

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**  
**HOLDEN AT ABUJA**  
**ON TUESDAY 3RD NOVEMBER 2020**  
**BEFORE HIS LORDSHIP: HON. JUSTICE O. A. ADENIYI**  
**SITTING AT COURT NO. 13, APO, ABUJA**

SUIT NO: FCT/HC/CV/1714/2020

**BETWEEN**

AFRI CONCEPTS CONSTRUCTION LTD. ... .. CLAIMANT

**AND**

1. MRS. ANGELINA EGBUNA
  2. ABUJA GEOGRAPHIC INFORMATION SYSTEMS (AGIS)
- } DEFENDANTS

**JUDGMENT**

By Originating Summons filed in this Court on 03/06/2020, the Claimant posed for determination three (3) questions, set down as follows:

- 1. Whether the Agreement dated 13<sup>th</sup> February 2013 executed between the Claimant and the 1<sup>st</sup> Defendant is valid, subsisting and binding.**
- 2. Whether the Claimant having provided the agreed consideration for the transfer/purchase of all that parcel of land known as Plot 887, Guzape District, Cadastral Zone A09, F.C.T. Abuja, including the sum of money described as the refund of monies ordered by the 1<sup>st</sup> Defendant to a third party, the 1<sup>st</sup> Defendant is bound to execute instrument of transfer consisting of Deeds of Irrevocable Power of Attorney, Assignment and Consent for the registration of same in favor of the Claimant.**
- 3. Whether the Claimant is not a beneficial owner entitled to the documents of title over Plot 887, Guzape District, Cadastral Zone A09, Abuja, pursuant to the final judgment in SUIT NO: FCT/HC/CV/3280/2012; MRS. EGBUNA Vs. BARRISTER CHIMERE AKOMA & 3 ORS.**

Upon the determination of these questions, the Claimant claimed against the Defendants the reliefs set out as follows:

- 1. A declaration that the Agreement dated 13<sup>th</sup> February 2013 executed between the Claimant and the 1<sup>st</sup> Defendant is valid, subsisting and binding.***
- 2. Pursuant to the final judgment dated 18<sup>th</sup> January, 2014 in SUIT NO: FCT/HC/CV/3280/2012; MRS. EGBUNA Vs. BARRISTER CHIMERE AKOMA & 3 ORS, the 1<sup>st</sup> Defendant as the adjudged owner of all that parcel of land known as Plot 887, Guzape District, Cadastral Zone A09, F.C.T. Abuja, is enjoined/obliged to hand over any and all the documents of title relating to the said Plot 887, Guzape District, which may be in her possession or to be collected by her from the Abuja Geographic Information System or any other authority.***
- 3. An Order of Mandatory Injunction compelling the 1<sup>st</sup> Defendant to sign, execute and hand over to the Claimant (or its agent/nominee) all the documents of transfer relating***

***to the said Plot 887, Guzape District, Cadastral Zone A09, FCT, Abuja, including the of Deeds of Irrevocable Power of Attorney, Assignment and Consent for the Registration of the said instruments of title.***

***AND/OR a further Order mandating and authorizing the Claimant, acting through its Director, to execute and sign any such document of title, namely: Deeds of Irrevocable Power of Attorney, Assignment and Consent for the registration of same for and on behalf of, and in the capacity as Attorney of the 1<sup>st</sup> Defendant.***

- 4. An Order authorizing the 2<sup>nd</sup> Defendant, its officers, servants, agents or otherwise howsoever described to accept for processing and registration any document of title, including Deeds of Irrevocable Power of Attorney, Assignment and Consent for the registration of same, signed and executed pursuant to the Order of this Honorable Court by and on behalf of the 1<sup>st</sup> Defendant over Plot 887, Guzape District, Cadastral Zone A09, F.C.T. Abuja.***

5. ***An Order of Perpetual Injunction restraining the 1<sup>st</sup> Defendant, acting by herself, her servants, agents, privies or otherwise howsoever described, from interfering in any manner whatsoever with the Claimant's rights as the beneficial owner in possession of Plot 887, Guzape District, Cadastral Zone A09, F.C.T. Abuja.***
6. ***The sum of ₦55,000,000.00 (Fifty-Five Million Naira) as damages, inclusive of the cost of this action.***

The records of the Court bear out that the Defendants were respectively served with the originating processes in this suit as well as the hearing notices for the scheduled hearing dates. Both Defendants elected not to file any processes in response to the Originating Summons; neither were they represented by counsel at the trial proceedings.

