

**IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY  
IN THE ABUJA JUDICIAL DIVISION  
HOLDEN AT JABI, ABUJA.**

**BEFORE HIS LORDSHIP HON. JUSTICE D.Z. SENCHI.**

**HON. JUDGE HIGH COURT NO. 12.**

**COURT CLERKS – T. P. SALLAH & ORS**

**DATE: 18/01/2021**

**BETWEEN:** FCT/HC/CV/0009/17

MRS. CHINELO HARRY ..... PLAINTIFF

AND

SAMS ELECTRONIC LIMITED ..... DEFENDANT

**JUDGMENT**

By Writ of Summons and Statement of Claim filed on 31<sup>st</sup>, October, 2017, the Plaintiff commenced the instant action seeking the following reliefs against the Defendant:-

- a. A declaration that the Plaintiff is the beneficial owner of the property described as Unit 3 of the Terrace Building at Plot No. 1692 Cadastral Zone A01 Garki District, Abuja with File No. RV 10060 and Certificate of Occupancy No. 15EBW – 17354 – 55 FOR DBLAU – 10.
- b. An order of specific performance mandating or directing the Defendant to sign all relevant documents in relation to registration and or procurement of Deed of Subdivision or Partition in respect of the entire plot in the property at No. 1692 Cadastral Zone A01 Garki District, Abuja with File No. RV 10060 and Certificate of Occupancy No. 15EBW – 17354 – 55 FOR DBLAU – 10.

- c. An order of this Honourable Court restraining the Defendant either by itself, agents, privies, servants, members and or successors however so called from engaging in any act that will run contrary to the Plaintiff's Right to possession of the property described as Unit 3 of the Terrace Building at Plot No. 1692 Cadastral Zone A01 Garki District, Abuja with File No. RV 10060 and Certificate of Occupancy No. 15EBW – 17354 – 55 FOR DBLAU – 10.
- d. The sum of N50,000,000.00 (Fifty Million Naira only) as general and aggravated damages for breach of contract, embarrassment, psychological trauma suffered by the Plaintiff arising from the breach of contract.
- e. The cost of this action assessed at N5,000,000.00 (Five Million Only).

Upon being served with the originating processes, the Defendant in response, filed its statement of defence on 23<sup>rd</sup> February, 2018 with leave of this Court granted on 12<sup>th</sup> April, 2018.

At the trial of this matter, the Plaintiff herself testified as PW1 in support of her case. She was cross-examined by the Defendant's Counsel. Although it was given adequate opportunity to do so, the Defendant failed to call any witness to give evidence in support of its defence. The following documents were admitted in evidence as exhibits through PW1:-

1. Exhibit 1:- Deed of Assignment Sams Electronics Ltd and Mrs.Chinelo Harry.
2. Exhibit 2:- Five copies of Manager's Cheques of Stanbic IBTC Bank Plc all dated 4<sup>th</sup> November, 2010.
3. Exhibit 2A:- Copy of Manager's Cheque of Zenith Bank Plc dated 5<sup>th</sup> November, 2010.
4. Exhibit 2B:- Copy of Bank Cheque of First Bank dated 5<sup>th</sup> November, 2010.
5. Exhibit 3:- Copy of National Identity Card of one AmazueOzioma.

6. Exhibit 4:- Receipt for N60 Million issued by Sams Electronic Ltd to the Plaintiff.
7. Exhibit 5:- Letter of Plaintiff's solicitors Nnanta Chambers to the Defendant dated 4<sup>th</sup> April, 2017.
8. Exhibit 5A and 5B:- Two copies of letter of Plaintiff's solicitors Nnanta Chambers to the Defendant dated 9<sup>th</sup> May, 2016.
9. Exhibit 5C and 5D:- Two copies of letter of Plaintiff's solicitors J.J. Usman & Co to the Defendant dated 11<sup>th</sup> September, 2017.
10. Exhibit 6:- Domestic Airway Bill receipt.
11. Exhibit 7:- Deed of Partition.

At the close of evidence, final written address was ordered. The Plaintiff's Counsel's Written Address was filed on 2<sup>th</sup> September, 2019 with leave of Court while the Defendant's Counsel's written address is dated 23<sup>rd</sup> September, 2019 and filed on the same date. The Plaintiff filed a reply address on points of law to the Defendant's written address. Counsel to the Plaintiff adopted his final written address while that of the Defendant's Counsel was deemed adopted as he was absent on the date the matter came up for adoption of final written address. The matter was subsequently adjourned for Judgment.

### **ISSUES FOR DETERMINATION:**

The Plaintiff's Counsel formulated a sole issue for determination of the instant suit to wit:-

*"Whether the Plaintiff has established her claim against the Defendant and is entitled to Judgment as per its Writ of Summons and Statement of Claim."*

Learned Counsel to the Defendant for his part formulated the issues for determination as follows:-

- i. Whether the Plaintiff's claim against the Defendant is maintainable and enforceable before this Court.

