

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

**BEFORE HIS LORDSHIP: HON. JUSTICE BABANGIDA HASSAN**

**SUIT NO: CV/2837/2018**

**BETWEEN:**

**CITEC INTERNATIONAL ESTATES LTD....CLAIMANT**

**AND**

**ABDULRAHMAN ABUBAKAR OMADE...DEFENANT**

**(BY ORIGINAL ACTION)**

**AND**

**ABDULRAHMAN ABUBAKAR OMADE...COUNTER CLAIMANT**

**AND**

- 1. CITEC INTERNATIONAL ESTATES LTD.....1<sup>ST</sup> DEFENDANT TO  
COUNTER CLAIM**
- 2. FEDERAL MORTGAGE BANK OF NIGERI A...2<sup>ND</sup> DEFENDANT TO  
COUNTER CLAIM**
- 3. STALLION MICROFINANCE BANK LIMITED...3<sup>RD</sup> DEFENDANT TO  
(BY COUNTER CLAIM) COUNTER CLAIM**

**JUDGMENT**

By the writ of summons and statement of claim dated the 24<sup>th</sup> day of September, 2018, the claimant herein seeks for the following reliefs:

- a. A declaration that the defendant is in breach of his obligation to the plaintiff as contained in the Provisional Letter of Allocation of House C1, B3 Close, Mount Pleasant Citec Estate, Mbora District, Abuja dated 30<sup>th</sup> August, 2006 issued to the defendant by the plaintiff.
- b. A declaration that the Provisional Allocation of House C1, B3 Close (Oyin House Type) in Mount Pleasant Citec Estate, Mbora District, FCT Abuja made to the defendant via the Provisional Letter of Allocation

dated 30<sup>th</sup> August, 2006, has lapsed by virtue of defendant's breach of the terms and conditions contained therein.

- c. An order mandating the defendant to immediately vacate and deliver up vacant possession of House C1, B3 Close (Oyin House Type) in Mount Pleasant Citec Estate, Mbora District, FCT Abuja to the plaintiff in a tenantable condition with immediate effect.
- d. The sum of N1,000,000.00 (One Million Naira) only per annum, being the annual rental value and mesne profit for the illegal use and occupations of the claimant's property known as House C1, B3 Close (Oyin House Type) in Mount Pleasant Citec Estate, Mbora District, FCT Abuja from 30<sup>th</sup> October, 2006 to 29<sup>th</sup> October, 2012.
- e. The sum of N1,250,000.00 (One Million, Two Hundred and Fifty Thousand Naira only) per annum being the annual rental value and mesne profit for the use and occupation of the property from 30<sup>th</sup> October, 2012 to 30<sup>th</sup> October 2017.
- f. The sum of N108,333.33 (One Hundred and Eight Thousand, Three Hundred and Thirty-Three Naira, Thirty Three Kobo only) per month, pro rata of N1,300,000.00 (One Million, Three Hundred Thousand Naira only) as the current rental value of the property, as mesne profit for the use and occupation of the property from 30<sup>th</sup> October, 2017 till vacant possession is yielded.
- g. Alternatively, the sum of N20,000,000.00 (Twenty Million Naira only) as general damages for trespass and holding over of the claimant's property by the defendant.

- h. Interest rate at 10% per annum, on the entire judgment sum from the date of judgment until the entire judgment sum is fully liquidated.
- i. An order of perpetual injunction restraining the defendant, its agents and privies from further trespassing on or holding over the claimant's property known as House C1, B3 Close (Oyin House Type) Mount Pleasant Citec Estate, Mborá District, FCT Abuja or any part of the entire estate.
- j. Cost of this action.

According to the statement of claim, the bottom line of the claim is that the defendant was offered a House C1, B3 Close (Oyin House Type) Mount Pleasant Citec Estate, Mborá District, FCT Abuja by the plaintiff through a Provisional Allocation Letter dated 30<sup>th</sup> day of August, 2006 at the rate of N5,000,000.00 (Five Million Naira only), and the defendant paid the sum of N500,000.00 (Five Hundred Thousand Naira only) as deposit and refused/failed to pay the balance of N4,500,000.00 (Four Million, Five Hundred Thousand Naira only) and the offer has lapsed, and the defendant has refused and failed to comply with the terms and conditions of the offer and is therefore in breach of such terms and conditions, and the claimant, is among other claims, asking the defendant to vacate and deliver up vacant possession of the property with immediate effect.

Attached to the statement of claim are the two witness statements on oath of Odunayo Bello and Shola Abeji.

The defendant filed a statement of defence and a notice of counter claim dated the 5<sup>th</sup> day of march, 2019 and the defendant admits paragraphs 1 and 2 of the statement of claim, and also admits paragraph 3 to the extent that the purchase price was N5,000,000.00 (Five Million Naira) and he has filled a Reservation Form which

was issued to him by the plaintiff. The defendant admits paragraph 4 of the statement of claim, and denied clauses 5 and 6 of the terms of the provisional Offer of Allocation that the clauses are not applicable to him and the terms and conditions of the allocation were of general application for all purchasers of houses at the estate and the Reservation Form was designed to indicate those who were to purchase houses by cash and those by mortgage through Stallion Savings and Loans (now Infinity Trust Mortgage Bank Plc) or any primary mortgage institution.

The defendant stated that he has paid 10% of N500,000.00 because any applicant for the mortgage loan from the Federal Mortgage Bank of Nigeria was expected to deposit 10% of the purchase price of the property with the primary mortgage institution and the deposit slip number is 004914.

The defendant averred that the 60 days payment period was not for a mortgage customer like him, hence the Reservation Form to distinguish, and that it was to the knowledge of the claimant that he has applied to the Federal Mortgage Bank of Nigeria through Infinity Trust Mortgage Bank for a National Housing Fund loan of N4,500,000.00.

The defendant averred that it is a matter of common knowledge that he has been making frantic efforts including court actions seeking specific performance to actual the disbursement of the mortgage loans approved for him.

The defendant further admits paragraph 9 of the statement of claim that he is in full occupation of the property, and also denied paragraph 10 of the statement of claim and put the claimant to strictest proof, and that the suit with No. FHC/ABJ/CS/635/2013 was erroneously

dismissed by the trial court, however, on appeal, it was struck out.

The defendant denied paragraphs 13, 14, 15, 16, 17, 18 and 19 that he is not a tenant but owner of the property.

The defendant counter claims as follows:

- i. A declaration of this Honourable Court that the claimant/1<sup>st</sup> defendant to the counter claim and the 2<sup>nd</sup> defendant to the counter claim are estopped from increasing the price of the House C1, B3 Close (Oyin House Type) at Mount Pleasant Citec Estate, Mborra District, Abuja to N9,700,000.00 (Nine Million, Seven Hundred Naira only) or any other sum from the original price of N5,000,000.00 (Five Million Naira only).
- ii. An order of this Honourable Court restraining the claimant/1<sup>st</sup> defendant to the counter claim and the 2<sup>nd</sup> defendant to the counter claim from increasing the price of House C1, B3 Close (Oyin House Type) at Mount Pleasant Citec Estate, Mborra District, Abuja.
- iii. An order of this Honourable Court for a specific performance of the final offer of National Housing Fund (NHF) loan 60 of N4,500,000.00 made to the defendant/counter claimant.
- iv. An order of this Honourable Court restraining the claimant/1<sup>st</sup> defendant to the claim, its agents and privies from evicting the counter claimant/defendant from House C1, B3 Close (Oyin House Type) at Mount Pleasant Citec Estate, Mborra District, Abuja.
- v. An order of this Honourable Court directing the 2<sup>nd</sup> and 3<sup>rd</sup> defendants to the counter claim to jointly and severally disburse to the claimant the

approved housing loan of the counter claimant of N4,500,000.00 as communicated by the 3<sup>rd</sup> defendant to the counter claim in its final offer letter of National Housing Fund Loan to the counter claimant.

- vi. An order of this Honourable Court directing the 3<sup>rd</sup> defendant to the counter claim to facilitate the disbursement of the approved loan of the counter claimant and settlement of balance of the purchase price for House C1, B3 Close (Oyin House Type) at Mount Pleasant Citec Estate, Mborra District, Abuja.
- vii. Any other order or further orders as this Honourable Court may deem fit to make in this circumstances.

The 2<sup>nd</sup> defendant to the counter claim filed its statement of defence and defence to the counter claim dated the 18<sup>th</sup> September, 2020 which was accompanied with a witness statement on oath.

The 2<sup>nd</sup> defendant to the counter claim admits paragraphs 2, 15, 19(iii) or 19(v) and denied paragraphs 1, 6, 8, 10, 11, 12, 19(i), 19(iv), 19(vi), 19(xi) (xii) (xiii) (xiv) and (xv), while could not deny or admit paragraphs 3, 4, 7, 9, 13, 14, 16, 17, 18, 19(ii), 19(vii) (viii) (ix) (x) (xvi) (xvii) of the counter claim.

