/revocation of the lease by the 1st

Defendant was valid. That being the case, it is my view that the issues that should rightly determine this case are:

1. **Whether the Plaintiff was in breach of the Development Lease Agreement (i.e. Exhibit TN1);**
2. **Whether the right of the Claimant in the Development Lease Agreement was validly revoked by the 1st Defendant;**
3. **Whether the subsequent allocation made to the 3rd Defendant by the 1st Defendant is valid.**

DETERMINATION OF ISSUES

ISSUE 1

Whether the Plaintiff was in breach of the Development Lease Agreement (i.e. Exhibit TN1).

The Law is now trite that the onus of proof is on the Plaintiff to lead cogent evidence to establish its entitlement to the relief sought. See the case of **OGBUANYINYA & ORS Vs OKUDO & ORS (1979) 6-9 S.C 32** and Section 131 of the Evidence Act, 2011 on this point of Law.

The burden of proof in this case becomes heavy and intensive as the Plaintiff has presented three separate heads of declaratory reliefs. In such situation, the Plaintiff must succeed on the strength of its case and not on the weakness of the defence. In fact, the onus on the

Plaintiff to establish its entitlement to the declaration sought will not shift even where the Defendant admits the claim of the Plaintiff or where there is default of defence. On this point of Law, see **DUMEZ NIG LTD Vs NWAKHOBA (2008) 18 NWLR (PT.1119) 361 AT 376** where the Supreme Court held thus:

> **"The burden of proof on the Plaintiff in establishing declaratory reliefs to the satisfaction of the Court is quite heavy in the sense that, such declaratory reliefs are not granted even on admission by the Defendant where the Plaintiff fails to establish his entitlement to the declaration by his own evidence."**

See also: MOTUNWASE Vs SORUNGBE (1988) 5 NWLR (PT.90) 90 and OKENIYI V. AKANJI (2002) FWLR (PT. 84) 113.

The 1st and 2nd Defendants entered into a Development Lease Agreement with the Plaintiff's Company in respect of Plot 43 measuring 2000 Hectares and situate at Cadastral Zone C16, Idu Industrial Area, Idu District, Abuja subject to terms and conditions.

Under the terms, the Plaintiff was suppose to submit drawings for approval and construct the approved structure reaching the first floor slab of the building within six months from the date the Development Lease Agreement was signed. The agreement was

duly registered and tendered as Exhibit TN1A. The Plaintiff in line with Clause 2(iii) of Exhibit TN1A forwarded building drawing to the 2nd Defendant for approval vide Exhibit TN3. Approval was granted by the 2nd Defendant and conveyed through Exhibit TN4. That Plaintiff paid the relevant processing fees and was issued treasury receipt admitted as Exhibit TN15. That Plaintiff got notice of withdrawal of its offer by the 1st Defendant a day after Exhibit TN15 was issued to the Plaintiff by the 2nd Defendant.

As stated earlier, the 1st and 2nd Defendants who are the critical parties to the resolution of Plaintiff's claim, failed to file statement of defence. The DW1 who testified for the 3rd Defendant simply harped on the point that the Plaintiff was in breach of the terms and conditions of Exhibit TN1A and the allocation to the 3rd Defendant was done after the withdrawal of Plaintiff's title. That the 3rd Defendant is an innocent party who should not be subjected to any legal injury, especially when its allocation was made before the commencement of this suit. The DW2 who is an employee of the 2nd Defendant and subpoenaed by the 3rd Defendant is in my view a vital witness. Accordingly, I take the liberty to reproduce his evidence in part, to wit:

> **"I work in Land Department of Abuja Geographic Information System. I am particularly in the Registry. I**

know the parties in this case by record. I have been shown Exhibit TN1. It is a Development Lease Agreement between Plaintiff and 1st and 2nd Defendants. I have seen this document before in the course of my official work. The conditions in paragraphs 2(x)(xi) of the Exhibit TN1 were not complied with by the Plaintiff. I have seen Exhibit TN5. It is titled "'Accelerated Development Programme Withdrawal of Allocation of Plot" dated 11/1/2007. The exhibit was written by the 1st and 2nd Defendants and the revocation was because of term of allocation of Plot 43. I have also seen and read Exhibit TN1A. It was registered on 24/4/2006. This registration was after the breach. This registration was made in error. I do not have a similar Development Lease Agreement in favour of the 3rd Defendant because I was not subpoenaed to produce the document."