The suit was heard on 06/10/2020 at which the Claimant's learned counsel referred the Court to the processes filed, including his written address in support of the Claimant's case.

The Court had proceeded to carefully examine and consider the totality of the Claimant's claim, as encapsulated in the Originating Summons; and in particular the Affidavit deposed to by the Claimant's Managing Director, **Senator Atai Ali Aidoko**, to support the same.

The Court has also taken due benefits of the totality of the arguments canvassed by the Claimant's learned counsel in his written address, to which due reference shall be made as it is considered needful in the course of this judgment.

The Claimant's claim, as gathered from the Affidavit deposed to support the Originating Summons, appears straightforward. Sometime in 2011, through her Managing Director, she came in contact with the 1<sup>st</sup> Defendant, who, at the material time, was a civil servant/land agent, through her agent by name **Mr. Gbenga Falaiye**. At the material time, the said

1<sup>st</sup>Defendant was said to be indebted to one **Crown Realities Plc** to the tune of **₦35,000,000.00(Thirty Five Million Naira)** only, being the sum deposited with her by the said company for her to process the acquisition of the plot of land known as Plot 887, Guzape District, Cadastral Zone A09, FCT, Abuja in favour of **Crown Realities Plc.**

According to **Mr. Gbenga Falaiye**, the said 1<sup>st</sup> Defendant's agent, in the process of perfecting title of the said **Crown Realities Plc.**over the said plot, she expressed disinterest in proceeding with the transaction; hence the demand for the refund of the said sum of **₦35,000,000.00.**

Apparently, the 1<sup>st</sup> Defendant had no means to make the said refund to **Crown Realities Plc.**, hence her agent approached the Claimant, through her Managing Director, for assistance and introduced him to the 1<sup>st</sup> Defendant.

After discussions with the 1<sup>st</sup> Defendant, the Claimant agreed to offset the 1<sup>st</sup> Defendant's indebtedness to **Crown Realities Plc.** and to further pay the sum of **₦220,000,000.00 (Two Hundred and Twenty Million Naira)** only as consideration for the assignment of the said Plot 887 to her. The Claimant attached to the Affidavit in support as **Exhibits A, B and C** respectively, the agreements executed between the trio of the Claimant, **Mr. Gbenga Falaiye** and the 1<sup>st</sup> Defendant on 04/11/2011; 16/12/2011 and 13/02/2013, reflecting the parties understanding for the 1<sup>st</sup> Defendant to execute all necessary documents for the transfer of title over Plot 887 to the Claimant, upon payment of the agreed sums, which the Claimant paid.

The Claimant's case is further that in the process of transferring ownership of Plot 887 to the Claimant, the said **Crown Realities Plc.**, who had already received her refund of **₦35,000,000.00** resiled and held on to



title documents over the plot as a result of which the 1<sup>st</sup> Defendant instituted an action against her and others in 2012. The said action – Suit No. FCT/HC/CV/3280/2012 – MRS ANGELINA EGBUNA VS. BARRISTER CHIMERE AKOMA & 3 OTHERS, was determined in favour of the 1<sup>st</sup> Defendant in the judgment delivered by this Court on 18/02/2014; in which the Court, *inter alia*, affirmed the 1<sup>st</sup> Defendant's subsisting statutory right of occupancy and interest over the said Plot 887. The Claimant attached to the Affidavit in support as **Exhibit D**, certified true copy of the Enrolment of Judgment in the said suit.

The Claimant's case is further that pursuant to the existing agreement between her and the 1<sup>st</sup> Defendant and the judgment of this Court of 18/02/2014, the 1<sup>st</sup> Defendant formally put the Claimant in possession of the plot and handed over to her, through her Managing Director, title documents over the plot (though still in the name of **Crown Realities Plc.**), including Demands for

payment of Ground Rents issued by the 2<sup>nd</sup> Defendant. The Claimant attached to the Affidavit in support as **Exhibits E, E1, E2 and E3** respectively, Offer of Statutory Right of Occupancy dated 31/11/2011 and other accompanying title documents issued in the name of **Crown Realties Plc.**

The case of the Claimant is further that in consequence of the judgment of this Court of 18/02/2014, affirming the 1<sup>st</sup> Defendant as the rightful holder of statutory right of occupancy over the plot in issue; and whilst awaiting the 1<sup>st</sup> Defendant to give effect to their agreement of 13/02/2013, the Claimant had gone ahead to make payments to the 2<sup>nd</sup> Defendant for Settlement of Right of Occupancy bill, Settlement of Building Plan Fees, which was issued after a Building Plan was submitted; and that the Building Plan was also approved on 13/10/2017. Accompanying the Affidavit in support were all the documents referred to in the foregoing, marked as **Exhibits G, H** and