- ii. Whether the actions of this Honourable Court amount to bias and denial of fair hearing to the Defendant.
- iii. Whether the Defendant is entitled to damages.

The Defendant's issues can be adequately addressed under the sole issue distilled by the Plaintiff. I shall therefore adopt the Plaintiff's issue as the main issue for determination and address the issues formulated by the Defendant thereunder.

Having said above, the Plaintiff's case is presented by her pleadings and her evidence as PW1. In giving evidence at trial, the Plaintiff adopted her witness statement on oath deposed to on 31<sup>st</sup> October, 2017 in the case as her oral testimony in support of her case. It is the Plaintiff's case that by Deed of Assignment 'sworn' to at the FCT High Court on 12<sup>th</sup> November, 2010, the Defendant-company conveyed a property known as Unit 3 of a Terrace Building at Plot No. 1692 Cadastral Zone A01 Garki District, Abuja with File No. RV 10060 and Certificate of Occupancy No. 15EBW-17354-55FOR DBLAU-10 (hereafter referred to as the 'Subject Matter' of this suit). The said Deed of Assignment was admitted in evidence at trial as Exhibit 1. The Plaintiff testified that she paid the sum of N60,000,000.00 (Sixty Million Naira) to the Defendant as consideration for the conveyance through bank cheques collected on behalf of the Defendant by one AmazueOzioma whose copy of National Identity Card was admitted in evidence as Exhibit 3. Exhibits 2, 2A and 2B are copies of the aforementioned Bank Cheques and payment advice. She testified that the Defendant also issued a receipt (Exhibit 4) in acknowledgment of the total sum of N60 Million paid to it by the Plaintiff. That she thus acquired equitable interest in the Subject Matter vide Exhibit 1 (the Deed of Assignment). That she engaged the services of Nnanta Chambers in May, 2016 to perfect her title over the assigned property and this was communicated to the Defendant via the Plaintiff's phone call and Exhibits 5A and 5B written by her said solicitor but the Defendant refused service of Exhibits 5A and 5B at its registered address. Efforts to serve the Defendant through its Director were also frustrated by the Director at his residence until said Director

eventually referred the Plaintiff and her solicitor to the Defendant-company's lawyer by name of Anthony Ogbonna Esq of Suite A, 409, Global Plaza, Jabi-Abuja. The said Defendant's lawyer was directed to listen to the Plaintiff's request and help meet the Defendant's obligation in perfecting the Plaintiff's title over the Subject Matter. Months followed without response from the Defendant's lawyer after meeting with him. A letter dated 25<sup>th</sup> October, 2016 was consequently sent to and acknowledged by the Defendant's lawyer as reminder, attached to which is a Deed of Partition of the entire property. Copies of the said letter dated 25<sup>th</sup> October, 2016 is attached to Exhibits 5A and 5B.

The Plaintiff testified further that there were yet a plethora of phone calls, visits and letters to the Defendant's lawyer and having exhausted all peaceful means of getting the Defendant to sign the Deed of Partition and other documents to perfect her title to the Subject Matter assigned to her, the Plaintiff's solicitor Nnanta Chambers wrote Exhibit 5 to the Defendant through its lawyer informing them of the Plaintiff's intention to approach the law courts to resolve the matter. The Plaintiff consequently engaged the law firm of J.J. Usman & Co who wrote Exhibits 5C and 5D dated 11<sup>th</sup> September, 2017 to the Defendant notifying it of the Plaintiff's intention to seek specific performance of Exhibit 1. Upon receipt of the said Exhibits 5C and 5D, the Defendant's Counsel informed the Plaintiff's Counsel that the Defendant had moved to a new office but still refused service of Exhibits 5C and 5D. It is the Plaintiff's case that the Defendant's actions amount to breach of covenant and failure to comply with terms of the Deed of Assignment i.e. Exhibit 1.

Answering questions from the Defendant's Counsel under cross-examination, the Plaintiff stated that she purchased one unit of the four units on the entire property while the other units were purchased by other persons. She said the only issue she has with the Defendant is obtaining the Deed of Partition although the Defendant's Company Secretary kept promising it would be handled. She reiterated that she wants the Defendant to sign the Deed of Partition although the Defendant still has other

obligations such as rectifying some documents with AGIS. And therefore she needs the consent letter from the Defendant's company secretary. She is however not aware of an amount to be paid to AGIS for the partitioning and in conclusion she urged the Court to grant her claims.

As I said earlier, final written addresses were filed by the parties in this case. In arguing the sole issue for determination in his final written address, learned Counsel to the Plaintiff submitted that the Plaintiff has established her claim against the Defendant and is therefore entitled to Judgment as per her writ of summons and statement of claim. Relying on a plethora of authorities on burden of proof and ingredients of a valid contract, Counsel contended that the question of whether there is a valid contract between the Plaintiff and the Defendant must be answered in the affirmative in view of Exhibit 1. He posited that by virtue of page 3 of Exhibit 1, the Defendant has a duty to perfect the Plaintiff's title by procuring all the necessary documentations for perfection. Learned Counsel contended that the Defendant who executed Exhibit 1 with the Plaintiff is bound by Exhibit 1. He further submitted that although the Defendant filed a statement of defence, it did not call any witness or lead any evidence in support. On the otherhand, Counsel has submitted that the Plaintiff has discharged the burden on it in this case and the Defendant to whom the burden shifted failed to discharge same. Learned Counsel concluded his arguments on behalf of the Plaintiff by urging this Court to enter judgment in favour of the Plaintiff as per her writ of summons and statement of claim.

