

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

HIS LORDSHIP: HON.JUSTICE M.S. IDRIS

COURT NUMBER: 28

DATE:-22ND NOVEMBER, 2023

FCT/HC/CV/1060/2023

BETWEEN

MR. OLUSEGUN ODUNAIYA-----

CLAIMANT

AND

THE LIFE CAMP PARADISE LTD-----

DEFENDANT

JUDGMENT

This Judgment is in respect of an action at the instance of the Claimant, brought by way of a Writ of Summons filed on the of 12th January,2023 together with supporting documents as prescribed by law and seeking the following reliefs to wit-:

1. A Declaration that the Defendant breached the terms of the agreement between it and the Claimant as contained in the 2 (two) separate Offer Letters (the "Offer Letters") both dated 22nd August, 2021 and captioned Offer Letter for the sale of a unit of 4 Bedroom Semi-Detached Duplex 1 Storey

at Villas De Paradis Durumi, on off sales basis and (y) Offer Letter for the sale of a unit of 3 Bedroom Apartment TMF at Villas De Paradis Durumi, on off sales basis.

2. An Order of specific performance compelling the Defendant to comply with the terms of and perform its obligations under the Offer Letters by:-

2.1 assessing and communicating to the Claimant in line with the Offer Letters, the cumulative quarterly instalment payments and default fees due on (x) A unit of 4 Bedroom Semi-Detached Duplex 1 Storey at Villas De Paradis Durumi, on off sales basis and (y) A unit of 3 Bedroom Apartment TMF at Villas De Paradis Durumi, on off sales basis (the "Properties");

2.2 allowing the Claimant to within 1 (one) month from the date of receipt of the assessment fully settle the assessed outstanding quarterly instalment payments and default fees;

2.3 allocating the Properties to the Claimant; and

2.4 forthwith executing all title documents and handing over physical possession of the Properties to the Claimant.

3. As an alternative to the relief sought in paragraph 2, 2.1, 2.2, 2.3 and 2.4 above;

- 3.1 An Order compelling the Defendant to forthwith refund the total sum of ₦20,000,000.00 (Twenty Million Naira) only being the Initial Deposit paid by the Claimant for the Properties;
 - 3.2 Interest on the Initial Deposit calculated at 25% from the date of payment till the date of Judgment in this suit.
- 4 Exemplary damages in the sum of ₦50,000,000.00 (Fifty Million Naira) against the Defendant for the breach of the terms of the Offer Letters.
 - 5 General damages in the sum of ₦10,000,000.00 against the Defendant for breach of the terms of the Offer Letters.
 - 6 10% interest per annum on the judgment sums till final liquidation of the entire judgment sums.
 - 7 The sum of ₦1,100,000.00 (One Million, One Hundred Thousand Naira) as cost of this action.

8 Any such further or other orders as this Honourable Court may deem fit to make in the circumstance.

Upon service of the Originating processes on the Defendant, they entered appearance, filed their Defence against the Claimant on 29th March ,2023:

On the basis of the pleadings of Parties herein, trial commenced and the Claimant testified and the following documents were tendered in support of his case:-

1. 2 Offer Letters dated 22nd August 2021 – (Exhibit 1)
2. Certificate of Compliance together with email correspondences between the Claimant and Defendant (Exhibit 2)

The Defendant also testified and the following documents were tendered through the 2nd Defendant: 0

1. 2 (10) day demand notices dated 17th February, 2022 – Exhibit DW1
2. 2 Termination of Contract Letters dated 24th May, 2023- Exhibit DW2

On the basis of the close of the case of all parties, parties filed and adopted their Final Addresses.

CLAIMANT'S ARGUMENT:

The Claimants argued that he subscribed to the Defendant's Villas De Paradis Estate by accepting the Defendant's twin offer for the sale of a unit of (four) Bedroom semi-detached duplex 1 storey and a unit of 3 (three Bedroom apartment TMF on off sales basis. Both offers were for 1 (one) year tenor with a 12 months payment plan. However, the Claimant after the first payment defaulted in the 2nd instalment and the Defendant without recourse to the Claimant sold the Properties during the life of the contract. The Claimant went on to adopt the first issue formulated by the Defendant and equally formulated its sole issue for the determination of the Case to wit:-

- i. Whether the Suit of the Claimant is properly constituted to warrant the determination of this Honourable Court.
- ii. Whether the Claimant has made out a case of breach of contract against the Defendant thus entitling him to the reliefs sought in his statement of claim?

