

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

HOLDEN AT GWAGWALADA, ABUJA

THIS TUESDAY, THE 6TH DAY OF OCTOBER, 2020

BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI – JUDGE

SUIT NO: CV/2310/16

BETWEEN:

1. PRIMEWEST PROPERTIES LIMITED }
2. CAE GLOBAL SERVICES LIMITED }CLAIMANTS

AND

1. BELLHOUSE TECHNOLOGIES LIMITED }
2. ACCESS BANK PLC } DEFENDANTS

JUDGMENT

The Plaintiffs' claims against the Defendants as contained in the writ of summons and the statement of claim dated 8th August, 2016 and filed same date in the Court Registry are as follows:

- 1. A Declaration that the 1st Plaintiff is the owner and occupier of Block 16A, Flat A, Plot 567, Gana Street, Maitama, Abuja.**
- 2. A Declaration that the 2nd Plaintiff is the tenant of the 1st plaintiff at Block 16A, Flat A, Plot 567, Gana Street, Maitama, Abuja, FCT and is therefore guaranteed a quiet and peaceful enjoyment of the period of its tenancy as provided by the tenancy agreement.**

- 3. A Declaration that the plaintiffs and the 1st Defendant have no contractual relationship whatsoever in respect of Block 16A, Flat A, Plot 567, Gana Street, Maitama, Abuja, FCT.**
- 4. A Declaration that the purported perfection of the title of the property pledged to the 2nd Defendant during the pendency of suit is illegal, null and void especially when the pendency of the suit was made known to both the 2nd defendant and the Abuja Geographical Information System (AGIS) and so confers no title on the 2nd Defendant.**
- 5. A Declaration that the purported sale of Block 16A, Flat A, Plot 567, Gana Street, Maitama Abuja, FCT by the 2nd Defendant to the 1st Defendant with full knowledge of the pendency of Suit No: FCT/HC/CV/1123/2013 and the implication is null and void and of no effect and confers no title on the 1st Defendant.**
- 6. A Declaration that the 1st Defendant's letters dated 21st day of July, 2016 and 29th day of July, 2016 to the 2nd Plaintiff amounts to Trespass to the 1st Plaintiff's exclusive possession of Block 16A, Flat A, Plot 567, Gana Street, Maitama, Abuja, FCT.**
- 7. An Order restraining the 1st and 2nd Defendants from trespassing or continuing the trespass on the 1st plaintiff's exclusive possession of Block 16A, Flat A, Plot 567, Gana Street, Maitama, Abuja – FCT by way of threat of ejection of the 2nd plaintiff or howsoever as the plaintiffs have nothing in common with or any obligation to the 1st defendant.**

The originating court processes were duly served on the defendants. The 1st defendants' statement of defence is dated 31st January, 2018 and filed on the same date at the Registry of this Court. The 1st Defendant also counter claimed against the plaintiffs and 2nd defendant as follows:

- 1. An Order of the court declaring the 1st Defendant as the rightful, bona-fide and beneficial owner of Plot 36 Gana Street, Maitama, Abuja, otherwise known as Block 16A, Flat A, Plot 567 Gana Street, Maitama, Abuja, FCT by virtue of the Certificate of Occupancy, having bought same from the 2nd**

Defendant by virtue of duly executed Deed of Assignment, who had due and valid authority to sell, alienate and transfer ownership of said property on the basis of duly executed Deed of Legal Mortgage between it and the 1st Plaintiff.

- 2. A Declaration that the sale of No. 36, Gana Street, Maitama Abuja, otherwise known as Block 16A, Flat A, Plot 567, Gana Street, Maitama, Abuja, FCT by virtue of the Certificate of Occupancy by the 2nd Defendant to the 1st Defendant is valid and legal, as the 2nd Defendant has valid right having obtained a Deed of Legal Mortgage duly registered over the property from the 1st Plaintiff, giving it due powers to dispose of the property validly on its own without recourse to the 1st Plaintiff.**
- 3. An Order of the Honourable Court directing the Plaintiffs and 2nd Defendant to deliver vacant possession of the property, Pot 36, Gana Street, Maitama otherwise known as Block 16A, Flat A, Plot 567, Gana Street, Maitama.**
- 4. A refund of the N180, 000, 000. 00 (One Hundred and Eighty Million Naira) only, purchase price paid by the 1st Defendant to the 2nd Defendant, plus interest at going bank rate obtainable in the market.**

The matter was then adjourned for hearing but much progress was not made because after taking some interlocutory applications filed, parties informed court that they wanted to explore avenues to settle the matter amicably and out of court. The court granted them the opportunity and this took some time.

On the 6th October, 2020, counsel to the plaintiffs informed the court that the matter has been amicably settled by the parties and that terms of settlement as agreed by the parties had been filed. Counsel further informed the court that there is a motion to substitute the 2nd defendant, Diamond Bank with Access Bank. The application was heard and granted.