The 2<sup>nd</sup> defendant to the counter claim also averred that it intervened in the housing dispute that arose between the management of Citec International Estate and the occupants of the house at the estate, as a stake holder in the housing section in Nigeria, hence various meetings that were held at the 2<sup>nd</sup> defendant to counter claim involving the 2<sup>nd</sup> defendant to the counter claim, the

management of Citec Estate Limited and the occupants of the estate.

It is averred that the Stallion Homes Savings and Loan Limited, being a primary mortgage institution, applied to the 2<sup>nd</sup> defendant to the counter claim for a mortgage loan in the sum of N50,225,000.00 (Fifty Million, Two Hundred and Twenty-Five Thousand Naira only) for the benefit of contributors to the National Housing Fund.

That sequel to the said application of Stallion Homes Savings and Loans Limited, the 2<sup>nd</sup> defendant to the counter claim offered Stallion Homes Savings and Loans Limited the loan facility which they applied for.

It is averred that by the said offer of loan facility, Stallion Homes Saving and Loans Limited were required to accept the offer of loan facility within 30 days of the receipt of the said offer, failing which the offer would terminate automatically. That Stallion Homes Saving and Loans Limited failed to communicate their acceptance of the offer of loan facility within 30 days, and the offer terminated automatically. That Stallion Homes Savings and Loans Limited never accepted the offer of loans facility before it was liquidated. That the 2<sup>nd</sup> defendant to the counter claim does not offer mortgage loan facility directly to contributions to the National Housing Funds, and the 2<sup>nd</sup> defendant to the counter claim is not the owner of Citec Estates, neither does it have any form of proprietary interest in the said estate.

The 3<sup>rd</sup> defendant to the counter claim filed a defence to the counter claim dated the 30<sup>th</sup> October, 2019 which was accompanied by a witness statement on oath.

The 3<sup>rd</sup> defendant to the counter claim admits paragraphs 2 and 3 of the counter claim and also responded to paragraphs 2 and 3 of the counter claim.

The 3<sup>rd</sup> defendant to the counter claim also responded to paragraphs 4, 6, 7, 10, 11, 12, 24 (vi) (ix) (x) as follows:

That it is no longer in mortgage finance partnership with the Federal Mortgage Bank of Nigeria, and that it is no longer in mortgage finance business, it is averred that the decision to approve or reject mortgage loan application resides with the Federal Mortgage Bank as it was not automatic that every loan application submitted to Federal Mortgage Bank must be approved, and that the letter of offer of National Housing Fund Loan issued to the counter claimant does not amount to allocation of property in issue as the 3<sup>rd</sup> defendant had no power to allocate what it did not build.

That 3<sup>rd</sup> defendant did apply to the Federal Mortgage Bank on behalf of the counter claimant for the loan facility and subsequently communicated approval of the request by the Federal Mortgage Bank to her but for reasons best known to the Federal Mortgage Bank, the facility was not released for disbursement to the claimant (Citec).

That the letter is merely conveyance of approval of credit facility of N4,500,000.00 which disbursement was at the absolute discretion of the Federal Mortgage bank who provides the funds, and the bank may at its discretion decline to release the approved facility to the customer.

That the 3<sup>rd</sup> defendant in response to paragraphs 6 and 7 of the counter claim averred that it was not a party to any purchase agreement discussion between Citec and the counter claimant and it was not a privy to the terms and conditions of allocation of property granted to the counter claimant by claimant (Citec), and that the sum of N500,000.00 deposit have all been transferred to the claimant Citec at the instance of the counter claimant.

The claimant filed a reply to the statement of defence and a defence to the counter claim, and denied paragraphs 1, 2, 3, 4, 6, 7, 8, 9, 10, 11, 12, 13, 15, 16, 17, 18 and 19(i) (ii) (iii) (iv) (v) (vi) (vii) (viii) (ix) (x) (xi) (xii) (xiv) (xv) and (xvi), 20, and 21 (i) (ii) (iii) (iv) (v) and (vi) of the statement of defence and counter claim and put the defendant/counter claimant to the strictest proof.

The claimant's response as per those paragraphs cover paragraphs 2 – 13 and 4 and 15 of the reply to the statement of defence and defence to the counter claim.

In the course of the trial, the claimant/1<sup>st</sup> defendant to the counter claim put in two witnesses, while the defendant called one witness, the 2<sup>nd</sup> defendant to the counter claim called one witness and the 3<sup>rd</sup> defendant to the counter claim called one witness, and all the witnesses were cross examined after adopting their witness statements on oath.

Almost all the witnesses' statements on oath are the replica of the statement of claim, statement of defence and counter claim of the defendant, statement of defence of the counter claim of the 2<sup>nd</sup> defendant to the counter claim, the statement of defence of the 3<sup>rd</sup> defendant to the counter claim and the claimant's reply to the statement of defence and 1<sup>st</sup> defendant's defence to the counter claim, and therefore, I need not to re-appraise them.

The claimant/1<sup>st</sup> defendant to the counter claim, in the course of the trial, tendered the following documents:

1. Provisional Letter of Allocation for the Purchase of a House at Citec Mount Pleasant, Mboru District, Abuja, marked as EXH. 'A1'.
2. Unsigned minutes of meeting between the Federal Mortgage Bank of Nigeria, Citec International Estates Ltd, Stallion Saving and

Loans Ltd and Citec Residents held on the 11<sup>th</sup> April, 2022, marked as EXH. 'A2'.

3. Valuation Report on Residential Property at C1, B3 Close, Citec Mount Pleasant Estate, Mboru Abuja marked as EXH. 'A3'

The defendant/counter claimant tendered the photocopies of Record Card of National Housing Fund and was marked as tendered and rejected. But however, admitted the following documents:

1. Increase in selling prices as of 28<sup>th</sup> February, 2012 which is unsigned, marked as EXH. 'D1'
2. Citec International Estates Ltd receipt of payment of N500,000.00 marked as EXH. 'D2'.
3. Final Offer of National Housing Fund Loan of N4,500,000.00 made to the defendant written by Stallion Homes Savings and Loans Ltd, marked as EXH. 'D3'.
4. Unsigned Minutes of meeting between FMBN, Citec International Estates Ltd, Stallion Savings and Loans Ltd and Citec Residents held on 11<sup>th</sup> April, 2012, marked as EXH. 'D4'.
5. Photocopy of the deposit slip of Stallion Savings and Loans Ltd dated 25<sup>th</sup> August, 2006, in the sum of N500,000.00, marked as EXH. 'D5'.
6. Offer Letter for National Housing Fund Loan No. 67 for the sum of N50,225, 000.00 written by the FMBN made to Mortgage Account No. SHSLL/000020/67/11, marked as EXH. 'E1'.

At the end of the trial, all the counsel were given the opportunity to proffer final written addresses which were adopted.

The counsel to the defendant/counter claimant, in his final written address donated an issues for determination, thus:

- 1. Whether, having regards to the facts as well as the evidence led, the claimant/1<sup>st</sup> defendant to the counter claim has failed to prove its case against the defendant/counter claimant?**
- 2. Whether the defendant/counter claimant has not proved his case to be entitled to the reliefs sought in his counter claim?**

The counsel urged the court to resolve the issues in favour of the defendant/counter claimant and that the claimant/1<sup>st</sup> defendant is making heavy weather over one of the provisions in EXH. 'A1' which state that, the balance of payment for the house is to be made within 60 days of the issuance of EXH. 'A1' but has refused, failed and neglected to bring to the fore the Reservation Form signed and executed between the defendant/counter claimant, claimant/1<sup>st</sup> defendant to the counter claim, 3<sup>rd</sup> defendant to the counter claim and carries the insignia of the 2<sup>nd</sup> defendant to the counter claim which by all intent and purpose is a contract/agreement that the balance of the cost of the subject house, house C1, B3 close, is to be settled by the mortgage loan the defendant/counter claimant had applied for through the 3<sup>rd</sup> defendant to the counter claim to the 2<sup>nd</sup> defendant to the counter claim.

The counsel submitted that the Reservation Form had vitiated the 60 days time limit from the date of issuance of EXH. 'A1' for the payment of the balance of the cost of House C1, B3 close (Oyin House Type) at Mount Pleasant, Mboru District, Abuja, and by the Reservation Form the claimant/1<sup>st</sup> defendant to the counter claim had by implication entered into another contract with the

defendant/counter claimant to reserve the house till when the mortgage loan is disbursed to be used to pay for the balance of the price of the subject property, and the counsel urged the court to take into consideration all the contracts between the claimant/1<sup>st</sup> defendant to the counter claim and the defendant/counter claimant in relation to this matter in resolving the case, and he cited the case of **BFI Group Corporation V. Bureau of Public Enterprises (2012) 7 SCNJ 405** where it held that any agreement/contract that is entered into via several agreement, the court has the duty to review all the series of agreements.