Irrespectively; which also were issued in the name of **Crown Realities Plc.**

The crux of the Claimant's grievances against the 1<sup>st</sup> Defendant is however that in spite of receiving consideration of the sum of **₦220,000,000.00** from her for the assignment of her interest in Plot 887 to the Claimant; and despite the judgment of this Court of 18/02/2014 nullifying the interests of the said **Crown Realities Plc** in the said Plot 887, she has persisted in refusing to execute the Deed of Assignment, Irrevocable Power of Attorney and Letter of Consent to Register Power of Attorney (shown in **Exhibits J, J1 and J2**) already prepared between the Claimant and the 1<sup>st</sup> Defendant in satisfaction of the agreement made between the two parties on 13/02/2013 and in satisfaction of the said judgment of this Court, of 18/02/2014.

The case of the Claimant is further that unless this Court intervenes and makes orders accordingly, the 1<sup>st</sup> Defendant will continue to refuse to execute the said documents of assignment of title to the plot to her and that the 2<sup>nd</sup> Defendant will not in that regard recognize the Claimant as the rightful holder of statutory right of occupancy of the said Plot 887, and cause his interest thereon to be registered as required.

As I had noted earlier on, the Defendants did not file any processes to defend or contest the Claimant's suit. The legal implication therefore is that the minimum credible affidavit evidence placed before the Court by the Claimant will be sufficient to prove her case. I so hold. See Monkom Vs. Odili [2010] All FWLR (Pt. 526) 542-563; Newbreed Organization Limited Vs. Erhomosele [2006] 5 NWLR (Pt. 974) 499; Asafa Food Factory Ltd Vs. Alraine Nigeria Ltd. [2002] 1 NWLR (Pt. 781) 353.

Going further, the Court also notes that the Claimant's case is anchored largely on documents attached to the Affidavit filed to support the Originating Summons. These documents clearly capture the obligations of the Claimant and those of the 1<sup>st</sup> Defendant in so far as pertaining to the transaction over Plot 887 between the two parties. As such, the Court agrees with the submissions of the Claimant's learned counsel that the suit, as constituted, is clearly suited to be tried by Originating Summons. See Famfa Oil Limited Vs. Attorney-General of the Federation & Anor [2003] 18 NWLR (Pt. 852) 453; Inakoju Vs. Adeleke [2007] 4 NWLR (Pt. 1025) 427; Diaplong Vs. Dariye (No. 2) [2007] All FWLR (Pt. 373) 81.

Now, the Claimant's case is principally premised on the agreement of the 13/02/2013 executed between her and the 1<sup>st</sup> Defendant with respect to the transfer of statutory right of occupancy over the plot of land at

Plot 887, Guzape District, Cadastral Zone A09, FCT, Abuja. According to the agreement, the 1<sup>st</sup> Defendant, as the beneficial holder of title, acknowledges that the Claimant had offset the sum of **₦35,000,000.00** owed by her to **Crown Realities Plc.**, in order to discharge her of any obligations to the said **Crown Realities Plc.** with respect to the said Plot 887.

The focal understanding between the parties is clearly capture by clause (2) of the to the Agreement, **Exhibit C**, which provides as follows:

***“In consideration of the said sum of ₦35,000,000.00 (Thirty Five Million Naira), raised by the Facilitator to the Beneficiary (Mrs. Angelina Egbuna) being total money refunded to Crown Realities Plc, Receipt of which the Beneficiary acknowledges, Mrs. Angelina Egbuna Covenants to hand over by way of a Power of Attorney all that title Documents in respect of the Guzape Plot, that might be in her custody at the end***

***of the pending suit to Afri-Concepts Construction Limited (Facilitator)”***

The proper inference to be drawn from this clause is that the realization of the terms of the agreement is made contingent upon a successful outcome of the said litigation between the 1<sup>st</sup> Defendant and Crown Realities Plc. and others, over the ownership rights of the plot. As such, the process of handing over of all title documents to and execute all necessary documents in favour of the Claimant in respect of the plot by the 1<sup>st</sup> Defendant, could only be achieved in the event that the Court case is resolved in favour of the 1<sup>st</sup> Defendant.

The judgment of the Court in the case was delivered on 18/02/2014; and indeed the Court ruled in favour of the 1<sup>st</sup> Defendant by affirming her legal interest in the said Plot 887, as the one entitled to statutory right of ownership over the said Plot 887.