Learned counsel to the 3rd Defendant in his final written address argued that the Plaintiff is a licensee and not a Lessee irrespective of the description of parties on the face of Exhibit TN1. Learned counsel is of the view that Exhibit TN1 does not confer any legal estate on the Plaintiff. Several authorities were cited by learned counsel to support his point. However, my take on this point is that Mr. Ebie of counsel to the 3rd Defendant got it wrong as he

misapplied the principle of law enunciated in those cases to the fact of the instant matter. For example, Counsel cited the case of **SHEKA Vs BASHARI (2013) LPELR – 21404 (CA)** where the Court of Appeal held inter alia that:

> **"The law is that if a licencee is given gratuitously, it is revocable by notice given at any time and in such a situation, the licensee must leave the premises otherwise he would become a trespasser as his continued occupation will be wrongful."**

With due respect to learned counsel to the 3rd Defendant, the relationship between the Plaintiff and the 1st and 2nd Defendants is very clear. The offer made to the Plaintiff vide Exhibit TN1 is not gratuitous and the intendment of parties is that it will crystallize to the issuance of Statutory Certificate of Occupancy in favour of the Plaintiff, if he met the conditions stipulated in Clause 2 of the Lease Agreement. Clause 2(x) and (xi) of the exhibit puts this point beyond peradventure. It provides that:

> **2(x) - Upon completion of the substructure i.e. reaching the first floor slab of the building, which must be completed within six (6) months from the date of signing this agreement, the Lessor will confer onto the Lessee an Offer of Statutory Right of Occupancy, which will be**

confirmed upon payment of all bills and premium at the prevailing rate per square meter of the area.

2(xi) - Upon completion of the first (1st) floor of building, which must be completed within 12 months from the date of signing this agreement, the Lessor will confer onto the Lessee a Statutory Certificate of Occupancy, which will be confirmed upon payment of all bills applicable.

The Law is settled that where the language used in an instrument is plain, the duty of the Court is to give it a simple and ordinary meaning. On this point, I refer to the case of **OLANREWAJU Vs THE GOVERNOR OF OYO STATE (1992) 9 NWLR (PT. 265) 335** where Karibi-White, JSC succinctly captured the Law thus:

"It is well settled that where the words of a statute are clear and unambiguous, the ordinary meaning of the words are to be adopted."

See also **YEROKUN Vs ADELEKE (1960) 5 FSC 126; and ABDULKARIM V. INCAR (NIGERIA) LTD (1992) 11 NWLR (PT.251) 1**.

Parties on the face of the Development Lease Agreement (Exhibit TN1), made it abundantly clear that the legal interest conferred on

the Plaintiff as Lessee under the exhibit is meant to crystallize into a statutory grant and to be duly authenticated by the issuance of a Certificate of Occupancy in favour of the Plaintiff. If that be the case, the 3rd Defendant's Counsel got it wrong when he submitted that the Plaintiff is a mere Licensee without any legally cognizable right under Exhibit TN1. This submission to say the least is strange and completely inconsistent with the clear and unambiguous language of Clause 2(x) and (xi) of Exhibit TN1 reproduced elsewhere above and I so hold.

Perhaps, I should also add that it cannot be imagined that under an agreement (Exhibit TN1) where the Plaintiff is expected to undertake construction works at a colossal sum, the 1st and 2nd Defendant can by a wave of hand dismiss Plaintiff's interest at their pleasure. It is my view that the Plaintiff has acquired an equitable interest in the disputed land especially after payment of relevant schedules of fees as dictated by the 2nd Defendant.

Learned Counsel to the 3rd Defendant has also contended in his written submission that Plaintiff was in breach of Exhibit TN1 and therefore the 1st Defendant was right in withdrawing the allocation made to the Plaintiff. Learned Counsel specifically referred the Court to Clause 2(x) and (xi) of Exhibit TN1 and submitted that Plaintiff

was in breach of the stipulations set out therein. At the risk of repetition, the Clause provides thus:

> **2(x) - Upon completion of the substructure i.e. reaching the first floor slab of the building, which must be completed within six (6) months from the date of signing this agreement, the Lessor will confer onto the Lessee an Offer of Statutory Right of Occupancy, which will be confirmed upon payment of all bills and premium at the prevailing rate per square meter of the area.**
>
> **2(xi) - Upon completion of the first (1st) floor of building, which must be completed within 12 months from the date of signing this agreement, the Lessor will confer onto the Lessee a Statutory Certificate of Occupancy, which will be confirmed upon payment of all bills applicable.**