The counsel submitted that the defendant/counter claimant having made part payment of N500,000.00 (EXH. D2 and EXH. D3) for the purchase price of the subject property, he urged the court to hold that the contract between defendant/counter claimant and the claimant/1<sup>st</sup> defendant to the counter claim is still valid and subsisting and cannot be terminated, and he cited the case of **Rano V. Rano (2021) 12 NWLR (Pt 1790) p. 289 at 301, paras. C-D** to the effect that where a part payment is made it shows that, a contract for the purchase of the subject matter has been concluded and final, leaving payment of the balance. The counsel submitted that the case of **Rano V. Rano** is on all forms with the situation in this case, that the defendant/counter claimant made part payment of N500,000.00 thereby acquiring an equitable interest over the property, that is as good as a legal estate. The claimant/1<sup>st</sup> defendant should be claiming the balance of the price of the subject property and not recovery of the property as he is urging the Honourable Court, and the court discountenance the claimant/1<sup>st</sup> Defendant to the counter claim.

The counsel argued that assuming but not conceding that the 60 days clause is a term in the contract/agreement, the decision of the Court of Appeal in **Rano V. Rano (supra)** can such a term/provision stand? The counsel answered in the negative as the parties should have contracted and agreed under the contract against the position of the law, and he cited the case of **Alhaji A.Odutola and Anor. V. Papersack Nig. Ltd (2006) 12 SCNJ 188**, to the effect that admissions against interest in order to be valid must vindicate and reflect the true legal position.

The counsel submitted that the 60 days terms within the contract holds no water because with the deposit of N500,000.00 made by the defendant/counter claimant, the contract for purchase of the property is final and complete, and the claimant/1<sup>st</sup> defendant to the counter claim is not in a position to recover the property, but he can only ask of the balance price of N4,500,000.00 and urged the court to hold so.

The counsel contended that the parties have misunderstood the position of the law with respect to the 60 days clause incorporated in the agreement they entered into, and it is not in the position of the parties to make provision for the revocation of the contract with a 60 days ultimatum as the contract was final and complete when the part payment of the cost of the house was made, relying on the cases of **Rano V. Rano and Alhaji A. Odutola & Anor. V. Papersack Nig. Ltd (supra)** and urged the court to decline to give the order to recover house C1, B3 close, Mount Pleasant Citec Estate, Mboru District, Abuja from the defendant/counter claimant as the court cannot give effect to the position of parties in an agreement that is borne out in law.

The counsel contended that the claim from the defendant/counter claimant of rental value and mesne profit which claim is bound to fail because the defendant/counter claimant's initial position as at the time of taking possession of the subject property was not to a tenant to the claimant/1<sup>st</sup> defendant to the counter claim for the purpose of paying annual rent, and there is no tenancy agreement to that effect. In order to establish the existence of a valid agreement for a lease, there must be definite understanding of the parties as to the lease and the property involved, and he cited the case of **Inter Textiles Ind. Ltd V. Aderemi (1990) 8 NWLR (pt 614) 208 at 282**, and submitted that save for the parties and property involved, no other thing exists in the relationship between the claimant/1<sup>st</sup> defendant to the counter claim and the defendant/counter claimant to describe their relationship as that of a landlord and tenant. The counsel went further to argue that claiming mesne profit for the defendant/counter claimant is bound to fail as mesne profit is stated by the SC in the case of **African Petroleum Ltd. V. Owodonmi (1991) 8 NWLR (pt 210) 391 SC**, and what is between the parties is not a landlord and tenant relationship, hence a claim of mesne profit cannot be made and he urged the court to resolve issue No. 1 in favour of the defendant/counter claimant.

The counsel to the defendant/counter claimant submitted that in view of the decision in **Rano V. Rano (supra)** the contract was final and complete as of the time the defendant/counter claimant made part payment for the property, and so the 1<sup>st</sup> and 2<sup>nd</sup> defendants to the counter claim cannot and are not in a position to increase the price of the subject property and he urged the court to so hold.

The counsel submitted that the witness of the 2<sup>nd</sup> defendant to the counter claim had not been consistent with his testimony on the issue of price increase and the interest of the 2<sup>nd</sup> defendant to the counter claim in the subject property.

The counsel submitted that under paragraph 37 and 15 of his witness statement on oath, the witness stated that the Federal Mortgage Bank of Nigeria did not increase neither did it participate in increasing the prices of houses at Citec Mount Pleasant Estate Mboru District, Abuja contrary to the allegation of the counter claimant, since the FMBN has no such power, however, in the course of cross examination by the counsel to the claimant/1<sup>st</sup> defendant to the counter-claim, the witness to the 2<sup>nd</sup> defendant to the counter claim stated unequivocally that FMBN participates in fixing prices of houses it funded and that the FMBN participated in fixing the prices of house for the Citec houses, and the implication of the above testimony is that the FMBN funded Citec Mount Pleasant Estate, Mboru District where the subject property is situated and that because of the funding by the 2<sup>nd</sup> defendant to the counter claim of the construction of the estate, it has interest in the estate and participated in fixing the prices for the houses in the estate.

The counsel submitted that the testimony of the witness to the 2<sup>nd</sup> defendant to the counter claim is highly contradictory and it is not in the position of the court to pick and choose which one to rely on, and he cited the case of **Ojo Adebayo V. Mrs. F. Ighodalo (1996) 5 SCNJ 23** where the Supreme Court stated that conflicting evidence given by a witness for a party must be rejected offhand. The counsel also rely on the case of **Chief N.T. Okoko V. Mark Dakolo (2006) 7 SCNJ 284** where the Supreme Court held

that it is the duty of the court to reject contradictory and inconsistent evidence.

The counsel submitted that both the 1<sup>st</sup> and 2<sup>nd</sup> defendants to the counter claim have been clearly demonstrated by the Reservation Form that the claimant/1<sup>st</sup> defendant to the counter claim is to reserve the subject property for the defendant/counter claimant pending when the 2<sup>nd</sup> defendant to the counter claim will disburse the mortgage loan of N4,500,000.00 to settle for the balance of the price of House C1, B3 Close (Oyin House Type) at Mount Pleasant Citec Estate, Mborra District, Abuja for the benefit of the defendant/counter claimant.

The counsel also submitted that the defendant/counter claimant also applied and was made an offer of a mortgage loan as evidenced in EXH. D3, and in compliance with section 4(1) of the National Housing Fund Act makes contributions to the National Housing Fund and holds account with No. 100584571-4 with the 2<sup>nd</sup> defendant to the counter claim to manage the fund and pooled together under the National Housing Fund to be loaned out to applicants through the primary mortgage institutions link the defendant/counter claimant purchase or renovate house.

The counsel submitted that the witness to the 3<sup>rd</sup> defendant to the counter claim stated that it applies for mortgage loans to the 2<sup>nd</sup> defendant to the counter claim on behalf of the contributors to the National Housing Fund and it is on record that the 3<sup>rd</sup> defendant to the counter claim offered to the defendant/counter claimant but the loan was not disbursed for reasons best known to the 2<sup>nd</sup> defendant to the counter claim, and in paragraph 7 of the witness statement on oath, through the 2<sup>nd</sup> defendant to the counter claim explained that 3<sup>rd</sup> defendant to the counter claim did not meet up with the conditions for the

disbursement of the loan to the 3<sup>rd</sup> defendant to the counter claim, however, the 2<sup>nd</sup> defendant to the counter claim stated that the mortgage loan of the defendant/counter claimant was not disbursed because he is not a contributor to the National Housing Fund, and the counsel submitted that they see the piece of evidence as an afterthought by the 2<sup>nd</sup> defendant to the counter claim and should be discountenanced.

The counsel further submitted that assuming but not conceding that the defendant/counter claimant did not meet the preconditions for the disbursement of the mortgage loans, he has the right to ask for specific performance, and he cited the case of **Anaeze V. Anyiaso (1993) 5 NWLR (pt 291) 1 at 38.**

The counsel submitted that the defendant/counter claimant who is seeking for an order of specific performance of the sale of the house C1, B3 close (Oyin House Type) Citec Mount Pleasant Estate, Mborra District, Abuja made part payment for the price of the house and has been in occupation and following the pronouncement in **Rano V. Rano (supra)**, the counsel urged the court to know the stand by the Court of Appeal as a judicial precedent, and he cited the case of **Global Transport Oceanico S.A. & Anor. V. Free Enterprises Nig. Ltd (2001) 5 NSCQR 487**, and he urged the court to stand by the decision in **Rano V. Rano (supra)**.

The counsel submitted that for the fact the defendant/counter claimant applied for the loan from the 2<sup>nd</sup> defendant to the counter claim and since the defendant/counter claimant has failed to meet up with the preconditions set for the loan to be disbursed through it and the 3<sup>rd</sup> defendant is not accredited to do the mortgage banking again, the defendant/counter claimant seek for an

order for the approved loans to be disbursed for the benefit of the defendant/counter claimant through another primary mortgage institutions.

The counsel to the claimant/1<sup>st</sup> defendant to the counter claim raised issues for determination and notable among them is:

**Whether the claimant/1<sup>st</sup> defendant to the counter claim has proved his case by preponderance of evidence to be entitled to judgment in this suit and whether the defendant/counter claimant has proved his counter claim to be entitled to judgment against all the defendants to the counter claim?**

On the first segment of the issues, the counsel submitted that a careful consideration of the issues in this proceedings revealed that there are main claim and counter claim and the law is that whoever desires the court to give judgment as to any legal right or liability must prove those facts and evidence is the basis of justice and the rule of evidence is that he who asserts must prove.