According to the Enrolment of Judgment, **Exhibit D**, the Court further adjudged that the 1<sup>st</sup> Defendant's obligations to the said **Crown Realties Plc.** over the said Plot 887 had become effectively discharged, having paid the said sum of **₦35,000,000.00** refund to the said **Crown Realties Plc.**

Flowing from the judgment of this Court, of 18/02/2014, the stage was then set for the 1<sup>st</sup> Defendant to perform her obligations to the Claimant as agreed upon in the Agreement of 13/02/2013 – **Exhibit C.**

The case of the Claimant however is that even though the said judgment of this Court, of 18/02/2014, is subsisting and binding, the same having not been shown to have been overturned on appeal, the 1<sup>st</sup> Defendant has continued to refuse to perform her obligations under the Agreement, **Exhibit C.**



The Court has examined the said Agreement of 13/02/2013, **Exhibit C**, executed between the 1<sup>st</sup> Defendant and the Claimant. It is found that there is no feature of the said agreement that renders it illegal or unlawful. It is further found that the agreement clearly and unequivocally conveyed and expressed the intention of parties thereto. In that circumstance, the Court is therefore duty bound to and hereby accords the agreement its full effect and force of law. See BPS Construction & Engineering Co. Ltd Vs. FCDA [2017] LPELR-42516 SC; Bilante International Ltd Vs. NDIC [2011] 15NWLR (Pt. 1270) 407.

Again, the position of the law is elementary, that by the doctrine of sanctity of contracts, where parties have entered into a contract or an agreement voluntarily and there is nothing to show that same was obtained by fraud, mistake, deception or misrepresentation, they are bound by the provisions or terms thereof. This is so

because a party cannot ordinarily resile from a contract or agreement just because he later found that the conditions of the contract or agreement are not favorable to him. See Larmie Vs. Data Processing Maintenance & Services (D.P.M.) Ltd. [2005] 12 SC (Pt. 1) 93 at 103; Baba Vs. Nigerian Civil Aviation Training Centre, Zaria [1991] 5NWLR (Pt. 192) 388; Union Bank of Nigeria Ltd. Vs. B. U. Umeh & Sons Ltd. [1996] 1 NWLR (Pt. 426) 565; S.C.O.A. Nigeria Ltd. Vs. Bourdex Ltd. [1990] 3 NWLR (Pt. 138) 380 and Koiki Vs. Magnusson [1999] 8 NWLR (Pt. 615) 492 at 514.

I therefore further hold that the said Agreement, **Exhibit C**, by which the 1<sup>st</sup> Defendant was under obligation to transfer ownership of Plot 887 to the Claimant, after the Claimant had furnished consideration; remains subsisting and binding on the 1<sup>st</sup> Defendant, who voluntarily entered into the same with the Claimant.

The Court further holds that the 1<sup>st</sup> Defendant's continued refusal to perform her obligation under the said Agreement, in spite of the judgment of this Court of 18/02/2013, affirming her right of ownership over the said plot; which judgment further reinforces the Agreement, **Exhibit C**; constitutes a flagrant breach of contract.

The Court has proceeded to examine the claims of the Claimant in the instant action. Even though it is not specifically stated, a proper understanding of the case set up by the Claimant and the reliefs claimed clearly shows that the Claimant seeks specific performance of the said contract by way of compelling the 1<sup>st</sup> Defendant to execute the stated Deeds in her favour; and where that is not practicable to compel the 2<sup>nd</sup> Defendant to accept documents of title presented to it for purposes of registering the Claimant's interest and title over the plot in issue.

The term “**specific performance**” was defined in very simple terms in the authority of U.B.N Plc. Vs. Erigbuem [2003] FWLR Pt. 180 @ 1365, where it was held as follows:

**“Specific Performance is an equitable relief given by the Court to enforce against a Defendant the duty of doing what the Defendant has agreed to do by contract.”**

Again, in Liman Vs. Mohammed [1999] 9 NWLR (Pt. 617) 116, it was held that there are two remedies open to an aggrieved party in a contract for sale of land which is breached by the other party. These are: order for specific performance or damages for breach of contract, as the circumstances of the case may dictate.

It is to be further noted that each is a specific relief that must be specifically claimed. Both may, however, be claimed in the same action but in the alternative and

not conjunctively. See also Ezenwa Vs. Oko & Ors [2008] LPELR-1206 (SC).

In the instant case, as I had noted, the Claimant claims specific performance of the contract (relief 3). In the same token, she also claims for damages for breach of contract (relief 6). The position of the law is clear that she can only be entitled to either of the reliefs and not both at the same time. See also Ajoke Vs. Amusa Yesufu & Anor. [1962] 1 All NLR 73.