Counsel cited several authorities to support the need to abide by the terms of contracts and the consequences of breach. Learned counsel then submitted that the Plaintiff has not shown that it satisfied the terms of Exhibit TN1. On this point of Law, Counsel called in aid the case of **BEST (NIG) LTD Vs B.H. (NIG) LTD (2011) 5 NWLR**

(PT.1239) 95 AT 116 AND EZENWA Vs OKO (2008) 3 NWLR (PT.1075) 610 AT 628.

He further submitted that the 1st Defendant acted within his power under the relevant law and under Clause 3(ii) of Exhibit TN1 when he revoked the allocation of the Plaintiff for breach of contractual stipulations. Clause 3(ii) referred to by counsel read as follows:

> **"After expiration of this lease, if the Lessee shall fail to mobilize to site and complete the sub structure on the parcel of land granted within the stipulated timeframe, the Lessor may or may not grant an extension of which the Lessor shall take over so much of the undeveloped portion of Land and pay the Lessee for the improvement thereon if any, but without prejudice to any right of action or other remedy of the Lessor for the recovery of any rent or money due to him, from the Lessee or in respect of any breach of this agreement."**

On a final note, learned counsel to the 3rd Defendant submitted that the Plaintiff is not entitled to any of its claims. That the 3rd Defendant should be treated as an innocent purchaser for value who had no notice of the prior interest of the Plaintiff and in the

circumstance, the Court was urged to affirm 3rd Defendant's interest over the subject land.

Mr. Ebune in his reaction to the submission by the 3rd Defendant, that Plaintiff was in breach of the terms and condition of Exhibit TN1A, submitted that the 3rd Defendant not being a party to the exhibit has no locus standi to contest issues relating to violation or breach of the terms of the Development Lease Agreement, let alone urge upon the Court to affirm the revocation of Plaintiff's title on that ground. He further submitted that the revocation of Plaintiff's title was done in breach of the principle of fair hearing. It was also his contention that the 1st Defendant can only revoke title to land on ground of overriding public interest. That in this case, Plaintiff's title was purportedly revoked and re-allocated to the 3rd Defendant contrary to the spirit and letters of the Law.

I have also considered the submission of Counsel to the Plaintiff that even if Plaintiff was in breach of the terms of Exhibit TN1, the available remedy opened to the 1st and 2nd Defendant is not the withdrawal of Plaintiff's offer as wrongly done in this case.

Now in order to determine whether Plaintiff was in breach of the Development Lease Agreement (Exhibit TN1), the document that will assist the Court is the contract document itself. The Law on this point is as handed down by the Supreme Court in **AGBARA Vs**

MIMRA (2008) 2 NWLR (PT.1070) 378 where it was held as follows:-

> **"If parties enter into an agreement they are bound by its terms and that either of them or the Court cannot legally or properly read into the agreement terms on which the parties have not agreed and did not agree to. As a matter of fact Section 132 of the Evidence Act state that the only admissible evidence of a contract is the contract itself although the Section recognizes exceptions. Thus if and where there is any disagreement as to what is or are the term of an agreement on any particular point, the authoritative source of information for the purpose of resolving the disagreement is of course the written agreement entered by the parties."**

See also **INTERCONTINENTAL BANK PLC Vs HILMAN & BROS WATER ENGINEERING SERVICES NIGERIA LIMITED (2013) LPELR – 20670 (CA)** where the Court of Appeal held thus:

> **"It is manifest from the authorities cited above therefore that in law, a written agreement or contract entered into by the parties thereto is binding on them. Accordingly, where there is any disagreement between the parties on a particular point, the only reliable evidence for the**

resolution of the disagreement or conflict is the written contract document of the parties. The Court will then construe the document in order to find out the intention of the parties as stated in the terms of the contract. In the resolution of the dispute between the parties, the Court is not allowed to go outside the contract document in search for an answer, but must give effect to the intention of the parties clearly expressed in the written agreement or contract. See UNION BANK OF NIG. PLC Vs AJABULE (2012) ALL FWLR (Pt. 611) p. 1413 at 1438."