The counsel submitted that the nature of evidence that will suffice, as to whether it is documentary or oral and the onus probandi rests on the claimant as it is encapsulated in the Latin maxim *ei que affirmat non ei qui negat incumbit probatio*, that is the burden of proof lies on one who alleges and not on whom who denies, and where there is no satisfactory evidence adduced at the trial, the claimant must fail.

The counsel submitted that the proof is as provided for under sections 131-133 of the Evidence Act, to which the counsel quoted. The counsel cited the case of **Philip V.**

**E.O.C. Ind. Co. Ltd (2013) 1 NWLR (pt 1336) p. 618 at 641, paras. H-B** as to he who asserts must prove.

The counsel relied on the case of **Okoye V. Nwankwo (2014) 15 NWLR (pt 1429) p. 93 at 126** to the effect that the first burden of proof is called legal burden and the second one is called evidential burden.

The counsel submitted that the contract between the claimant/1<sup>st</sup> defendant to the counter claim and the defendant/counter claimant is represented in EXH. 'A1' and is in respect of a 3 bedroom semi detached unit known as House C1, B3 Close (Oyin House Type) Mount Pleasant Citec Estate, Mbora District Abuja and there is also the alleged contract between the defendant/counter claimant and the 2<sup>nd</sup> and 3<sup>rd</sup> defendants to the counter claim, and to the counsel, notwithstanding the fact that a party is generally relieved of the burden of proving what is admitted by his adversary, and where the counsel is called upon to make a declaration of right, it is incumbent upon the claimant/1<sup>st</sup> defendant to the counter claim to satisfy the court by credible evidence that he is entitled to the declaration sought and he cited the case of **Tukur V. Sabi (2013) 10 NWLR (pt 1364) p. 442 at 459, paras. B-D** to the effect that where a claim is for declaration of right. It is not granted on the admission of the defendant.

The counsel submitted that what is between the claimant/1<sup>st</sup> defendant to the counter claim and the defendant/counter claimant is a contract, and the parties must be bound by the terms and conditions of their agreement, and this is encapsulated in the Latin maxim "pacta sunt servanda" which means "agreement must be kept", and the counsel cited the case of **U.B.N V. Ozigu (1994) 3 NWLR (pt. 333) p. 385 at 404, para. D** to the effect that generally, if the conditions necessary for the formation

of a contract are fulfilled by the parties thereto, they will be bound by it. The counsel cited the cases of **Owoniboys Technical Services Ltd V. U.B.N Ltd (pt. 844) p. 545 at 585, para. D.**; and **Koiki V. Magnusson (1999) 8 NWLR (pt 615) p. 492 at 514, para. F.**

The counsel submitted that the claimant/1<sup>st</sup> defendant to the counter claim averred that the defendant/counter claimant was offered a unit of 3 bedroom semi detached bungalow House C1, B3 Close (Oyin House Type) Mount Pleasant Citec Estate, Mboru District, Abuja at a purchase price of N5.2m (Five Million, Two Hundred Thousand Naira only) and the defendant/counter claimant was issued a provisional allocation letter dated 30<sup>th</sup> August, 2006 and that the allocation was subject to terms and conditions of the letter of provisional allocation issued to the defendant/counter claimant and he accepted the offer by making a mandatory deposit of N500,000.00 and that the full purchase price was to be paid within 60 days from the date of the provisional allocation in line with the said letter of allocation, failing which the offer lapsed and the claimant/1<sup>st</sup> defendant to counter claim is entitled to withdraw the allocation and reallocate to another person, and the defendant/counter claimant was entitled to the refund of the initial deposit of 10% less N50,000 administrative cost.

The counsel submitted that the claimant/1<sup>st</sup> defendant to the counter claim in 2013 exercised its right to reallocate the property, but gave the defendant/counter claimant the privilege to re-apply on compassionate ground and the property was re-allocated at the cost of N9.7m (Nine Million, Seven Hundred Thousand Naira only). The defendant/counter claimant challenged in court but was unsuccessful, and he continued to live in the property

without settling the balance of the purchase price or pay rent to the claimant/1<sup>st</sup> defendant to the counter claim.

The counsel made reference to clauses 5 and 6 of the EXH. 'A1', and however, the defendant/counter claimant stated to the contrary that clauses 5 and 6 of EXH. 'A1' does not apply to him and stated further that he was to finance the purchase of the house through the 3<sup>rd</sup> defendant to the counter claim (Stallion Microfinance Bank Ltd) and that the sum of N4.5m was approved for him by the 2<sup>nd</sup> defendant to the counter claim to be disbursed by the 3<sup>rd</sup> defendant to counter claim.

The counsel submitted that the witness of the 2<sup>nd</sup> defendant to the counter claim (Mr. Dom Richard) admitted under cross examination that the 2<sup>nd</sup> defendant to counter claim never disbursed money on behalf of the defendant/counter claimant to the claimant/1<sup>st</sup> defendant to the counter claim, and the Federal Mortgage Bank of Nigeria is not an agent/business associate of the claimant/1<sup>st</sup> defendant to the counter claim and that the 2<sup>nd</sup> defendant to the counter claim never had any dealing with the defendant/counter claimant.

That it was in evidence that the witness for the 3<sup>rd</sup> defendant (Mr. Iyare Martins) under cross examination that Stallion Microfinance Bank, the 3<sup>rd</sup> defendant, was neither the claimant's/1<sup>st</sup> defendant to the counter claim's agent or business associate, nor did it make any payment to the claimant/1<sup>st</sup> defendant to counter claim on behalf of the defendant/counter claimant and that Stallion Microfinance Bank Ltd did not also receive any money from the 2<sup>nd</sup> defendant to the counter claim on behalf of the defendant/counter claimant.

The counsel submitted that the PW1 (Mr. Odunayo Bello) who was the witness to the claimant/1<sup>st</sup> defendant to

the counter claim also stated that till date only 10% of the purchase price for the property was paid by the defendant/counter claimant, and the counsel then submitted that from the totality of the evidence adduced, the claimant/1<sup>st</sup> defendant to the counter claim has been able to show that the defendant/counter claimant is in breach and failed to keep faith with the terms and conditions of EXH. 'A1'.

The counsel submitted that the contract in writing, it is the contractual document that constitutes the guide to its interpretation and the parties will not be allowed to read any extraneous terms not agreed by them into such contract, and he cited the case of **Baba V. N.C.A.T.C (1991) 5 NWLR (pt 192) p. 388 at 413, paras. A-B.**

The counsel submitted that the claimant/1<sup>st</sup> defendant to the counter claim has proved its entitlement to the reliefs in paragraph 19(a) (b) and (c) of the statement of claim. The counsel also submitted that, it is the law that where the purchase price is not fully paid, the vendor has the right to rescind the contract of sale, resell the property and the purchaser will have no right to enforce specific performance, and he cited the case of **Odusoga V. Rickett (1997) 7 NWLR (pt 511) p. 1 at 15, para. E** where the Supreme Court held that it follows, therefore that where the purchase price is not fully paid there can be no valid sale, notwithstanding that the purchaser is in possession. That possession cannot defect the title of the vendor.

The counsel submitted that the evidence before the court revealed that aside from the sum of N500,000.00 paid by the defendant/counter claimant to the claimant/1<sup>st</sup> defendant to the counter claim which proceeded to issue letter of allocation (EXH. 'A1') no further payment has been made till date.

The counsel submitted that from the totality of the evidence adduced, the claimant/1<sup>st</sup> defendant to the counter claim is entitled to the declaratory relief of injunction sought against the defendant/counter claimant for holding over possession of the disputed house.

The counsel submitted that in proof of the claims as contained in 19 (d) (e) and (f) of the statement of claim, the claimant/1<sup>st</sup> defendant to the counter claim called PW2 (Mr. Olushola Abeji), a registered surveyor and valuer and stated that he is familiar with the subject property and handled similar 3 bedroom semi-detached bungalow in the said estate. The counsel also submitted that the witness stated that from his property consultancy engagement in the estate, he knows that the annual rental value of the property is N1,300,000.00 and the current purchase price of the property is between N22m and N25M depending on the finishing in the property. He argued that the figure put forward in the evidence of PW2 (Olushola Abeji) as to the rental value and the open market value for the sale of the house was never challenged, controverted and debunked at the trial by the defendant/counter claimant, and the witness was never cross-examined by the defendant/counter claimant, and he cited the case of **Ojo V. Gharojo (1999) 8 NWLR (pt 615) p. 374 at 393, para. E** to the effect that evidence that is not challenged and controverted, the court has to accept and act upon it.

The counsel submitted that since the evidence of PW2 was not challenged by the defendant/claimant, it should be accepted and acted upon, and he cited the case of **Oyakhire V. Obaseki (1986) 1 NWLR (pt 19) p. 735** to the effect that the witness is uncontradicted either due to failure to cross-examine him or alter cross-examining him, his credibility remains untainted due to failure to elicit any

evidence adverse to his opinion. The court must believe his evidence. The counsel urged the court to believe and act on the evidence of the PW2 (who is an expert), and he cited the case of **ELF (Nig.) Ltd. V. Sillo (1994) 6 NWLR (pt 350) p. 258 at 272 para. F**, to the effect that if the evidence of an expert is not shaken under cross-examination and is uncontradicted, it should be admitted.