On the otherhand, learned Counsel to the Defendant submitted in his written address that the Plaintiff's claim is not maintainable and enforceable in view of the evidence before the court. He argued that although the Plaintiff established that she purchased Unit 3 of the Terrace Building at Plot No. 1692 Cadastral Zone A01 Garki District Abuja from the Defendant, the Plaintiff failed to prove that the Defendant has a duty to pay and compel the purchasers of the other two units to pay for the cost of partitioning. He submitted that the Defendant owes the Plaintiff

no other duty than to allow the Plaintiff peaceful possession and quiet enjoyment of the Subject Matter which she bought from the Defendant. He referred this Court to the Deed of Assignment Exhibit 1. Relying on the case of **NWOKIDU V. OKANU (2010) 1 MJSC (PT.1) P. 29**, it is Counsel's position that a party claiming that she is entitled to a particular right from the defendant must show the existence of a legal right by adducing cogent documentary evidence in building her case. He argued that if the Court finds that the Plaintiff is not entitled to the principal relief for declaration, the other relief hinged on the principal relief will equally fail. He referred this Court to the case of **ADEGOKE MOTORS V. ADESANYA (1989) 3 NWLR (PT. 109) P. 250** on that point. He contended that weakness of the defence or failure of the defendant to defend the case does not entitle the plaintiff to judgment where the plaintiff could not prove her case as she can only succeed on the strength of her case. Counsel cited the case of **ERINFOLAMI V. OSO (2012) 24 NWLR (PT.70)**. He urged this Court to dismiss the Plaintiff's case with punitive cost.

Counsel to the Defendant further submitted that this Court's actions is a display of denial of the Defendant's right of fair hearing in this case. He contended that this Court *suomotu* awarded a cost of N50,000.00 against the Defendant on 26<sup>th</sup> February, 2018 for no reason. That the Court also awarded the cost of N100,000 against the Defendant on 13<sup>th</sup> May, 2019 without affording its counsel opportunity of being heard on cost. That this Court towed the line which has been severally condemned by the Supreme Court in a plethora of cases. He cited the case of **UWEOJI V. AZODO (2012) 12 WRN VOL. 12 P. 49** on the point. Counsel said that the Court deployed all kind of intimidation against the Defendant's Counsel in the course of hearing and descended into the arena by denying the Defendant opportunity of entering its defence for no ascertainable reason. That on 28<sup>th</sup> February, 2019, the Court heard the Plaintiff in the absence of the Defendant and thereafter adjourned to 18<sup>th</sup> March, 2019 for cross-examination and defence but the hearing notice served on the Defendant was for cross-examination alone. That after cross-

examination, the Defendant's Counsel informed the Court of this but the Defendant was foreclosed from entering her defence. That on 2th July,2019 this Court rejected the Defendant's application for adjournment, foreclosed the Defendant from entering her defence and thus denied the Defendant the opportunity of entering her defence. Counsel contended that any party sued to court must be accorded the right or opportunity to defend himself before the court and such right cannot be abridged by the court as it is fundamental. He submitted that the Defendant in this case was denied fair hearing by this Court as it was foreclosed notwithstanding the wrong information contained in the hearing notice and despite its application for adjournment. He therefore urged this Court to dismiss the Plaintiff's case. The Defendant's Counsel concluded his address by submitting that the Plaintiff having failed to prove his claim, this Honourable Court is left with no option but to dismiss same with punitive cost.

Replying on points of law, the Plaintiff's Counsel contended that the Defendant did not adduce any evidence to establish that purchasers of other units are to bring money for partitioning. He said it is the law that parties must lead evidence on facts pleaded and relied on a plethora of authorities. He reiterated his earlier submission that the Defendant is bound by Exhibit 1. He submitted that this Court has discretion under its Civil Procedure Rules to award costs against the Defendant based on particular facts. He posited that the Defendant has a right to appeal against this Court's decision as to cost if aggrieved, but this Court cannot sit on appeal on its own said decision. It is Counsel's contention that where a defendant is given opportunity to present his case but chooses not to utilize same, he cannot be heard to complain of breach of his right to fair hearing. He relied on the case of **MILITARY GOVERNOR OF LAGOS STATE V. ADEBAYO ADEYIGA & ORS (2012) LPELR-7836(SC)**. Referring this Court to its record of proceedings, Counsel submitted that the Defendant was given ample opportunity to present its case but failed to do so and it is wrong for its Counsel to cast aspersion on the Court that the Defendant was not given fair hearing. He posited that the Court accorded both parties in this case equal

opportunity to present their case but the Defendant failed to utilize same. Learned Counsel to the Plaintiff noted that Counsel owes a duty to display a dignified and respectful attitude towards the Judge. He urged this Court to discountenance the Defendant's arguments and grant the reliefs sought by the Plaintiff.