In this case, I have carefully scrutinized Exhibit TN1 and I form the view that Clause 2(viii) and (ix) of the exhibit are quite germane to the resolution of this issue. It provides as follows:

CLAUSE 2(VIII)

The Lessee shall within three (3) months from the date of signing this agreement, submit building plans for approval and commence effective mobilization to site

CLAUSE 2(IX)

The Lessor will guarantee approval of properly documented building plans by the Department of

Development Control within one week from the date of submission.

The question to be determined at this point is whether the Plaintiff complied with the terms and stipulation stated above. The Plaintiff at paragraph 11 of its Further Amended Statement of Claim had pleaded as follows:

> **"Plaintiff states that on 27th October, 2006, it submitted its relevant drawings to the Defendants for their approval, to enable it commence the required development. A copy of the said application is herewith pleaded and will be relied upon at the hearing. The Defendants are hereby put on NOTICE TO PRODUCE the original at the hearing."**

Now by the express provision of Clause 2(viii) of Exhibit TN1, the Plaintiff is under a mandatory obligation to submit relevant building plans for approval within three (3) months from the date Exhibit TN1 was executed. The Plaintiff both in its pleadings and evidence led in support stated that the drawings were submitted on 27th October, 2006. I have seen Exhibit TN3 which is the acknowledgment copy of Plaintiff's letter of 27th October, 2006 titled "SUBMISSION OF DRAWING FOR APPROVAL." The letter was received by the 2nd Defendant on 30th October, 2006 as clearly

indicated by the endorsement on the face of the exhibit. Taking into account the fact that Exhibit TN1 was executed on 15th December, 2005 it then follows based on simple arithmetical calculation that Plaintiff submitted its drawing for approval ten (10) and half months after the execution of Exhibit TN1 contrary to the three (3) months agreed upon by parties. This, in my view constitutes a breach of Clause 2(viii) of Exhibit TN1.

Although the PW1 gave evidence under cross examination by the 1st and 2nd Defendants' Counsel that Exhibit TN3 was not the first drawing that was submitted by Plaintiff I am not the least impressed by this line of testimony.

The evidence of the PW1 that there was an initial submission of drawing is not supported by the pleadings of the Plaintiff. What the Plaintiff pleaded is simple and clear and it is to the effect that it submitted building drawing on 27th October, 2005. There is no pleading to suggest that Plaintiff submitted any previous drawings which were subjected to correction and undue delay. It is trite Law that any evidence led and not supported by the pleadings goes to no issue. See **GEORGE & SONS V. DOMINION FLOUR MILLS LTD (1963) 1 SCNLR 117 and MUSA & ORS V. YERIMA & ANOR (1997) 7 NWLR (PT.511) 27** on this point of Law.

Put in another way, I have no evidence of any previous submission of drawing by the Plaintiff. My final take on this point is that Exhibit TN3 is the only drawing submitted by the Plaintiff taking into account, the pleadings and evidence of the Plaintiff. If that be the case, it is clear to me that contrary to the (3) months stipulation in Exhibit TN1A, the Plaintiff submitted its drawings over 10 months after the execution of the exhibit. I therefore hold as I should that the Plaintiff was in breach of Clause 2(viii) of Exhibit TN1 which stipulated that drawing should be submitted within three months from the date of execution of the exhibit.

Plaintiff's counsel has also made heavy weather of the stipulation in Clause 3(iv) of Exhibit TN1 which is to the effect that:

> **"Provided further that notwithstanding any such default as aforesaid the Lessor may in his discretion give notice in writing to the Lessee of his intention to enforce the Lessee's stipulation herein contained and may fix any extended period for the completion of the said works in substitution for the period of …… Months hereby fixed for such completion and thereupon the obligations hereunder of the Lessee to complete the said works shall be taken to refer to such substituted period."**

The Clause in my considered view has nothing to do with submission of drawing. Rather, it has to do with the actual completion of the building work which without disputation comes after the approval of building drawings. The stipulation set out the discretionary power of the 1st and 2nd Defendants to grant extension to the Plaintiff to complete the building works where good grounds exist for such extension. It is not a condition that such notice must be served. The 1st and 2nd Defendants from the facts and circumstances of this case, have not exercised the discretion in issue in favour of the Plaintiff and it would be wrong for the Court to impose what is not part of the agreement of parties.