The counsel submitted that the law is settled that mesne profit are recoverable where a tenancy or licence has expired by effluxion of time or has been determined by valid notices to quit or where the claim for possession succeeds in court, and further submitted that the defendant/counter claimant's interest has since lapsed and come to an end, the defendant/counter claimant becomes a trespasser as held in the case of **Ogunbiyi V. Adewunmi (1988) 5 NWLR (pt 93) p. 215 at 221, paras. D-E** to the effect that the defendant/counter claimant derives his possession from the purported sale in dispute and it was move in the nature of trespass, and further submitted that the uncontroverted and unchallenged evidence of PW2 that the annual rental value of the disputed 3 bedroom semi detached bungalow at House C1, B3 Close (Oyin House Type) Mount Pleasant Citec Estate, Mborra District, Abuja is currently N1,300,000.00 should be accepted by this court.

The counsel also submitted that the claim of N20,000,000.00 is in the alternative as general damages is another term for mesne profit, and he cited the case of **Debs & Anor. V. Cheico (Nig.) Ltd (1986) 2 NSCC p. 837 at 841**, and submitted further in the event the court grants reliefs (d) (e) and (f) of the reliefs claimed, then this relief will become superfluous and will amount to double compensation.

The counsel cited Order 39 Rule 4 of the Rules of this court and submitted that the claimant/1<sup>st</sup> defendant is entitled to post judgment interest, if successful.

The counsel submitted that the claimant/1<sup>st</sup> defendant to the counter claim has shown that the defendant/counter claimant has not fully paid the purchase price for the disputed house and that there is no valid sale and the claimant/1<sup>st</sup> defendant to the counter claim's title in respect of the house cannot be defeated by the fact that the defendant/counter claimant is in possession of the property, and that the law regard a trespasser in actual possession of land as a trespasser since he cannot by his own wrongful act acquire any possession recognised by law, and he cited the case of **Ekretsu V. Oyoboebere (1992) 9 NWLR (pt 266) p. 438 at 455, paras. E-F.**

The counsel submitted that the evidence in this suit shows that the claimant/1<sup>st</sup> defendant to the counter claim is entitled to reliefs in paragraphs 19 (a) (b) (c) (d) (e) (f) (g) (h) (i) and (j) of the statement of claim as the defendant/counter claimant has failed to fully pay for the house, the order of perpetual injunction is required to protect the established legal right of the claimant/1<sup>st</sup> defendant to the counter claim to house C1, B3 Close, Mount Pleasant Citec Estate, Mboru District, Abuja in line with the decision of the Court of Appeal in **Adeniran V. Alao (1992) 2 NWLR (pt 223) p. 359 at 372, para. H** to the effect that perpetual injunction can only be granted if the plaintiff has successfully proved his case on the balance of probability or the preponderance of evidence.

The counsel submitted that the court has powers to award cost in the event if finds this suit meritorious as cost follows event and urged the court to award cost against the defendant/counter claimant.

In reply to the claim of the defendant/counter claimant that the contract was final and complete in view of case of **Rano V. Rano (supra)** and that because of the inconsistency in the testimony of the witness of the 2<sup>nd</sup> defendant to the claim, the implication would be that the 2<sup>nd</sup> defendant to the counter claim funded the estate of the claimant/1<sup>st</sup> defendant to the counter claim and urged the court to discountenance the piece of evidence of the witness of the 2<sup>nd</sup> defendant to the counter claim which he placed reliance on the cases of **Ojo Adebayo V. Mrs. F. Ighodalo and Chief N.T. Okoko V. Mark Dakolo (supra)** in support of his contention, it is the bounding duty on the defendant/counter claimant to prove by evidence and it is the duty of the court to prefer one version over the other after putting them in imaginary scale and he cited the case of **Otigbah V. Uwanaka (2020) 16 NWLR (pt 1749) p. 1 at 22, paras. G-H.**

It is also the submission of the counsel to the claimant/1<sup>st</sup> defendant to the counter claim that the party seeking for declaratory relief, as was sought in the counter claim, must establish its entitlement to the reliefs by evidence and not by the absence of the defence and he cited the case of **Abubakar V. INEC (2012) 8 NWLR (pt 1833 p. 463 at 478 – 479, paras. H-C.**

The counsel contended that the issue in the case is not whether the construction of the estate of the claimant/1<sup>st</sup> defendant was funded by the 2<sup>nd</sup> defendant to the counter claim or whether the 2<sup>nd</sup> defendant to the counter claim participated in fixing in the fixing of the prices of the houses in the estate, the issue whether the defendant/counter claimant complied with the terms and conditions of EXH. 'A1' by paying full purchase price for house C1, B3 close

(Oyin House Type) Mount Pleasant Citec Estate Mboru District, Abuja within 60 days as stated in EXH. 'A1'.

The counsel submitted that the claim of the defendant/counter claimant will not aid the case of the defendant/counter claimant and will not whittle down the case of the claimant/1<sup>st</sup> defendant to the counter claim as it is the law that for contradictions in the testimonies of the witness to the 2<sup>nd</sup> defendant to the counter claim to vitiate a decision, they must be so material and substantial, and he cited the case of **Ojo Adebayo V. Chief N.T. Okoko (supra)** as relied upon by the defendant/counter claimant.

The counsel also contended that there is nothing in the Reservation Form suggesting that the claimant/1<sup>st</sup> defendant to the counter claim was to reserve the said property for the defendant/counter claimant until a mortgage loan is disbursed by the 2<sup>nd</sup> defendant to the counter claim to settle the balance of the said house or ad infinitum.

The counsel submitted that the burden of showing by credible evidence that the balance of the purchase price was paid within 60 days as required in clause 5 of EXH. 'A1' is on the shoulder of the defendant/counter claimant, and he failed to produce evidence of payment made on his behalf by the 2<sup>nd</sup> and 3<sup>rd</sup> defendants to the counter claim as the evidence before the court only shows that the defendant/counter claimant paid only N500,000.00 in 2006 and he has been in occupation of the said property since 2006 till date. He also argued that there is nothing to show that the defendant/counter claimant has satisfied with the terms and conditions of the final offer of loan EXH. 'D3' made by him and the 2<sup>nd</sup> defendant, for instance, EXH. 'D3' provides inter alia that upfront payment of FMBN service charge of N0.25% flat, admin charge of 0.25% and

insurance premium of N0.25% and there is no indication that the defendant/counter claimant has complied with these conditions for disbursement of the said loan, yet the defendant/counter claimant claimed to have applied and obtained loan facility of N4.5m which was never disbursed.

The counsel submitted that the defendant/counter claimant contended that assuming without conceding that he did not meet the preconditions to the disbursement of the mortgage loan, that the law is that he has the right to seek for specific performance so long as he is ready to perform all the terms which he ought to performed which he placed reliance on the case of **Anaeze V. Anyabo (supra) and Rano V. Rano (supra)** and the counsel to the claimant/1<sup>st</sup> defendant to the counter claim argued that a party seeking for specific performance of a contract must himself show that he is not in breach of his obligations under the contract as it has always been that equity will not grant specific performance if under all circumstances, it is just and equitable to do so, and he cited the case of **Olowu V. Building Stock Ltd (2018) 1 NWLR (pt 1601) p. 343 at 414, paras. C – D** and urged the court not award specific performance in the circumstances of this case.

The counsel distinguished the two cases of **Anaeze and Rano V. Rano (supra)** with the present case, in that in the two cases, the appellants performed the contract substantially but in the instant case the defendant/counter claimant failed, refused and neglected to perform the contract as evidence in EXH. 'A1'.

The counsel finally argued that even if the court is bound by judicial precedent, however, before judicial precedent can apply to a case, they must be applicable and on all falls with the case under consideration and there must be semblance and he urged the court to hold that the

case of **Rano V. Rano** is totally irrelevant and inapplicable in the circumstances of this case.

The 2<sup>nd</sup> defendant to the counter claim, in his final written address, formulated lone issue for determination, thus:

**Whether the defendant/counter claimant is entitled to his claim against the 2<sup>nd</sup> Defendant to counter claim.**

On the first and second counter claim of the defendant/counter claimant, the counsel to the 2<sup>nd</sup> defendant to the counter claim submitted the defendant/counter claimant failed woefully to establish that the 2<sup>nd</sup> defendant to the counter claim did increase the price of House C1, B3 Close, (Oyin House Type) at Mount Pleasant Citec Estate, Mboru District, Abuja to N9,700,000.00 or any other amount whatsoever, and urged the court to so hold. According to the counsel, there is no iota of concrete evidence before the court that shows that the 2<sup>nd</sup> defendant did or participated in the said increment.

The counsel submitted that in the course of cross-examination, the sole witness of the defendant/counter claimant, the counter claimant himself, could not establish by concrete evidence that the house C1, B3 Close (Oyin House Type) at Mount Pleasant Citec Estate, Mboru District, Abuja does belong to the 2<sup>nd</sup> defendant to the counter claim, the 2<sup>nd</sup> defendant cannot be said to have the power to make such increment.