Now in the resolution of the issue before this Court, it is pertinent to note that the Defendant's Counsel has, in his address, raised the issue of denial of fair hearing to the Defendant by this Court. The record of the proceedings in this matter show the following:-

1. This matter first came up in this Court for hearing on 26<sup>th</sup> February, 2018 whereat the Defendant's Counsel sought an adjournment to put his house in order as a motion for extension of time to file his statement of defence out of time was not before the Court. The application for adjournment was granted with a cost of N50,000 ordered to be paid by the Defendant's Counsel on or before the next adjourned date.
2. After attempts at settlement failed, the matter was on 2<sup>nd</sup> October, 2018 adjourned to 13<sup>th</sup> November, 2018 for hearing and hearing notice was served on the Defendant through its Counsel.
3. On 13<sup>th</sup> November, 2018 the Defendant and its Counsel were absent without any explanation. The Plaintiff opened her case and gave evidence-in-chief as PW1. Due to the absence of the Defendant's Counsel, the matter was adjourned for his cross-examination of PW1 and the Defendant's defence. The duplicate copy of the hearing notice in the Court's record dated 8<sup>th</sup> March, 2019 (and served on the Defendant through his Counsel on the same date) clearly indicates that the matter was adjourned to 18<sup>th</sup> March, 2019 for cross-examination *and* defence.
4. When the matter came up on 18<sup>th</sup> March, 2019, PW1 was cross-examined by the Defendant's Counsel at the end of which the Plaintiff closed its case. The Defendant's Counsel thereat sought an adjournment to produce his witness despite the fact that the matter was for defence. In its Ruling, this Court noted that there was no witness statement of any

witness for the Defendant before it as required to have been filed by the Rules and thus refused the application for adjournment, foreclosed the defence from calling any witness and adjourned for final address of parties.

5. On the date the matter came up for address (13<sup>th</sup> May, 2019), the Defendant had filed a Motion No. M/5660/19 to set aside the order foreclosing it, extend the time for filing its witness statement on oath and deeming that which it had filed as properly filed. In its Ruling delivered on that date, this Court in its discretion granted the application and awarded cost of N100,000 to be paid by the Defendant's Counsel in view of its finding that Counsel is not being diligent in the handling of the case. In adjourning the matter to 2<sup>nd</sup> July, 2019 for defence, this Court sternly directed that no further adjournment will be tolerated at the instance of either of the parties.
6. On 2<sup>nd</sup> July, 2019 when the matter came up for defence, the Plaintiff's Counsel was in Court but the Defendant and its Counsel were absent. The Defendant's Counsel had sent a letter dated the same 2<sup>nd</sup> July, 2019 applying for an adjournment on grounds that he travelled because he was bereaved. The Plaintiff's Counsel opposed the application on grounds that the Defendant's Counsel's Chambers had more than one lawyer who could competently handle the proceedings and that the Defendant's Counsel had failed to pay the Court-ordered cost of N100,000. In its Ruling delivered on that date, this Court noted that the Defendant's Counsel failed to comply with the order of cost of N100,000 and the Court had, in any case, directed that there will be no more adjournments at the instance of either party. This Court thus refused the Defendant's application for adjournment and as the Defendant could not open its case that day, the defence was once again foreclosed by this Court. The matter was thereat adjourned for final address and parties filed their respective final written addresses which were adopted/deemed adopted.

It is necessary to set the record straight above in view of the falsehoods, lies the untruths and distortion of facts upon which

the Defendant's Counsel has alleged denial of fair hearing in his address.

It is clear from the record that the Defendant was given ample opportunity to defend the Plaintiff's claim against it. The Defendant was called upon to present its defence but could not do so on various occasions. Firstly, the Defendant asked for an adjournment to call its witness when it hadn't even filed any written witness statement on oath in accordance with the Rules of Court. Even when this Court subsequently magnanimously allowed the Defendant to regularize its processes by filing a witness statement on oath out of time, it again still failed to present its defence by calling evidence at the time it was called upon to do so. Defendant's Counsel's contention that the hearing notice served on him was only for cross-examination is palpably false. As mentioned earlier, the records show that the hearing notice served on him on 8<sup>th</sup> March, 2019 clearly indicated that the matter was adjourned to 18<sup>th</sup> March, 2019 for cross-examination **AND defence.**

The Defendant was accorded fair hearing as this Court gave it opportunities to defend itself in this matter. It just did not make use of the opportunities provided for it. It cannot now complain of breach of fair hearing. Fair hearing simply means giving equal opportunity to the parties to be heard in the litigation before the court and where parties are given opportunity to be heard, they cannot complain of breach of fair hearing where they choose not to make use of the opportunity. See the cases of **OGUNMOLA V. KIDA (2001) 11 NWLR PT. 726 P. 93, BILL CONST. CO. LTD. V. IMANI & SONS LTD. (2006) 19 NWLR (PT. 1013) P. 1 and S.C.E.N. V. NWOSU (2008) ALL FWLR (PT. 413) P. 1399.**