on the first issue, the Claimant quoting the provision of Order 2 Rule 1 of the High Court of the Federal Capital Territory (Civil Procedure) Rules 2018, argued that civil proceedings may be begun by writ, originating summons, originating motion or petition and that the Claimant commenced the instant case by way of a Writ of Summons which was duly filed and subsequently

issued by the Registrar before it was served on the Defendant and that the Writ captures the name of the Defendant as it should be. The Claimant argued that although the other processes accompanying the Writ of summons had the name of the Defendant written as "The Paradise Life Camp Limited" this was a mistake which has not in any way misled the Defendant. To buttress this point, the Claimant relied on the case of ***APGA V. UBAH (2019) 15 NWLR (PT.1694) 25 AT 39, PARAS. C-F*** and urged the Court to resolve this issue against the Defendant.

Going further to the 2nd issue raised, the Claimant maintained that in a case for breach of contract, the Party alleging a breach of contract is first required to establish the existence of a valid contract. The Claimant submitted that in this regard a combined look at the pleadings and exhibits tendered reveal that he had established the existence of a valid contract between him and the Defendant. Relying on the case of ***OWAKAH V. R.S.H.P.D.A (2022) 12 NWLR (PT.1845) 463 AT 498*** he stated that the Defendant had also admitted the existence of this contract in paragraph 1 of its Statement of Defence and that facts admitted need no further proof. The Claimant further argued that although he defaulted on the payment plan as contained in the contract between it and the Defendant, this was largely as a result of the

Defendants failure to provide the original title documents to enable the Claimant conduct legal search at the land registry amidst other factors.

The Claimant's grouse is therefore that he got wind of the fact that the subject matter of the contract was resold or "reallocated" to third parties and this was a breach of the contract between it and the Defendant as the contract did not permit the Defendant to sale the properties while the contract still subsisted. The Claimant further maintained that Exhibit DW1 tendered by the Defendant was never served on him. The Claimant further argued that the Defendant's Exhibit DW2 supports the case of the Claimant that the Defendant indeed breached the terms of the contract. In conclusion, the Claimant urged the Court to grant the reliefs sought by him on the strength of the evidence adduced.

DEFENDANT'S ARGUMENTS:

The Defendant formulated two issues for the determination of the Case to wit:-

1. Whether the suit of the Claimant is properly constituted to warrant the determination of this Honourable Court

2. Whether from the state of pleadings and the totality of the evidence placed before this Honourable Court, the Claimant is entitled to the reliefs claimed

In arguing these issues raised, the Defendants submitted that the Court has been robbed of jurisdiction to entertain this matter as the Claimant's suit is incompetent, the Defendant having been sued with a wrong name. Relying on the case of ***ANYAWU V. OGUNWE (2014) ALL FWLR (PT.738) 1012 AT 1042C-D*** the Defendant submitted that any defect in competence of a court is fatal and any proceedings conducted in the face of such lack of competence will be declared null and void no matter how well conducted. Further relying on the case of ***NITEL V. OKEKE (2017) ALL FWLR (PT. 899) 296 AT 220 SC***, the Defendant maintained that it gave evidence that the Defendant was wrongly sued and the Claimant failed to join issues with it on this point therefore this established the fact that the Court lacked jurisdiction.

On issue two raised, the Defendant submitted that the Claimant is not entitled to the reliefs claimed before the Court. The Defendant reiterated the contractual nature of the relationship between the Claimant and Defendant. The Defendant relying on ***DALEK (NIG) LTD V. OMPADEC (2007)***

NWLR (PT.1034) 402 maintained that it is trite that parties are bound by the terms of their agreement freely entered into and duly signed by them. The Defendant therefore submitted that even though the contract entered into between the parties is valid, the Claimant had breached a term of the contract as regards payment which has in turn given the Defendant rights to deal or treat each of the transactions in line with the offer letters. The Defendant relying on the case of **COLONIAL DEVELOPMENT BOARD V. KAMSOM (1955) 21 NLR 75** further submitted that the Claimant who willingly accepted these offers made to him in writing cannot change the terms and conditions orally or through the instrumentality of court in absence of fraud or ambiguity. The Defendant also submitted that the Claimant who is in breach of the offer letters cannot be asking the court to enforce same for him, maintaining that he who comes to equity must come with clean hands.

The Defendant therefore invited the Court to give effect to the terms and conditions as expressly stated in line with the cherished decision of the Supreme court in **FBN PLC V. MAIWADA (2013) 5 NWLR (PT. 1348) 444 AT 483 SC.** Furthermore, the Defendant urged the Court to discountenance

the reliefs sought by the Claimant for lacking in merit and substance.