The counsel submitted that the evidence in chief of the witness to the 2<sup>nd</sup> defendant to counter claim was never contradicted and submitted that evidence that is not challenged or contradicted becomes credible and reliable by the court, and he cited the case of **Governor of Zamfara**

**State V. Gyalange (2012) LPELR – 9715 SC per Mukhtar JJC and Godsgift V. State (2016) 13 NWLR (pt 1530) 44.**

On the 3<sup>rd</sup> counter claim for specific performance of the final offer of National Housing Fund (NHF) Loan of 60 of N4,500,000.00 made to the defendant/counter claimant, the counsel submitted that the administration of the National Housing Fund and advance of mortgage loan under National Housing Fund is regulated by the National Housing Fund Act, Cap N45, LFN 2004, and under the Act, the primary requirement for application for mortgage loan is that the applicant must be a contributor to the National Housing Fund, and according to the counsel, the defendant/counter claimant failed to establish by concrete evidence that he is a contributor, hence the application for mortgage loan in connection with the counter claimant was not approved by the 2<sup>nd</sup> defendant to the counter claim, and this was buttressed by the witness in paragraph 12 of the witness statement on oath of Dom Richard to the effect that the counter claimant is not one of the beneficiaries of the aforesaid loan, hence the counter claim of the counter claimant is bound to fail.

The counsel submitted that by the law, the contributors to the National Housing Fund do not obtain mortgage loan directly from the Federal Mortgage Bank of Nigeria rather they have to apply to primary Mortgage institutions, such as the 3<sup>rd</sup> defendant to this counter claim, who in turn, apply to the FMBN for Mortgage loan, for the benefit of contributors, and the counsel referred the court to section 14(1) & (2) of the National Housing Fund Act, Cap. N45, LFN 2004.

The counsel submitted that even if the defendant/counter claimant is a contributor, there is no privity of contract between the 2<sup>nd</sup> defendant to the counter claim and the defendant/counter claimant in

connection with the final offer of National Housing Fund loan 67 of N4,500,000 since the 2<sup>nd</sup> defendant to the counter claim is not a party to the contractual relationship between the defendant/counter claimant and the 3<sup>rd</sup> defendant to the counter claim; and he cited the case of **Coast Oil Ltd V. Turboscope Vetco International (2019) LEPLR – 46450 (CA)** and the cases of **Reichie V. NBCI (2016) LPELR – 40051** and **Rebold Industries Ltd V. Magreola (2015) LPELR – 24612**.

The counsel submitted that in compliance with the National Housing Fund Act, the 3<sup>rd</sup> defendant to the counter claim applied to the 2<sup>nd</sup> defendant to the counter claim and who offered N50,225,000.00 for a mortgage loan for the benefit of various contributors including the defendant/counter claimant and the subject to terms that were stipulated in the letter of offer, which the 3<sup>rd</sup> defendant to the counter claim accepted and which by the letter dated 5<sup>th</sup> June, 2007, the FMBN offered Stallion Home Savings and Loan Ltd, however, the 3<sup>rd</sup> defendant to the counter claim never fulfilled the conditions for disbursement of the mortgage loan amount until the 3<sup>rd</sup> defendant to the counter claim seized to be a mortgage institution. The counsel further submitted that the 3<sup>rd</sup> defendant to the counter claim in the cause of cross-examination told the court that it did not fulfill the conditions for disbursement of the mortgage loan facility for the benefit of the defendant/counter claimant, and the defendant/counter claimant did not fulfill the conditions for disbursement as stated in the loan facility advance to the counter claimant.

The counsel submitted that the defendant/counter claimant admitted in the course of cross-examination, that he did not fulfill the conditions for disbursement as

contained in the mortgage loan facility, advanced to him by the 3<sup>rd</sup> defendant to the counter claim.

On the fifth counter claim, the counsel submitted that the counter claimant is not entitled to that relief as someone cannot place something on nothing and expect it to stand and the 2<sup>nd</sup> defendant to the counter claim does not have the power to transfer a mortgage loan contract between a contributor and a mortgage institution to another mortgage institution as same was never contemplated in the National Housing Fund Act and the terms and conditions for obtaining loans from the National Housing Fund by mortgage institutions and individual contributors regulations, as doing so will amount to imposing liabilities arising from such contract against the will of the receiving mortgage institution as it is trite law that he who seeks equity must do equity, and he referred to the case of **Iiyasu V. Ahmadu (2011) 13 NWLR (pt 1264) p. 236** and **Yaro V. Arewa Construction Ltd (2007) 17 NWLR (pt 1063) p. 333**.

He submitted that equity does not aid the indolent, and a tardy and indolent party who seeks an equitable remedy from the court is not deserving of such relief, as in the case of **N.A.C.B. Ltd. V. Ozoemelum (2016) 9 NWLR (pt 1517) p. 376** and **Muhammed V. Ekpelai (2001) 6 NWLR (pt 710) p. 700** and submitted that the defendant/counter claimant ought to apply to another primary mortgage institution to benefit from mortgage loan under the National Housing Fund Scheme since the 3<sup>rd</sup> defendant has ceased to be a mortgage institution, and he urged the court to so hold.

The counsel to the 3<sup>rd</sup> defendant to the counter claim proposed lone issue for determination, thus:

**Whether, having regard to the evidence before the court, the state of pleadings and the relief sought, the counter claimant can sustain the instant action**

**against the 3<sup>rd</sup> defendant or has established reasonable cause of action against the 3<sup>rd</sup> defendant to the counter claim?**

The counsel submitted that the counter claimant has not established reasonable cause of action against the 3<sup>rd</sup> defendant or the counter claim, and he referred to the case of **Rinco Construction Company Ltd V. Veepee Industries Ltd & Anor. (2005) LPELR – 2949 (SC)** where reasonable cause of action was defined. He also referred to the case of **Atiba Iyalamu Savings And Loans Ltd V. Suberu (2018) 13 NWLR (pt 1637) 387** where reasonable cause of action was espoused.

The counsel submitted that the DW1 was cross examined and in the course of cross-examination, he told the court that the 3<sup>rd</sup> defendant to the counter claim has changed name and is no longer known as Stallion Home Savings and Loan and that the 3<sup>rd</sup> defendant to the counter claim is no longer a primary mortgage institution as the licence to operate as a mortgage institution was withdrawn. He submitted that in the pleadings, there is nowhere in the entire paragraphs and on the evidence before the court where it was alleged that the 3<sup>rd</sup> defendant to the counter claim had any future role to play in the transfer of the counter claimant's application loan previously packaged and approved whether alive or dead to another competent primary mortgage bank, and he referred to the case of **Atiba Iyalamu Savings and Loans Ltd V. Suberu (supra)** to the effect that in determining whether a reasonable cause of action is disclosed, the court would have to have recourse only for the facts contained in the statement of claim or the affidavit or other originating process. He submitted that there are no facts disclosed in the pleadings showing the role, if any, either factual or

statutory which is incumbent upon the 3<sup>rd</sup> defendant to the counter claim to play without which the reliefs sought by the counter claimant cannot be granted by the court, and he cited the cases of **Dantata V. Mohammed (2000) 7 NWLR (pt 664) 176 and Opia V. I.N.E.C (2014) 7 NWLR (pt 1407) 431.**

The counsel submitted that it would not have been different since the 3<sup>rd</sup> defendant to the counter claim is no longer a stakeholder in mortgage finance business as its licence has been withdrawn, and the court cannot grant what it cannot enforce, and he cited the case of **Sheriff V. PDP (2017) 14 NWLR (PT 1585) 212** to the effect that once illegality is brought to the attention of the court, it overrides all other question and court will not close its eyes against such illegality.

The counsel finally submitted that courts do not grant an order in vain and he referred to the case of **Nyako V. A.S.H.A (2017) 6 NWLR (pt 1562) 347**, and he urged the court to strike out the name of the 3<sup>rd</sup> defendant to the counter claim in this suit with substantial cost against the defendant/counter claimant.