Further, it is important for the Defendant's Counsel to know that when a suit is filed the Court has a fundamental and constitutional duty to inform the adverse party about the pendency of the suit against him by serving hearing notice. And by the time the Court does that it has discharged its obligation. The essence of serving a hearing notice is simply to intimate the

other party that there is a complaint against the party in Court and it is now the duty of the party to take steps to defend same. In fact in the case of **OBIOHA OBONNA & ANOR V CHIEF IGNATIUS OKEAHIAZAM & ORS (2013)LPRLR, 22051** the Court of appeal Held thus:-

"On the issue of non- service of hearing notice on the Appellants before commencement of hearing; A party who is aware of a pending suit against him or affecting his interest should not wait for the Court to communicate to him at every stage of case. On the 13<sup>th</sup> day of February, 2007, Counsel for the 3<sup>rd</sup> Defendant/Respondent Mrs. G.N. Otti wrote a letter for adjournment indicating that there was a move by the parties to settle out of Court. Appellant's Counsel also on the 18<sup>th</sup> day of December, 2007 wrote a letter for adjournment and stated in paragraph 3 of their letter thus:-

*"Besides efforts to reach a peaceful settlement of the suit hereof are still on- going".*

This in effect means that the Appellants were quite aware of the different stages of the case, hence the said letter of adjournment. A party who knows the date for which a date is fixed for hearing does not require any hearing notice."*It is indeed the duty of Counsel to acquaint themselves and keep abreast with the business of the Court at any stage.*"

See also **NYAMCO PLC V ALLMOTORS (NIG) PLC, (2012) ALL FWLR (Pt600) page 1226 at 1248 paragraphs A-B.**

In the instant case, when this matter was filed on 31<sup>st</sup> October, 2017, this Court instructed the registry to effect service of processes including hearing notice on the Defendant. On the 15<sup>th</sup> November, 2017, the Defendant was effectively served with the processes in this suit including hearing notice and the case was slated for hearing on 13<sup>th</sup> December, 2017.

At this stage, it is the duty of the Defendant or its Counsel to acquaint themselves with the business of the Court. However the Defendant's Counsel, one Oliver Eya Esq of Ikechukwu Ezechukwu, SAN & co failed or refused to acquaint himself of the business of the Court despite a notice of hearing signifying the

fact that the Defendant is aware of the pendency of this suit in this Court.

Despite the Defendant's failure to acquaint himself with the business of the Court, another hearing notice was issued and served on the Defendant on 22<sup>nd</sup> February, 2018 with a return date of 26<sup>th</sup> February, 2018 and between the first service of hearing notice accompanied with the originating processes and the issuance of the 2<sup>nd</sup> hearing notice on the Defendant, the Defendant had a period of over two months to file its defence or file any appropriate application. However, on the 26<sup>th</sup> February, 2018 when the matter came up, the Defendant's Counsel Oliver Eya who appeared with IkechukwuEzechukwu (Jnr.) DressmanEbikehinaDissy submitted thus:-

*"We have an application before the Court to file our statement of defence out of time. The application is not before the Court."*

Oliver Eya Esq for the Defendant further submitted:-

*"In the circumstance I apply for a short adjournment to put my house in order."*

It is very sad and indeed disappointing that it is the same Counsel to the Defendant that is complaining of lack of fair hearing by the Court.

It has also been held by the Supreme Court that that the fair hearing principle is not for the indolent or lazy litigant who sets a trap in the litigation process against the court and then turns around to accuse the court of an assumed wrong-doing which was in fact instigated by that party, through his Counsel. See **NEWSWATCH COMM. LTD V. ATTA (2006) 12 NWLR (PT. 993) P. 144.**

Regarding the orders of costs and adjournment, it is clear from the provisions of the extant civil procedure Rules of this Court that these are made at the discretion of the Court. The grant of same is a decision of the Court made pursuant to its inherent discretionary powers and base on facts and given circumstances of the case. That being so, parties (including the Defendant) are at liberty to exercise their right of appeal against such decisions of the Court if they are aggrieved by same. It is trite law that a

person aggrieved by the decision of a court has the right to appeal against same. See the Supreme Court's decision in the case of **NKANA V. HUNDEYIN (2018) LPELR-43757(CA)**. There is however nothing in the records before this Court to show that the Defendant appealed against the decisions of this Court regarding the costs awarded against it. The Defendant didn't even deem it necessary to file an application before this Court to set aside those decisions. Its Counsel, in his final address, is now relying on his perceived grievance with those decisions to contend unfair treatment and denial of fair hearing! It is absurd and preposterous! Even **IF** this Court erred in its said decisions, that cannot by itself be evidence of bias, intimidation or harassment. – see the Supreme Court's decision in **DANIEL TAYAR TRANS ENT. NIG.CO. LTD. V. BUSARI & ANOR (2011) LPELR-923(SC)**.