After a careful appraisal of the entire processes filed by parties, I am of the view that in order for justice to be manifestly done and seen to be so done, issues which need to be addressed are:-

1. *"WHETHER THE CLAIMANT BREACHED THE CONTRACT BETWEEN IT AND THE DEFENDANT"*
2. *"WHETHER THE DEFENDANT BREACHED THE CONTRACT BETWEEN IT AND THE CLAIMANT"*

Before sojourning into the issues raised above, it is crucial to address the jurisdictional issue raised by the Defendant, as time and time again Courts have been reminded that jurisdiction is the live wire of a Court and a Court that proceeds without jurisdiction to adjudicate over a Matter conducts an effort in futility as such a decision is liable to be rendered nugatory. See the case of ***MADUKOLU V. NKEMDILIM (1962) 2 SCNLR 341***

The grouse of the Defendant is that the Claimant has sued a wrong name "The Paradise Life Camp Limited" which has no legal personality rather than "The Life Camp Paradise Limited". Having gone through the processes filed in this Matter, I observe that the Writ of Summons which was served on the Defendant carries its correct name but the Statement of Claim is the process

containing this error in arrangement of nomenclature. It is unnecessary to belabor an issue as elementary as this. It is clear that actions are commenced either by way of a Writ of Summons, an Originating Summons, Originating Motion and Petition under the rules of this Court. The Claimant herein commenced this action by way of Writ of Summons and on the face of it, the Writ contains the correct name of the Defendant. I therefore cannot fathom why the Defendant insists on placing reliance on the error in the Statement of Claim to found this objection. The era of relying on technicalities are long over in as much as there won't be miscarriage of justice. The case of **FAMFA OIL LTD V. A.G. OF THE FEDERATION (2003) 18 NWLR (PT.852) 453** lucidly stresses this point thus: *"Accordingly, Courts of law should not be unduly tied down by technicalities, particularly where no miscarriage of justice would be occasioned"*. I do not believe the error in nomenclature on the face of the Statement of Claim filed by the Claimant will amount to a miscarriage of justice in this regard as the name of the Defendant is well captured on the Writ which is the foundation upon which this entire action is sustained. I therefore uphold the arguments of learned Counsel to the Claimant and resolve issue 1 formulated by the Defendants against the Claimant.

Having now put to rest the issue of jurisdiction, it is imperative we proceed to the substance of the case and in a bid to so do, answering the following questions are necessary to wit:

1. What is a Contract?
2. When will a breach of Contract be said to occur?

In answering the first question raised, the case of **BPS CONSTRUCTION & ENGINEERING Co. LTD V. FCDA (2017) LPELR-SC. 293/2011** is quite instructive. Herein, the Supreme Court held that:

*"Conversely, my understanding of a 'CONTRACT' is that it is a formal agreement between two or more parties who by so entering into such agreement, they resolve to create obligation or commitment between them to do or not to do a particular thing. **In a contract, the basic elements that forms it or makes it binding, is that there is offer, "acceptance" and consideration and these three elements of which must coexist and be properly defined in no uncertain terms.** In such agreement, if parties sign it they make themselves bound by it and thereby becoming enforceable on them depending on the terms agreed upon. See *Alfotrin Ltd v. A-G Federation & Ors (1996) 9 NWLR (Pt. 475) 634.*" **Per SANUSI, J.S.C. (P. 86, Paras. A-D)***

It is imperative and I shall now proceed to the second question raised above. In the case of **OBAJIMI V. ADEDEJI (2007) LPELR-CA/1/25/05** the Court of Appeal held that:

"...a breach of contract is committed when a party to the contract without lawful excuse fails

neglects or refuses to perform an obligation he undertook in the contract or either performs the obligation defectively or incapacitates himself from performing the contract. See Adeoti & Anr. v. Ayorinde & Anr. (2001) 6 NWLR (Pt. 709) 336." Per FABIYI, J.C.A (P. 19, paras. C-E)

Also, in **PANBISBILDER NIGERIA LTD V. FBN LTD (2000) LPELR-SC.114/91** the Supreme Court in deciding what a breach of contract connotes held thus:

"A breach of contract connotes that the party in breach had acted contrary to the terms of the contract either by non-performance, or by performing the contract not in accordance with its terms or by a wrongful repudiation of the contract. A party who had performed the contract in consonance with its terms cannot be said to have been in breach thereof." Per AYOOLA, J.S.C. (P. 31-32, paras. G-A)