I adopt the issues as formulated by the counsel to the claimant/1<sup>st</sup> defendant to the counter claim as a found them so suitable, thus:

- 1. Whether the claimant/1<sup>st</sup> defendant to the counter claim has proved his case by preponderance of evidence to be entitled to judgment in this suit?**
- 2. Whether the defendant/counter claimant has proved his counter claim to be entitled to judgment against all the defendants to the counter claim?**

It is incumbent upon this court to evaluate the evidence adduced with a view to ascribe probative value

to the one that is credible. See the case of **Nwalutu V. Nigerian Bar Association (2019) All NWLR (pt 997) p. 68.**

Thus, in the course of the proceedings, the counsel to the defendant/counter claimant sought to tender a minutes of meeting that was held between the Federal Mortgage Bank of Nigeria, Citec International Estate, Stallion Savings and Loans Ltd which is now Stallion Micro Finance Bank, Resort Savings and Loans Ltd and Aso Savings and Loans Ltd and Citec residential subscribers which involves the defendant/counter claimant on the 11<sup>th</sup> day of April, 2012, and the counsel to the 1<sup>st</sup> defendant to the counter claim raised an objection, in which the court ruled on the 4<sup>th</sup> day of March, 2022 and drew a distinction between admissibility of a document and attaching probative value to it, whereby the court admitted the document, however, defer the attachment of probative value to the document till when writing judgment. I looked at the document and discovered that it was not signed by the author. Now, the question that agitates in the mind of this court is:

**What is the position of unsigned document in law?**

I rely on the case of **Aloba V. Heritage Bank Ltd (2019) All FWLR (pt 1001) p. 701 at 212, paras. B-C** where the Court of Appeal, Akure Division held that unsigned document remain worthless document. It cannot be acted upon any ground. In the instant suit, I hold the view that the minutes of the meeting between Federal Mortgage Bank of Nigeria, Citec International Estate, Stallion Savings and Loans Ltd, Aso Savings and Loans Ltd and Citec International Estate residents/stake holders held on the 11<sup>th</sup> April, 2012 has no probative value and therefore is of no value to accept it and it is hereby expunged as it was not a signed document. It is the duty of this court to expunged the inadmissible evidence which was wrongly admitted. See the case of

**Azike V. Nigerian Bottling Co. Plc (2019) All FWLR (pt 989) p. 1223.**

In the course of the cross-examination, the PW1 was asked whether he was aware of the Reservation Form, and he answered in the affirmative. And the PW1 was given the document to look at it, and he looked at it and was asked and answered that it looks like the Reservation Form.

The counsel to the claimant/1<sup>st</sup> defendant to the counter claim raised the issue that the document Reservation Form was not mentioned in the pleadings. However, the court looked at the statement of defence and counter claim of the defendant/counter claimant and discovered that the Reservation Form was mentioned in paragraphs 4, 7 and 19 (vi) (vii), and by this, reference can be made in the course of cross-examination to the Reservation Form. See the case of **Sifax Nig. Ltd V. Migfo Nig. Ltd (2019) All FWLR (pt 1019) p. 929 at p. 997, paras. F-G** where the Supreme Court held that reference to a document in a pleading makes the document part of the pleading.

Also, in the course of examination in chief, the PW1 told the court that the defendant/counter claimant paid the initial deposit of N500,000.00 (Five Hundred Thousand Naira) to the claimant/1<sup>st</sup> defendant to the counter claim and a provisional letter of allocation was issued to the defendant/counter claimant and no additional payment was made apart from the initial deposit of N500,000.00. The PW1 told the court that no payment is made by the Federal Mortgage Bank of Nigeria to the claimant/1<sup>st</sup> defendant to the counter claim on behalf of the defendant/counter claimant.

The PW1 told the court during cross-examination by the counsel to the 2<sup>nd</sup> defendant to the counter claim that the FMBN is not the owner of the property in issue.

The PW1 told the court during cross-examination by the counsel to the 3<sup>rd</sup> defendant to the counter claim that the sum of N500,000.00 initial deposit was transferred by the 3<sup>rd</sup> defendant to the counter claim to the claimant/1<sup>st</sup> defendant to the counter claim.

The evidence of the PW1 was not challenged during cross examination, and therefore, the court has no option than to accept it and act upon it. The evidence of the PW1 is hereby accepted. See the case of **Adebiyi V. Dasilva (2019) All FWLR (pt 993) p. 354.**

The PW2, being an estate valuer tendered a valuation report and was admitted as EXH. 'A3', and the counsel to the defendant/counter claimant did not cross-examine the PW2, and to the counsel to the 2<sup>nd</sup> and 3<sup>rd</sup> defendants to the counter claim.

The evidence of the PW2 is credible and worthy of acceptance and it is hereby accepted accordingly since the defendant/counter claimant did not dispute the valuation report. See the case of **Patrick V. State (2019) All FWLR (pt 996) at 1026, paras. D-F.**

In the course of cross examination, the DW1 confirmed that EXH. 'A1' is the conflict between the claimant/1<sup>st</sup> defendant to the counter claim and the defendant/counter claimant, and that the DW1 confirmed that he accepted the offer. The DW1 during cross examination denied that by virtue of the contract he is supposed to pay in full within 60 days, because there is nowhere in the world where a person is given a mortgage loan within 60 days, and the DW1 denied clauses 5 and 6 of

the agreement, and that he has accepted the offer since 2006.

The DW1 was asked to show any document showing that the agreement is not what he accepted including clauses 5 and 6, and the DW1 answered in the negative that he has the approval of the Federal Mortgage Bank of Nigeria and the deposit he paid to Stallion Savings and Loans Ltd. The DW1 confirmed to the court that from 2006 to 2021, he made payment of N500,000.00 and that EXH. 'A1' did not make reference to any document.

The DW1 told the court that the document EXH. D3 did not make reference to the claimant. The DW1 also told the court that as a procedure he is not to apply to Federal Mortgage Bank of Nigeria but the primary Mortgage Institution which is Stallion Homes Ltd, and he did apply.

The DW1 was asked to look at the second page of EXH. 'D3' and to confirm whether he complied with that condition, and he answered in the affirmative and he told the court that he did not execute deed of legal mortgage, because he was asked to hold on, and that presupposes that the condition has not been met, and that the Stallion Homes told them that it has not been given the money.

The DW1 was asked whether the condition was to be complied after the money was disbursed and the DW1 confirmed in the affirmative, and that he was not given any letter to that effect.

The DW1 confirmed to the court that the Federal Mortgage Bank of Nigeria does not own the claimant/1<sup>st</sup> defendant to the counter claim, but that he is aware that Federal Mortgage Bank of Nigeria has given loan to the claimant/1<sup>st</sup> defendant to build the estate.

The DW1 was also asked, assuming the Federal Mortgage Bank of Nigeria gave loan to the claimant/1<sup>st</sup>

defendant, whether that means it own the property, and the DW1 answered that if the claimant/1<sup>st</sup> defendant to the counter claim could not be able to pay the loan back.

The DW1 was asked whether the Federal Mortgage Bank of Nigeria approved the loan, and the DW1 answered that it is the responsibility of the Stallion Homes to tell the court whether it was approved.

The DW1 confirmed to the court that Stallion Homes is not a primary Mortgage institution, and that his initial deposit of N500,000.00 was transferred to the claimant/1<sup>st</sup> defendant. The DW1 confirmed that in EXH. 'D3' Stallion homes is not mentioned and that paragraph 3 of EXH. 'D3' has not been complied with until the money is disbursed.

The DW1 told the court that he did not submit anything to the Stallion Homes, and that Stallion Homes does not own the property in issue.

The evidence of the DW1 is not worthy or acceptance because of the some aspect of it is speculative, thus:

- 1. The DW1 told the court that clauses 5 and 6 of the Provisional Letter of Allocation for the Purchase of a house at Citec, Mount Pleasant, Mboru District, Abuja do not apply to him, when he said there is nowhere in the world where a person is to be given a loan within 60 days.**
- 2. The DW1 was also speculative when he answered that clauses 5 and 6 were not what he has accepted, and that the Federal Mortgage Bank of Nigeria has given loan to the claimant/1<sup>st</sup> defendant to the counter claim. The DW1 was also speculative when he answered that the Federal Mortgage bank of Nigeria owns the property, where the claimant fails to pay the loan.**
- 3. The DW1 was speculative when he answered that the approval given by Federal Mortgage Bank of Nigeria to the**

**claimant/1<sup>st</sup> defendant to the counter claim is the responsibility of the Stallion Homes to tell the court whether it was approved. These testimonies are speculative.**

See the case of **Kekong V. State (2018) All FWLR (pt 923) p. 78 at 99, paras. A-B** where the Supreme Court held that courts of law act on empirical evidence and not on speculations. In the instant case, the evidence of the DW1 is not worthy of acceptance, it is hereby rejected.

The DW2 during cross-examination confirmed to this court that Stallion Homes is not primary mortgage bank and has no right to approve or reject any application made to the Federal Mortgage Bank of Nigeria.

The DW2 also confirmed that the application made by Stallion Homes to Federal Mortgage Bank of Nigeria was not approved.

The DW2 confirmed to this court of the payment of N500,000.00 the defendant/counter claimant made and no further payment was made and that Stallion Homes is not the owner of the Citec International Estate.

The DW2 confirmed to this court that the defendant/counter claimant did not meet the conditions for disbursement of the loan.

The evidence of DW2 was not challenged during cross-examination, and therefore the court has no option than to accept it, and it is hereby accepted. See the case of **Niko Engineering Ltd. V. Akinsina (2005) All FWLR (pt 284) p. 292.**

It is also the duty of this court to examine the exhibits so far tendered and admitted. See the case of **Chemiron International Ltd V. Egbujoowuwa (2007) All FWLR (pt 395) p. 444.**

EXH. 'A1' is the provisional letter of allocation for the purchase of a house at Citec Mount Pleasant, Mboru District, Abuja which was tendered and was not objected

to. The letter was addressed to the defendant/counter claimant. It is evident that the defendant/counter claimant acknowledged the receipt of the provisional letter.