Relief (3) as claimed by the Claimant apparently supercedes relief (6) for damages for breach of contract. I further reckon that if the Claimant had preferred to be awarded damages in lieu of specific performance, she would have claimed a refund of the cost of the plot, which, as at 2011, was valued at **₦220,000,000.00**; and not the sum of **₦55,000,000.00**. The Court is therefore satisfied that the prior intention of the Claimant is to claim specific

performance of the contract, couched in the form of an order for mandatory injunction by relief (3) of her claim. I so hold.

The Court has further noted the claim made by Claimant to permit or authorize her, acting through her Managing Director, to execute and sign any such document of title, namely Deed of Irrevocable Power of Attorney, Deed of Assignment and Consent for the registration of the same for and on behalf of, and in capacity as Attorney of the 1<sup>st</sup> Defendant. By my understanding, this relief is claimed apparently in order not to render the judgment of this Court ineffectual in the event that the 1<sup>st</sup> Defendant could not be located to execute the said Deeds in person or continues to evade her lawful obligation in that regard.

The position of the law is that where there is a wrong, there must be a remedy. The Court therefore agrees that an order is apt to arrogate the 1<sup>st</sup> Defendant's

obligation to execute the said Deeds to the Claimant, as Court-appointed Attorney for the 1<sup>st</sup> Defendant, in order to give lawful effect to the orders of this Court at the end of the day.

In the overall analysis of the materials placed before this Court by the Claimant in support of her Originating Summons, the Court hereby resolves the three (3) questions placed before it for determination by the Claimant in her favour. Consequently, the Claimant's case succeeds in material substance. For avoidance of doubt and abundance of clarity, it is hereby declared and ordered as follows:

- 1. It is hereby declared that the Agreement dated 13<sup>th</sup> February 2013, executed between the Claimant and the 1<sup>st</sup> Defendant is valid, subsisting and binding.***
- 2. It is hereby further declared that pursuant to the judgment of this Court dated 18<sup>th</sup> February, 2014 in SUIT NO: FCT/HC/CV/3280/2012-MRS. EGBUNA Vs.***

**BARRISTER CHIMERE AKOMA & 3 ORS, the 1<sup>st</sup> Defendant, as the adjudged owner of all that parcel of land known as Plot 887, Guzape District, Cadastral Zone A09, F.C.T. Abuja, is under obligation to hand over to the Claimant all the documents of title relating to the said plot in her possession or to be collected by her from the 2<sup>nd</sup> Defendant or any other authority.**

- 3. The 1<sup>st</sup> Defendant is hereby ordered, compelled and mandated to sign, execute and hand over to the Claimant (through her agent/nominee) all the documents of transfer relating to the said plot, including the Deeds of Irrevocable Power of Attorney, Assignment and Consent for the registration of the instrument of title of the said plot referred to in (2) above.**
- 4. It is hereby further ordered, in the event that Order (3) above is found incapable of being actualized, that the Claimant shall be authorized, through any of her agents, to act as Court-appointed Attorney for the 1<sup>st</sup> Defendant, for purposes of executing the Deeds referred to in (3) above; and any other relevant documents of transfer of**



- title with respect to the plot referred to in (2) above, in favour of the Claimant.*
- 5. The 2<sup>nd</sup> Defendant is hereby ordered, through its officers, servants, agents or otherwise howsoever described, to accept for processing and registration, any document of title, including Deed of Irrevocable Power of Attorney, Deed of Assignment and Consent for the registration of same, signed and executed pursuant to the judgment of this Court, particularly as set out in (3) and (4) above, with respect to Plot 887, Guzape District, Cadastral Zone A09, F.C.T. Abuja, in favour of the Claimant.**
- 6. The 1<sup>st</sup> Defendant is hereby restrained, whether by herself, her servants, agents, privies or otherwise howsoever described, from interfering in any manner whatsoever with the Claimant's rights as the beneficial holder of statutory right of occupancy over Plot 887, Guzape District, Cadastral Zone A09, F.C.T. Abuja.**

**7. Costs of this action, in the sum of ₦1,000,000.00 (One Million Naira) only, is hereby awarded in favour of the Claimant against the 1<sup>st</sup> Defendant only.**

**OLUKAYODE A. ADENIYI**  
**(Presiding Judge)**

**03/11/2020**

**Legal representation:**

**N. J. Kalu, Esq. – for the Claimant**

**Defendants unrepresented by counsel**