Furthermore, in the case of **ODULATE V. FIRSTBANK (2019) LPELR CA/L/1450/2016** the Court of Appeal in establishing what a Claimant must show to succeed in an action for breach of contract held thus:

"...Breach of contract arises in a situation wherein a party to an agreement, fails to perform his own obligations, thereby causing damages to the other party or parties to the agreement, who have taken certain steps on the basis of the agreement. In order to prove breach of

contract, the party asserting must clearly show what actions or omissions the defaulting party is guilty of that constitutes the breach. *The Supreme Court gave a succinct exposition of the foregoing in the case of BEST NIGERIA LTD. v. BLACKWOOD HODGE NIGERIA LTD. (2011) LPELR-776(SC) (P.42, Paras.D-E) Per Adekeye, J.S.C. thus: "For a claimant to succeed in an action for breach of contract, he must establish not only that there was a breach but also that there was in existence an enforceable contract which was breached." See: DIAMOND BANK LTD v. PAMOB WEST-AFRICA LTD (2014) LPELR-24337(CA); and JACOB V. AFAHA (2012) LPELR-7854(CA). A calm look at the facts of this case shows that the Appellant did not satisfactorily establish breach of contract." Per TUKUR, J.C.A. (Pp. 14-15, Paras. A-D)*

It is now crucial to Juxtapose the cited authorities above to the facts of this Case as inferred by the Court. Summarily, the facts are that the Claimant entered into a Contract with the Defendant for the purchase of two properties as shown in **Exhibit 1** which comprises the two offers. In both offers, the Claimant was expected to make an initial deposit of ₦6,000,000.00 (Six Million Naira) and ₦14,000,000.00 (Fourteen Million Naira) respectively and complete the payments quarterly within a tenor of 12 months. The Claimant therefore made these deposit payments

but defaulted in due quarterly payments along the line. Thereafter, within the 12-month tenor, the Claimant approached the Defendant seeking the possibility of making all payments due but was allegedly informed that the properties had been sold off. Upon this discovery, the Claimant requested from the Defendant a refund of the total initial deposit of ₦20,000,000.00 (Twenty Million Naira) which he had paid but was only informed by the Defendants that refunds will be processed in line with the agreement of both parties, signaling a deduction of 10 per cent of the total sum deposited and an administrative fee of ₦10,000.00. Being unsatisfied with this proposition, the Claimant instituted this action seeking the reliefs as captured in the Writ.

It is now incumbent on this Honorable Court to lift the veil to decipher the true state of affairs based upon the preponderance of evidence led. Firstly, it is settled and not in contention that the contract between the Claimant and Defendant is valid. Therefore, what is in contention is if this contract between both parties has been breached and if so by whom.

On the first issue I have raised, "*WHETHER THE CLAIMANT BREACHED THE CONTRACT BETWEEN IT AND THE DEFENDANT*", it is instructive to note that the payment terms were clearly captured in ***Exhibit 1***. Therein, it was clearly stated that the Claimant was to pay for both properties within a 12-month period through an initial

deposit followed up with agreed quarterly instalments. It is on record before this Court that the Claimant actually made the initial deposit payment but failed to make further payments. Even though the Claimant has struggled to shift the blame for neglecting to comply with the payment terms as agreed to the actions of the Defendant, those allegations remain unfounded as the contract which was entered between the Claimant and the Defendant is before this Court and speaks for itself. The Supreme Court in the case of ***IBRAHIM V. ABDALLAH & ORS (2019) LPELR-SC. 465/2019*** upheld this principle when it held that:

"It is now firmly settled that documentary evidence is the best evidence. In fact, the document being the best proof of its contents, no oral evidence will be allowed to discredit or contradict the said contents except in cases where fraud is pleaded. See Per Ogbuagu JSC in Skye Bank & Anor V. Akinpelu (2010) LPELR-3073 (SC)." Per Abba Aji, JSC (Pp. 11-12, Paras. E-A)"

Therefore, based on the preponderance of evidence before this Court it remains manifestly clear that the Claimant breached the contract between it and the Defendant as he failed to comply with the payment terms therein.