In sum, the Defendant's Counsel's allegations in his written address of intimidation and denial of fair hearing is without merit and submissions of same cannot avail him in the circumstances. It ought to be discountenanced and it is accordingly discountenanced.

Now, let me first quickly address the issue of the Defendant's defence.

In the instant case, the Defendant filed a statement of defence (with leave of court). Although they had the opportunity to do so, the Defendant failed to call any witness or evidence in support of the statement of defence when the time came for them to do so. This Court was thus constrained to order the foreclosure of its defence.

The law is trite on the effect of a statement of defence where a defendant fails to give evidence at trial. The law is that the Defendant is deemed to have abandoned its statement of defence in the circumstances. See the cases of **AIR FRANCE V. OKWUDIAFOR (2010) LPELR-3664(CA)** and **MANSON V. H.E.S. (NIG.) LTD (2007) 2 NWLR (PT.1018) P. 211**. See

**also the case of DUROSARO V. AYORINDE (2005) 8 NWLR (PT.927) P. 407** wherein the Supreme Court posited that failure to lead evidence in support of averments contained in a statement of defence amounts to an abandonment of the statement of defence and it would be deemed as such.

Having said the above, the first relief sought by the Plaintiff in her statement of claim is essentially one for declaration of title to landed property.

On the onus of proof on a party seeking declaration of title to land, it has been held that such a party must succeed on the strength of his own case rather than rely on the weakness of the defence. See the cases of **HENSHAW V. EFFANGA (2009) 11 NWLR (PT.1151) P. 65** and **EDEBIRI V. DANIEL (2009) 8 NWLR(PT.1142) P. 15.**

Further to the above, the position is that a plaintiff seeking for a declaration of title to land bears the onerous duty in law to adduce credible and admissible evidence in establishment of such title. See the case of **MADAM LANTOUN OJEBODE & ORS V. AKEEM AKANO & ORS (2012) LPELR-9585(CA).**

It is thus irrelevant to the Plaintiff's claim for declaration of title that the Defendant abandoned its defence. The Plaintiff has a duty to prove her case to the satisfaction of this Court.

The position of the law is that a plaintiff seeking declaration of title to land must prove title to that land claimed in one of the following ways in order to succeed:-

- (1) by traditional evidence;
- (2) by the production of documents of title duly authenticated;
- (3) by acts of persons claiming land such as leasing, entering etc. which acts must extend over a sufficient period of time;
- (4) by acts of long possession and enjoyment of land
- (5) by proof of possession of connected or adjacent land.

See the cases of ***IDUNDUN V. OKUMAGBA (1976) 1 NWLR (PT.200) P. 210, EDEBIRI V. DANIEL (SUPRA)*** and ***NWOKOROBIA V. NWOGU (2009) 10 NWLR (PT.1150) P. 553.***

Successful proof by way of only one of the 5 methods would be sufficient to discharge the burden on the claimant for declaration of title. See the case of ***OLAGUNJU V. ADESOYE (2009) 9 NWLR (PT.) 1146 P. 225.***

The Plaintiff in this case tendered documents particularly Exhibit 1 in proof of her allegation of title to the Subject Matter of dispute.

In the case of ***MADU V. MADU (2008) 6 NWLR (PT.1083) P. 296*** the Supreme Court restated its position that in a claim for declaration of title to land, the production of documents of title alone is not sufficient to discharge the onus on the plaintiff to prove the title he claims. The court has a duty to look at the title documents of parties in order to ascertain the validity and effect of same before granting declaration of title. This Honourable Court is therefore entitled, in fact has a duty, to consider the validity and effect of the documents of title which the Claimant has tendered and relied on for his allegation of title in the Subject Matter. See the cases of ***ROMAINE V. ROMAINE (1992) 4 NWLR (PT.238) P. 600, AKINDURO V. ALAYA (2007) 15 NWLR (PT.1057) P. 312 and W.A.C. LTD. V. YANKARA (2008) 4 NWLR (PT.1077) P. 323.***

Now the Plaintiff's case is to the effect that the Defendant conveyed the Subject Matter to her on 9<sup>th</sup> November, 2010 via Exhibit 1. The oral evidence of the Plaintiff on this was neither discredited under cross-examination nor challenged by contrary evidence.

I have carefully looked at Exhibit 1. It is a Deed of Assignment executed between the Plaintiff and the Defendant by which the Defendant transferred/assigned its rights as beneficial owner in the Subject Matter to the Plaintiff. Exhibit 1 indicates that the

Defendant is the original allottee issued to it by the Honourable Minister of the FCT-Abuja over the entire plot of land known and described as Plot No. 1992 Cadastral Zone, A01 Garki 1 District Abuja with File No. RV 10060 and covered by Certificate of Occupancy No. 15ebw-17354-55for-dblau-10 part of which is the Terrace Building known as Unit 3 (Subject Matter of this case). It is a notorious fact that it is the Honourable Minister that has power to allocate land. The title of the Defendant (as the Plaintiff's vendor) was not put in issue in this case and as such the Plaintiff is under no burden to prove his vendor's (i.e. the Defendant's) title to the Subject Matter. See the cases of **AIYEOLA V. PEDRO (2014) LPELR-22915(SC)**, **KILAWA V. KALSHINGI & ANOR (2018) LPELR-45630(CA)** and **BARAU & ORS V. CONSOLIDATED TIN MINES LTD & ORS (2019) LPELR-46806(CA)** to mention but a few.