The Law is settled that Courts cannot re-write the contract of parties. Rather the business of the Court is to give effect to the contracts of parties. See **OIL SERVERV LTD V. L.A. IBEANU & CO. NIG. LTD 2008 2 NWLR (PT 1070)191** where the Court of Appeal held as follows:

> **"Where parties have made a contract for themselves they are bound by the terms thereof. In interpreting the contract the Court at all times should give a meaning that reflects the plain and obvious intention of the parties and should never import into the contract ideas not patent on the face of the contract. It is only when the words used are**

not clear that the Court would try to find the intention behinds the words. On no account would the Court make agreement for the parties."

As I stated earlier, the Plaintiff submitted its drawings outside the time stipulated in Exhibit TN1A. This now takes me to the effect of the approval granted to the Plaintiff after the expiration of the period given for the submission of the drawing. This question is necessary, because, the evidence before me shows that although the drawing was submitted outside the stipulated timeframe, the 2nd Defendant still granted approval to the Plaintiff as amply demonstrated on the face of Exhibit TN4 dated 22nd November, 2006. The implication of this approval is that the 1st and 2nd Defendants did not take the non-submission within the agreed timeframe as a breach. As a matter of fact, they are deemed to have waived their right to terminate the contract under the terms of the agreement.

The concept of waiver was aptly explained by Eso, JSC in **ARIORI & ORS V. ELEMO & ORS (1983) 1 SCNLR 1** as follows:

"The concept of waiver must be one that presupposes that the person who is to enjoy a benefit or who has the choice of the two benefits is fully aware of his right to the benefit or benefits, but he either neglects to exercise his right to

the benefit or where he has a choice of two he decide to take one but not both - See VYVYAN V. VYVYAN 30 Beav 65 per Sir John Romilly MR at P. 74 (Reported also in 54 ER 817). The exercise has to be a voluntary act. There is little doubt that a man who is not under any legal disability should be the best Judge of his interest. If therefore having full knowledge of the rights, interest, profit or benefits conferred upon him or accruing to him by and under the Law, but he intentionally decides to give up all these or some of them, he cannot be heard to complain afterwards that he has not been permitted the exercise of his right, or that he has suffered by his not having exercised his rights. He should be held to have waived those rights. He is, to put it in another way estopped from raising the issue. See also Halsbury's Laws of England 3rd Edn. Vol. 14 para 1175."

See also **FASADE & ORS Vs BABALOLA & ANOR (2003) 11 NWLR (PT.830) 26;** and **AUTO IMPORT EXPORT Vs ADEBAYO (2005) LPELR 642 SC.**

By their conduct, the doctrine of estoppels by conduct will be invoked against the 1st and 2nd Defendants as they are estopped from complaining of any breach by the Plaintiff. In other words, they cannot enforce the terms of Exhibit TN1A against the Plaintiff

having granted approval for development and proceeded to accept payment from the Plaintiff for building drawings after becoming aware that the Plaintiff was in breach of the Development Lease Agreement (Exhibit TN1).

ISSUE 2

Whether the right of the Claimant in the Development Lease Agreement was validly revoked by the 1st Defendant;

Under this issue, what is demanded of the Court, is whether a ground exist for the revocation of Plaintiff's allocation and whether the revocation was done in accordance with the terms of the agreement.

Now, I have found in issue 1 that failure to submit building plan or achieve a particular level of development has ceased to be a condition for revocation. If that be the case, it is my honest view that it has not been demonstrated before me that there was a basis for the revocation. The letter of revocation was just bare; no reason was given for the purported revocation.

Under Section 28 of the Land Use Act, the 1st Defendant is empowered to revoke a Right of Occupancy for either overriding public interest or breach of any conditions of the grant. However, Section 28(6) of the Act imposed a mandatory duty on the 1st

Defendant to serve notice of revocation on the Plaintiff. It is beyond dispute that the notice should set out the reason(s) for the revocation. The letter of revocation served by the 1st Defendant on the Plaintiff did not state the reason for the revocation or withdrawal of the Lease Agreement.

The Law is clear that the Governor has power to revoke a right over land for; (1) a breach of the provisions which a certificate by Section 10 of the Land Use Act is deemed to contain; and (2) a breach of any terms contained in the Certificate of Occupancy or in any special contract made under Section 8 of the Land Use Act.