The said terms of settlement dated 24th March, 2020 was filed in the Court's Registry on the 23rd September, 2020. Learned counsel on both sides then applied that the said terms of settlement filed on the 23rd September, 2020 in the Court's

Registry be entered as consent judgment in the case. The Terms of Settlement as mutually agreed by parties are in the following terms:

- 1. That the 1st plaintiff shall pay to the 1st defendant the sum of N190, 000, 000. 00 (One Hundred and Ninety Million Naira) as full and final settlement of all their claims in this suit or any other suit against the defendants, and the said sum shall be paid into the account of the 1st Defendant domiciled with the 2nd Defendant.**

- 2. That the said sum of N190, 000, 000. 00 (One Hundred and Ninety Million Naira) shall be paid by the 1st plaintiff to the 1st defendant in four (4) instalments within a space of one (1) year and seven (7) months. The breakdown of the instalments are as follows:**
 - a. N50, 000, 000 (Fifty Million Naira) within one (1) month from the adoption of these terms of settlement as the Judgment of the court.**
 - b. N40, 000, 000 (forty Million Naira) within six (6) months of the first payment.**
 - c. N50, 000, 000 (fifty Million Naira only) within six (6) months of the 2nd instalment.**
 - d. The final N50, 000, 000 (fifty Million Naira only) within six (6) months of the third instalment.**

- 3. That on payment of the last instalment and fulfilling of its other obligations herein contained, the 1st defendant shall handover to the 1st plaintiff the Title Deeds relating to the property at No 36, Gana Street, Maitama, Abuja, FCT otherwise known as Block 16A, Flat A, Plot 567, Gana Street, Maitama, Abuja, FCT covered by a Deed of Legal Mortgage registered as No FC 171 Page 171 in Volume 32 (MISC Register) at the Lands Registry, Abuja, given to it by the 2nd Defendant.**

- 4. That the 1st defendant shall only have recourse to the plaintiffs in the event of the plaintiffs' failure to faithfully ensure payments to the 1st defendant as contemplated in paragraph 1 and 2 above. The 1st defendant shall have no recourse whatsoever to the 2nd defendant for refund of the purchase**

price of the property described in paragraph 3 of these terms of settlement, nor shall it have recourse to any form of damages or claims whatsoever against the 2nd Defendant in respect of 2nd Defendant's sale of the said property to it.

5. Also, the Plaintiffs have requested and the 2nd Defendant has agreed to accept the sum of N8, 000, 000.00 (Eight Million Naira) from the 1st plaintiff as full and final settlement of the 1st plaintiff's total indebtedness of N30, 637, 326.19 (Thirty Million, Six Hundred and Thirty Seven Thousand, Three Hundred and Twenty Six Naira, Nineteen Kobo) plus accrued interest thereon.
6. The 1st Plaintiff shall on or before March 27th 2020, pay to the 2nd Defendant the said sum of N8, 000, 000.00 (Eight Million Naira) in clear funds, and the 2nd Defendant shall accept the said sum as full and final settlement of the 1st plaintiff's total indebtedness of N30, 637, 326.19 (Thirty Million, Six Hundred and Thirty Seven Thousand, Three Hundred and Twenty Six Naira, Nineteen Kobo), failing which the said total indebtedness plus outstanding interest shall immediately become due and payable to the 2nd defendant.
7. That the 2nd Defendant shall on receipt of the full sum stated in paragraphs 4 and t above, and you upon the adoption of these terms of settlement as the Judgment of the Court,. execute and handover to the 1st Plaintiff a Deed of Release of the property described as No. 36, Gana Street, Maitama, Abuja, FCT otherwise known as Block 16A, Flat A, Plot 567, Gana Street, Maitama, Abuja, FCT covered by a Deed of Legal Mortgage registered as No. FC 171 page 171 in volume 32 (MISC Register) at the Lands Registry, Abuja.
8. That upon the plaintiffs' payment of the said sum of N8, 000, 000. 00 (Eight Million Naira) to the 2nd Defendant, and upon the adoption of these terms of settlement as the Judgment of Court, the 2nd Defendant shall upon conclusion of its security release process, return to the 1st plaintiff the title documents relating to the following properties:

- a. **No. 10, Dan Ngozi Iyio Drive, DLA Road, Asaba, Delta State covered by a Certificate of Occupancy dated October 22 2008 and registered as No. 20 Page 20 in Volume Co. 149 at the Lands Registry, Asaba; and**
 - b. **Plot 41, Area E, Onyirimba Drive, back of Concorde Hotels, Owerri, Imo State covered by a Certificate of Occupancy dated September 8, 1980 and registered as No. 99 page 99 in Volume 20 at the Lands Registry, Imo State.**
- 9. That upon the adoption of these terms of settlement as the Judgment of Court, as well as the plaintiffs satisfactory performance of their obligations to the 2nd Defendant as captured in paragraphs 4 and 5 above, the 2nd defendant shall ensure that the 1st plaintiff's credit status is updated at Credit Bureau to indicate settlement of the 1st plaintiff's indebtedness to the 2nd defendant in respect of the facilities giving rise to the present dispute.**
- 10. That in the event that the 1st plaintiff fails to pay up the said sum of N190, 000, 000.00 (One Hundred and Ninety Million Naira) to the 1st defendant within the agreed period of one (1) year and seven (7) months, the said sum shall automatically accrue interest at the rate of 10% flat on the outstanding debt, while the 1st plaintiff shall have a maximum grace period of three (3) months from the date expiration thereof to pay up the outstanding balance in addition to the accrued interest.**
- 11. In the event that the 1st plaintiff fails to pay up the outstanding sum and the ten (10%) percent Default Charge at the expiration of three (3) months' grace period, whatever title, right or privilege it has on the subject matter of this suit i.e No 36, Gana Street, Maitama, Abuja, FCT otherwise known as Block 16A, Flat A, Plot 567, Gana Street, Maitama, Abuja, FCT covered by a Deed of Legal Mortgage dated 2011 and registered as No FC 171 Page in Volume 32 (MISC Register) at the Lands Registry, Abuja, shall become extinguished automatically, and the 1st defendant shall be free upon such default to enter into and take possession of the said property or**

to apply to the Court for issuance and enforcement of writ of execution against the said property, the subject matter of the suit.

12. That the initial down payment of the sum of N50, 000, 000.00 (Fifty Million Naira) only mentioned in paragraph 11.0 (2) (A) shall be paid within One (1) month after the adoption of these Terms of Settlement and entering same as the consent Judgment of the Court.
13. That if the event envisaged by paragraph 11 above occurs, the 1st Defendant shall upon taking possession of the property at No. 36, Gana street, Maitama, Abuja, FCT otherwise known as Block 16A, Flat A, Plot 567, Gana Street, Maitama, Abuja FCT covered by a Deed of Legal Mortgage dated 2011 and registered as No. FC 171 Page 171 in Volume 32 (MISC Register) at the Lands Registry, Abuja, return to the 1st Plaintiff all the sum of monies paid to it within one month of taking over possession.
14. Save for the purpose of enforcement of these Terms of Settlement, the parties agree that upon the payment of the above sums to the 1st Defendant and 2nd Defendant by the 1st plaintiff, the claims in this suit, as well as in Suit No: FCT/HC/CV/1123/2013 – Primewest Properties Limited & Another V. Diamond Bank Plc & 2 others, and/or any other pending suits or pending Judgments or pending rulings related to or connected howsoever with the facilities granted to the 1st plaintiff by the 2nd defendant shall automatically abate upon the execution of these Terms of Settlement.
15. In consideration of the payment of the above sums by the plaintiffs to the 1st defendant and 2nd defendant, and the collection of the title documents referred to in paragraph 7 above, the plaintiffs on behalf of themselves, their, successors and assigns hereby releases and discharges the 1st defendant and 2nd defendant, its officers, directors, any past directors, shareholders, employees, successors and assigns from any and all liabilities and obligations, whether past, present and future, howsoever and whensoever arising, whether known or unknown, whether currently existing or arising in the future in relation with or in anyway connected with the dispute in this suit and Suit No: FCT/HC/CV/1123/2013 –

Primewest Properties Limited & Another V. Diamond Bank Plc & 2 others, or any other pending suits.

16. These Terms of Settlement shall be binding upon all parties and shall constitute the unappealable judgment of the Court. It shall inure to the benefits of the parties' respective successors, assigns and personal representatives.

17. Each of the parties have participated in the drafting and negotiation of these Terms of Settlement. Accordingly, for all purposes, these Terms of Settlement shall be deemed to have been drafted jointly by the parties.

18. Each of the parties have agreed to bear their respective costs in this suit.

19. Each person signing these Terms of Settlement hereby represents and warrants that he or she has the authority to bind the entity or person on behalf of which he or she has signed.

20. That the Court shall adopt the above terms of settlement as consent judgment in this case and in Suit No: FCT/HC/CV/1123/2013 – Primewest Properties Limited & Another V. Diamond Bank Plc & 2 Others, as well as in any other pending suit between the Plaintiffs and the 2nd Defendant.

The above terms of settlement were duly executed by all the parties and their respective counsel. It is stating the obvious that the primary responsibility of a court of law qua justice is to encourage the settling of matters out of court. Where parties settle and then prepare terms of settlement which they embody in a document and apply to court for same to be entered as consent judgment in the action, the duty of court at that point is limited to giving effect to the express intention of parties as embodied in the filed terms of settlement.

Accordingly, the terms of settlement dated 24th March, 2020 and filed in the Court's Registry on the 23rd September, 2020 and duly executed by parties and their respective counsel is hereby entered as Consent Judgment in the extant action.

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Hon. Justice A.I. Kutigi

Appearances:

- 1. Ifeoluwa Adigun, Esq. for the Claimants.**
- 2. K.C. Omega, Esq. with J.A. Eze (Mrs.) for the 1st Defendant/Counter-Claimant.**
- 3. Uchenna Okafor, Esq. for the 2nd Defendant.**