Thus, based on the evidence before me I hold the view that Exhibit 1 truly establishes a conveyance of the Subject Matter by the Defendant to the Plaintiff and therefore the Plaintiff has established her ownership of the Subject Matter in this action and I so hold. She is thus entitled to the declaration sought via the first relief of the Statement of Claim and it is accordingly granted.

Having established her title to the Subject Matter, the Plaintiff is entitled to an order of injunction protecting that title. Such an order is a consequential order which naturally flows from the grant of declaration of title sought, and can be granted by the Court to protect such right even if not specifically asked for. – see the case of **JIMLARI V. TIPPI (2010) LPELR-4356(CA)**. The Plaintiff is thus entitled to the grant of the third relief of her statement of claim and it is hereby granted as prayed.

The second and fourth reliefs of the statement of claim are for order of specific performance and damages for breach of contract respectively.

The principle of specific performance relates to enforcement of contract entered into between the parties. A contract for its part

involves offer, acceptance of that offer coupled with provision of consideration. See the Supreme Court's decision in the case of **EZENWA V. OKO (2008) 3 NWLR (PT.1075) P. 610.**

In the case of **UNIVERSAL VULCANIZING (NIG) LTD V. IJESHA UNITED TRADING & TRANSPORT CO. LTD & ORS (1992) LPELR-3415(SC)**, the Supreme Court held as follows per Kutigi JSC:-

*"A decree of specific performance is a decree issued by the Court which constrains a contracting party to do that which he has promised to do. It is a remedy for breach of contract provided by equity to meet those cases where the common law remedy of damages is inadequate (see Beswick v. Beswick (1968) A.C.58 H.L.). Thus where a vendor or lessor of land refuses to carry out his contract, an order of specific performance may be granted requiring him to execute the necessary conveyance or lease since one piece of land is not necessarily the same as another and damages may therefore not be an adequate remedy. But a plaintiff will be left to his remedy at law if a decree of specific performance would inflict a hardship on the defendant. Consequently, the principle is that specific performance will generally not be granted where damages would be an adequate remedy."*

See also **NKANA V. HUNDEYIN (SUPRA).**

The general principle of law is that the grant of an order of specific performance is a matter of judicial discretion which must be exercised judiciously and judicially on settled principles, one of which is that the remedy is only available in respect of a valid contract. See the cases of **HELP (NIG.) LTD. V. SIVER ANCHOR (NIG.) LTD. (2006) 5 NWLR (PT.972) P. 196** and **OHIWEREI V. OKOSUN (2003) 11 NWLR (PT.832) P. 463.**

In the instant case, it has been established that the Plaintiff and the Defendant executed Exhibit 1 by which the Defendant (as 'Assignor') conveyed the subject property to the Plaintiff (as

'Assignee'). On the face of it, Exhibit 1 indicates all the trappings of a valid contract of sale of landed property capable of enforcement by specific performance i.e.offer, acceptance and consideration. See **EZENWA V. OKO (SUPRA)**. The validity of Exhibit 1 is not in question in this case.

Now, at page 3 paragraph 3 of Exhibit 1 (executed by the parties to this case) it reads as follows:-

*"The Assignor hereby covenants with the Assignee to sign all relevant documents in relation to registration and or procurement of Deed of subdivision or partition in respect of the entire plot."*

The fact has been established by the only credible evidence before this Court is that in efforts to perfect the title conveyed to her by the Defendant, the Plaintiff approached the Defendant through its Counsel with copies of Deed of Partition of the entire property to be signed by the Defendant. There was no action by the Defendant and so the Plaintiff again, wrote a reminder to the Defendant through its Counsel. Exhibit 7 is a copy of the Deed of Partition prepared for the Defendant's signature while Exhibits 5A and 5B are correspondences to the Defendant and its Counsel forwarding copies of the Deed of Partition (i.e. Exhibit 7). Exhibit 5 is another letter dated 4<sup>th</sup> April, 2017 by which the Defendant was again urged by the Plaintiff to sign Exhibit 7. Finally, Exhibits 5C and 5D are copies of letters dated 11<sup>th</sup> September, 2017 giving the Defendant ultimatum to sign the Deed of Partition (Exhibit 7) but which the Defendant refused service thereof.

Counsel to the Defendant argued in his final address that there is nothing in Exhibit 1 to compel the Defendant and some other persons to pay for the partitioning of the property. I am afraid there is no issue before this Court regarding payment for partition of the property. This Court can only deal with issues that are competently placed before it by parties.