It is now pertinent to move on to the second issue I have raised, "WHETHER THE DEFENDANT BREACHED THE CONTRACT BETWEEN IT AND THE CLAIMANT". On this head, it is necessary to reproduce crucial clauses of the contract (**Exhibit 1**) as it affects the actions of the Defendant in the Contract. To this end, a reproduction of the clause titled Default/Remedy is necessary and is reproduced below:

"In the event that there is a default in the payment structure as agreed or the Purchaser wishes to withdraw, please note that the Vendor reserves the right and sole discretion to: demand full payment for the property, or review, withdraw, cancel or revoke this offer for failure of the purchaser to comply with the terms and conditions herein stated, and upon a request for refund, to effect a refund less 10% of the total amount paid and N10,000.00 administrative fee within 8 (eight) months from execution and submission of the refund form. All refunds are subject to our internal policy. Where the Vendor fails to deliver the property within the stipulated delivery period inclusive of the grace period, the Purchaser shall be entitled to terminate the Sale Agreement.

The Vendor shall, within 8 (eight) months from termination repay to the Purchaser a one-off interest at the prevailing market rate or 5% of the total amount paid, whichever is lower; provided that where Purchaser does not terminate the Agreement, the Purchaser shall not be entitled to any interest or claims whatsoever whether the property is ready for delivery or not and the Vendor shall not be under any obligation to pay any amount for any whatsoever."

From a reading of the above clause, it is clear that although the clause empowers the Defendant to demand full payment for the property, or review, withdraw, cancel or revoke the offer for failure of the purchaser to comply with the terms and conditions stated in the contract, the Defendant ought to be guided also by the provisions of the contract as a contractual document is not read in part but wholly. The Contracts in questions were for a definite term of 12 months. Therefore, what this entails is that although the Claimant had reneged on the payment plan, within this period, he could have made right his error by paying up the default fees and any additional costs prescribed by the

Defendant. This is confirmed by a read of the “other conditions clause” in ***Exhibit 1***, which states that:-

- i. Compliance with the payment structure is a fundamental condition for the sale price offered for the property to subsist; and failure to make payments as and when due may invalidate the offered sale price especially in the case of promos/discounts offered to the Purchaser. In such events, the Vendor shall reserve the right to review the sale price of the property. The Purchaser understands that he/she shall bear any additional costs in delivering the property especially those arising from changes in government policies or unforeseeable circumstances.***
- iii. The delivery timelines agreed by Parties may be affected by unforeseen circumstances, economic forces, and bureaucratic delays in governmental and regulatory approvals.***
- iv. The Unit is sold as part of an estate, the Purchaser upon signing the contract accepts to be bound by the Estate Handbook.***

Therefore, as evidenced in that clause above, a default in payment terms entitled the Defendant to seek additional cost from the Claimant and as evidenced in **Exhibit 2** of the Claimant, in their mail of July 16, 2022 to the Defendant, the Claimant had opted to make payments but was informed by a staff of the Defendant that the property had been sold already.

The Defendant tendered **Exhibit DW1**, a demand notice but on the face of **Exhibit DW1**, there is nothing to show that the notice was ever served on the Claimant. Furthermore, **Exhibit DW2** dated May 24th, 2023 was made during the pendency of this action and it will be folly for this Honorable Court to place reliance on same.

In essence, the contract between the Claimant and the Defendant was for a tenor of 12 months. Where due to a breach of the contract within the 12-Month tenor the Defendant was to take any action on the properties, they ought to have duly notified the Claimant as the Claimant was still within the 12-month tenor period and could have remedied his wrong as he proposed to. In this regard, the action of the Claimant did not go to the root of the Contract. In other words, the Claimant did not breach a fundamental term of the contract. The action of the Claimant would have been fundamental to the underlining of the contract if

the 12-month period had elapsed, or the Defendant had given the Claimant sufficient notice of an action they intended to take based on his action and the Claimant neglected to act.

It is in light of the above that it is glaring that the Defendant did not also adhere wholly to the contract between it and the Claimant.

Based on the foregoing, it is deducible that both the Claimant and Defendant have soiled their hands with the spoils of breaching the contract they voluntarily entered into and it therefore lies sour in the mouth of the Claimant to seek the equitable remedy of specific performance and also lies sour in the mouth of the Defendant to enforce the contract *stricto sensu* when they have also not adhered strictly to its terms. It is trite that he who comes to equity must come with clean hands.

To this end, reliefs 1, 3.1, 5 and 6 sought by the Claimant succeeds. However, the sum granted for relief 5 is ₦500,000.00 reliefs 2, 2.1, 2.3, 2.3, 2.4, 3.2, 4 and 7 sought by the Claimant fail accordingly for lacking in merit. Parties are to bear their respective costs.

HON. JUSTICE M.S IDRIS
(Presiding Judge)

Appearance

Godswill N. Iwuajoku:- For the Claimant