See Section 28(5) (a) and (b), as well as the case of **OSHO & ANOR Vs FOREIGN FINANCE CORPORATION & ANOR (1991) 4 NWLR (PT.184) 157.**

However, where a letter of revocation does not state the specific reason for so revoking, it is invalid having not been issued in accordance with the Law.

From the established facts in this case, it is clear that there was no specification of the breach committed by the Plaintiff in the Exhibit TN5. The document is therefore null and void.

See **OSHO & ANOR Vs FOREIGN FINANCE CORPORATION & ANOR (supra) and DANTOSHO Vs MUHAMMED (2003) 6 NWLR (PT.817) 457.**

In the same way, the Law is clear that it is a contravention of right to fair hearing to extinguish a right of a party in law without having heard from him. There is no doubt from all I have said that the withdrawal of the Lease is ineffectual and I hold so.

This now takes me to issue 3 which is whether the allocation made in favour of the 3rd Defendant by the 1st Defendant is valid.

ISSUE 3

Whether the subsequent allocation made to the 3rd Defendant by the 1st Defendant is valid.

Evidence before me is that the land in dispute was allocated to the 3rd Defendant vide Exhibits D2 and D6 respectively. Mr. Ebie made frantic efforts to defend the allocation to the 3rd Defendant. He urged the Court to invoke the principle and protection inherent in the doctrine of innocent purchaser for value without notice of defect in title. I have calmly considered this line of argument and I form the firm view that Mr. Ebie got it wrong as the principle is inapplicable to the facts of this case. For ease of clarity, the point must be made

that the principle of innocent purchaser for value is only relevant where there is transfer of property from one person to another and the subsequent buyer had no notice of the defect in the title of his vendor. This point was well laid out in the case of **BEST (NIGERIA) LIMITED Vs BLACKWOOD HODGE (NIGERIA) LTD (2011) 5 NWLR (PT.1239) 95** where Fabiyi, JSC has this to say:

> **"A bona fide purchaser for value is one who has purchased property for valuable consideration without notice of any prior right or title which if upheld will derogate from the title which he has purported to acquire."**

See also the Supreme Court case of **OHIAERI Vs YUSUF (2009) 37 NSCQR 694** on this point of Law (per Tabai, JSC) to the effect that:

> **"The settled principle is that only a subsequent purchaser of legal estate for value without notice that can take priority over someone who has acquired a prior equitable interest over the same property. This is the principle in ANIMASHAUN Vs OLOJO (1990) 6 NWLR (PT.154) 111."**

In the application of the doctrine of innocent purchaser for value without notice the focus is always on an innocent purchaser. The 3rd

Defendant both in its pleading and evidence canvassed in support did not put itself forward as someone who purchased the property from any named vendor. Rather the case of the 3rd Defendant is that it derived title in the disputed property through a direct allocation made by the 2nd Defendant. If that be the case, I do not see the relevance of the doctrine of innocent purchaser for value without notice in this case. Accordingly, I overrule Mr. Ebie on this line of submission.

Now, the Law is settled on a long line of decided authority, that any allocation made by the 1st Defendant during the subsistence of a previous grant is void ab initio. I refer to the Supreme Court case of KARI **Vs GANARAM (1997) 2 NWLR (PT.488) 320 AT 400** where the Apex Court per Belgore, JSC held thus:

> **"Where there is a subsisting Right of Occupancy, it is good against any other right. The grant of another Right of Occupancy over the same piece of land will therefore be merely illusory and invalid. The Appellant's Right of Occupancy subsists up till now as it has not been revoked and the wrongful grant to the 1st Respondent has no effect whatsoever on its authenticity."**

The net effect of the foregoing decision in the light of the facts and circumstances of this case is that the allocation made to the 3rd Defendant by the 1st Defendant during the subsistence of Plaintiff's allocation is invalid. Therefore, it is liable to be and is hereby set aside. In reaching this conclusion, I am fortified by the decision of the Apex Court in **NIGERIA ENGINEERING WORK LTD Vs DENAP LTD & ANOR (2001) 12 SCNJ 251** where Ogundare, JSC stated as follows:

> **"Having held, and rightly too, in my respectful view, that the revocation of Plaintiff's Right of Occupancy was invalid, null and void, the Military Governor could not validly grant a Right of Occupancy to another person over the same Land; the second grant while the first subsists, must be invalid. An invalid Certificate of Occupancy would not have the effect of extinguishing all previous right over the land as envisage in Section 5(2). As Belgore, JSC put it in OGUNLEYE Vs ONI (1990) 2 NWLR (PT. 135) 745, 773, "all the Appellant has in its hand is "a piece of paper having no value".**