From the facts before this Court, all the Plaintiff required the Defendant to do was to execute the Deed of Partition Exhibit 7. She reiterated this under cross-examination by the Defendant's Counsel when she said that her only issue with the Defendant is obtaining the Deed of Partition which the Defendant's Company Secretary kept promising would be handled.

The simple question is; is the Defendant obliged under Exhibit 1 (Deed of Assignment) to sign/execute Exhibit 7 (the Deed of Partition)? Having read the third paragraph of page 3 of Exhibit 1, I have no hesitation in answering in the affirmative. The said clause of Exhibit 1 is clear and unambiguous. The simple and ordinary meaning (which must be given effect to) is that the Defendant undertook to sign all documents relevant to the partition of the property. Therefore, upon being presented with copies of the Deed of Partition by the Plaintiff for execution, the Defendant was obliged to have signed same. I thus disagree with the Defendant's Counsel's submission that all the Defendant owed the Plaintiff was peaceful possession and quiet enjoyment of the Subject Matter.

Once a document containing terms is signed, in the absence of fraud and misrepresentation, a party who has signed such a document is bound by it. See **WEST AFRICA PORTLAND CEMENT PLC V. ODUNTAN & ANOR (2007) LPELR-9046 (CA)**. The Court of Appeal held as follows in the case of **LIVING FAITH CHURCH WORLDWIDE INC & ORS V. SUPERIOR CHOICE (NIG) LTD & ANOR (2019) LPELR-46501(CA)**:-

*"Parties are bound by the terms and conditions of agreement they freely entered into. In matters of contract where the terms and conditions are embodied in a written document, neither of the parties, nor the Court will be permitted to introduce extraneous terms on which they are not **ad idem**. In other words, where parties are ad idem on the terms of contract, the role of the Court is to give effect to the terms without more."*

In view of its obligation to sign the Deed of Partition, the Defendant's act of persistently failing to sign Exhibit 7 after being presented with same amounts to a wilful breach of its obligations under Exhibit 1. There is no lawful reason presented to this Court why the Defendant ought not to have signed Exhibit 7. 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 an obligation defectively or incapacitates himself from performing the contract. See the case of **ADEOTI V. AYORINDE (2001) 6 NWLR (PT. 709) P. 336**. See also the Supreme Court's decision in the cases of **BEST (NIGERIA) LTD. V. BLACKWOOD HODGE (NIGERIA) LTD. & ORS. (2011) LPELR-776(SC)** and **ADEDEJI V. OBAJIMI (2018) LPELR-44360(SC)**.

In view of the Defendant's obligation under Exhibit 1 to sign Exhibit 7, and its breach of same, I hold the view that the Plaintiff is entitled to the second relief and I so hold. The Defendant has not shown that it would be impossible or work exceptional hardship upon it if it is made to comply with its said obligation. This is therefore an appropriate situation where the discretionary power of this Court to order specific performance would be judiciously and judicially exercised. The Plaintiff is thus entitled to the second relief of the statement of claim in this case and it is accordingly granted as prayed.

With respect to the fourth relief for damages for breach of contract, the law is settled that where a plaintiff claims specific performance, the Court has the power to award damages either in addition to or in lieu of specific performance. See **UNIVERSAL VULCANIZING (NIG) LTD V. IJESHA UNITED TRADING & TRANSPORT CO. LTD & ORS (SUPRA)**.

Having established the Defendant's breach of contract (Exhibit 1), the Plaintiff is entitled to damages against the Defendant. The position of the law is that once breach of contract is established, damages follow and general damages are presumed by law (it need not be pleaded or proved) as losses that flow naturally from

the adversary. – see the case of **CAMEROON AIRLINES V. OTUTUIZU (2011) LPELR-827(SC)**.The Plaintiff has however not proved any actual damage to herself. She is therefore only entitled to nominal damages. Accordingly the sum of N5,000,000.00 is hereby awarded to the Plaintiff against the Defendant as damages for breach of contract.

The law is settled that cost follows the event. The Plaintiff who is the successful party in this action is therefore entitled to cost to be awarded at the discretion of this Court. – see the case of **OKAFOR V. LEMNA CONSTRUCTION CO. LTD & ANOR (2018) LPELR-46001(CA)**.The Plaintiff is entitled to an amount as cost under the fifth relief of her statement of claim and the sum of N100,000.00 is hereby assessed in favour of the Plaintiff and against the Defendant.

Pursuant to all the foregoing, the issue for determination is hereby determined in favour of the Plaintiff and against the Defendant. The Plaintiff is entitled to judgment in this case as per all the reliefs sought by her in the statement of claim.And accordingly judgment is hereby entered for the Plaintiff as per reliefs (a) (b) and (c) while reliefs (d) and (e) are in part.

That is the judgment of this Court.

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**HON. JUSTICE D.Z. SENCHI  
(PRESIDING JUDGE)  
18/01/2021**

Parties :- Absent.

J.J Usman:- With me is S.O George Esq for the claimant.

Oliver Eya:- For the Defendant.

**Sign  
Judge  
18/01/2021**