This now takes me to the claim of the Plaintiff for exemplary damages in the sum of N500Million for trespass. From the evidence

led at trial, the 3rd Defendant admitted entry upon the disputed land and launch significant developmental activities thereon. Based on this admission, I form the view that trespass is established as no further proof is required once the Defendant as in this case admitted the case of the Plaintiff. However, I find no justification in awarding exemplary damages in this case as the 3rd Defendant was misled by the 1st and 2nd Defendants into believing that valid title was vested in the said 3rd Defendant, by virtue of Exhibits D2 and D6 respectively, which turned out to be worthless documents as the 1st Defendant had nothing to vest in the 3rd Defendant in view of the subsistence of Plaintiff's interest over the disputed land.

I also take into account the fact that Plaintiff's allocation was purportedly revoked vide Exhibit TN5 dated 11/01/2007, while 3rd Defendant's purported allocation was made on 24/04/2007 vide Exhibit D3. This is more than three months after the purported revocation in issue. Similarly, Exhibit TN11 which is the Order of Injunction heavily relied upon by the Plaintiff was made on 22nd April, 2009 more than two years after 3rd Defendant's purported allocation. These set of facts cannot support a claim in exemplary damages. For avoidance of doubt, the Supreme Court is emphatic on when to grant a claim in exemplary damages when it stated in **ODOGU Vs ATTORNEY-GENERAL OF THE FEDERATION (1996) 6 NWLR (PT.456) 508** as follows:

> **"Exemplary damages are usually awarded whenever the Defendant's conduct is sufficiently outrageous to merit punishment, as where it discloses malice, fraud, cruelty, insolence, flagrant disregard of the law and the like. See: ELIOCHIN (NIGERIA) LIMITED & ORS Vs MBADIWE (1986) 1 NWLR (PT.14) 147; (1986) ANLR 1."**

There is nothing to suggest that the conduct of the 3rd Defendant is outrageous or a manifest demonstration of disregard for the Law. The claim for exemplary damages is accordingly refused and in its place, I award general damages in the sum of N50,000.00 (Fifty Thousand Naira) Only against the 3rd Defendant for trespass.

In all, the Plaintiff succeeds in its main claim while the alternative claims are struck out in its entirety. For the avoidance of doubt, I make the following Orders:

1. **I declare that the Plaintiff is entitled to the Statutory Right of Occupancy over Plot No. 43 within Industrial Area 1C, Idu District, Phase 3, Idu, Abuja measuring approximately 2.00 Hectares by virtue of the Development Lease Agreement (Exhibit TN1) executed between the Plaintiff and the 1st and 2nd Defendants.**

2. **I declare that the purported revocation/withdrawal of Plaintiff's allocation vide Exhibit TN5 is null and void and of no legal effect.**

3. **I declare that the 3rd Defendant's purported allocation made by the 1st Defendant during the subsistence of Plaintiff's allocation is null and void.**

4. **AN ORDER is hereby made setting aside the 3rd Defendant's purported allocation vide Exhibits D2 and D6 respectively.**

5. **AN ORDER is hereby made directing the 1st and 2nd Defendants to rectify their Register of Deeds in favour of the Plaintiff's interest over the disputed property.**

6. **I make a Mandatory Order compelling the 3rd Defendant to remove all the structures erected on the Plaintiff's plot of land.**

7. **AN ORDER of Perpetual Injunction is hereby made restraining the Defendants whether by themselves, agents, servants, privies whomsoever and however defined from tampering with the said property and/or interference with the Plaintiff's existing interests.**

8. **₦50,000.00 (Fifty Thousand Naira) general damages is awarded in favour of the Plaintiff and against the 3rd Defendant for trespass.**

SIGNED
Hon. Justice H.B. Yusuf,
(Presiding Judge)
04/12/2020

Appearance

Josiah Daniel-Ebune, Esq…….. For the Plaintiff
(with Abimbola Oluwasegun)

I.V. Asuelimen Esq…….. For the 3rd Defendant
(with John Kiren Etuk, Esq)

1st and 2nd Defendants absent and not represented.

SIGNED
Hon. Justice H.B. Yusuf,
(Presiding Judge)
04/12/2020