In the letter, there are six terms which are subject of compliance and clause 5 reads:

**“Upon full and final payment of consideration within 60 days of this letter, a final letter of allocation shall be made available to you together with a copy of the condition of sale, which forms an integral part of the allocation.”**

Since the letter was addressed to the defendant/counter claimant, it means that he is bound to comply with the term as clearly written in the letter.

Clause 6 reads:

**“Citec holds your deposit as stakeholder and upon the expiration of this provisional allocation without payment of the balance due, Citec shall reserve the right to re-allocate the property to another person and refund the initial deposit less N50,000.00 administrative cost”**

The purport of the paragraph 6 of the provisional allocation is that the defendant/counter claimant having paid the initial deposit of N500,000.00, it behooves upon him to make full payment before the expiration of the letter after 60 days from the date the letter was given to him, failing which the claimant/1<sup>st</sup> defendant to the counter claim reserves the right to allocate the property to another person and the deposit so far paid would be returned to the defendant/counter claimant with less of N50,000.00

These are the terms attached to the provisional allocation letter which was addressed to the defendant/counter claimant. The provisional allocation is

an offer made to the defendant/counter claimant and this offer was exactly accepted by the defendant/counter claimant. Then, how the defendant/counter claimant now turned around and denied being bound by the clauses 5 and 6 of the provisional allocation? It is the law that parol evidence cannot be led to contradict a document that is clear and unambiguous, extrinsic evidence is basically admissible. See the case of **Living Faith Church, Otukpo V. Adole (2005) All FWLR (pt 276) p. 787 at 798, paras. G-H.**

The terms therein clauses 5 and 6 of the provisional allocation are very expenses and ascertainable, and there is no counter offer in the transaction between the claimant/1<sup>st</sup> defendant to the counter claim and the defendant/counter claimant, but by evidence it was only that the defendant/counter claimant accepted the offer. Failure on the part of the defendant/counter claimant to comply within 60 days has a devastating consequence on the contract as time is of the essence of it. See the case of **N.B.C.& 1 V. Integrated Gas Nig. Ltd. (2005) All FWLR (pt 250) p. 12 at 29, paras. A-C**, where the Supreme Court held that time is said to be the essence of a contract in the circumstances of a contract of the nature of the subject matter indicated that the fixed date must be exactly complied with e.g. the purchase of a leasehold house required for immediate occupation.

EXH. 'A3' is a valuation Report of house C1, B3 Close, Mount Pleasant Estate, Mborra District, Abuja where the opinion of the estate valuer was put at N22,000,000.00 and a rental value at N1,300,000.00. This was tendered without any objection and no cross-examination on the parts of the defendant. See the case of **Ezemuo V. N.N.B Plc (2007) All FWLR (pt 368) p. 1038 at 1065, paras. A-D** to the effect that the effect of not objecting to a tendering of a document

and its reception is that the document will be admitted in evidence and the opposing party cannot afterwards be heard to complain about its admission.

All these documents are worthy of acceptance, and they are hereby accepted.

EXH. 'D1' is the Citec Stakeholders meeting of 28<sup>th</sup> February, 2012 and there is an increase in selling prices, this document was not signed and therefore has no probative value and it is hereby expunged accordingly.

EXH. 'D2' is the original receipt of the sum of N500,000.00 deposit paid by the defendant/counter claimant. The receipt is its original shape and has met the requirement of admissibility.

EXH. 'D3' is the final offer of National Housing Fund Loan 60 of N4,500,000.00 made to the defendant/counter claimant by the Stallion Savings and Loans Limited dated the 10<sup>th</sup> day of September, 2007 and it is in its original form which has met the requirement of admissibility. However, the final offer is subject to the fulfillment of some conditions as per payment of fees and charges. It is evident that the defendant/counter claimant did not fulfill the conditions and therefore no Deed of Legal Mortgage was executed between the defendant/counter claimant and the Stallion Homes Savings and Loans Limited.

Moreso, it is evident that the Stallion Savings and Loans Ltd has now changed to Stallion Microfinance Limited which is now not a primary mortgage bank.

EXH. 'D4' is a minutes of meeting held between the Federal Mortgage Bank of Nigeria, Citec International Estates Limited, Stallion Savings and Loans Limited, Resort Savings and Loans Limited, Aso Savings & Loans Limited and Citec residents held on Wednesday 11<sup>th</sup> April, 2012, this

document was earlier tendered and was expunged by this court as it is not signed.

EXH. 'D5' is a letter which the defendant/counter claimant paid N500,000.00 as deposit through Stallion Home Savings and Loans Limited, even though a photocopy but a foundation has been laid to its admissibility.

EXH. 'E1' is an offer letter for National Housing Fund Loan number 67 in the sum of N50,225,000.00 which is a photocopy and it is for eleven applicants which were listed in the letter.

It is instructive to note that the name of the defendant/counter claimant is not one of the eleven persons whose loans were approved. The document was admitted as foundation has also been laid to its admissibility.

Thus, the claimant/1<sup>st</sup> defendant to the counter claim by evidence both the documentary and oral, has shown that there was about to be a contract of sale of house C1, B3 Close (Oyin House Type) Mount Pleasant Estate, Mboru District, Abuja between it and the defendant/counter claimant whereupon the defendant/counter claimant was issued with Provisional Allocation Letter containing some terms to which the defendant/counter claimant was required to fulfill and it was upon payment of an initial deposit of N500,000.00 and the balance remaining unpaid is N4,500,000.00. Therefore EXH. 'A1' and 'D2' speak for themselves. The balance of N4,500,000.00 is not paid by the defendant/counter claimant within 60 days from the date of the offer and the defendant/counter claimant has been occupying the house since 2007. It is also in EXH. 'A1' that if the defendant/counter claimant fails to pay the balance of N4,500,000.00, the claimant/1<sup>st</sup> defendant to the counter claim has the right to allocate the house to another person

and return the deposit with less N50,000.00 to the defendant/counter claimant.

This, I am more satisfied with the version of the claimant/1<sup>st</sup> defendant than the version of the defendant/counter claimant and that the claimant/1<sup>st</sup> defendant to the counter claim has been able to prove with preponderance of evidence and on the balance of probability that he is entitled to judgment, and I therefore so hold.

The defendant/counter claimant has not been able to prove the counter claim because EXH. 'D3' which is the letter from Stallion Savings & Loans Limited dated the 10<sup>th</sup> day of September, 2007 was issued to the defendant/counter claimant with some conditions to fulfill and the defendant/counter claimant has not fulfilled those conditions consequent upon which the money was not released and disbursed to him, and in addition to that Stallion Savings and Loans Limited has changed its name to Stallion Microfinance Limited which is not a primary mortgage institution and cannot disburse loans. The letter written by the Federal Mortgage Bank of Nigeria dated the 6<sup>th</sup> day of June, 2007 does not relate to the defendant/counter claimant as the names of eleven persons whose houses were approved in the letter does not include the defendant/counter claimant.

Based upon the above consideration, the defendant/counter claimant has not proved with preponderance of evidence that he is entitled to the reliefs sought and I therefore, so hold.

The defendant/counter claimant alluded to the fact that by making part payment of N500,000.00, the transaction has been concluded and it is final. I beg to disagree with the counsel to the defendant/counter

claimant that the position of the law now is that in contract of sale of land, failure to pay the purchase price constitutes fundamental breach which obviously goes to the root of the case upon which the court cannot decree specific performance. See the case of **Achonu V. Okuwobi (2017) All FWLR (pt 905) p. 1303 at 1330, para. G.**

The decision in **Rano V. Rano (supra)** was one of the Court of Appeal while the decision in **Ochonu V. Okuwobi (supra)** was the judgment of the Supreme Court, and by the doctrine of judicial precedent, I prefer that of the Supreme Court, and I therefore come to the conclusion that the claimant/1<sup>st</sup> defendant to the counter claim has successfully proved the claim and is entitled to the reliefs as follows:

1. It is hereby declared that the defendant/counter claimant is in breach of his obligation to the claimant/1<sup>st</sup> defendant to the counter claim as contained on the provisional letter of allocation of House C1, B3 close Mount Pleasant Citec Estate, Mbora District, Abuja dated the 30<sup>th</sup> August, 2006 issued to him by the claimant/1<sup>st</sup> defendant to the counter claim.
2. It is hereby declared that the provisional allocation of House C1, B3 Close (Oyin House Type) in Mount Pleasant Citec Estate, Mbora District, Abuja made to the defendant/counter claimant via the provisional letter of allocation dated the 30<sup>th</sup> August, 2006, has lapsed by virtue of the defendant's breach of the terms and conditions contained therein.
3. It is hereby ordered that the defendant/counter claimant should vacate without further delay and deliver up possession of House C1, B3 Close

(Oyin House Type) in Mount Pleasant Citec Estate, Mborá District, Abuja to the claimant/1<sup>st</sup> defendant to the counter claim in a tenantable condition.

4. As there is no tenancy created between the claimant/1<sup>st</sup> defendant to the counter claim and the defendant/counter claimant in respect of the property mentioned above, the claimant/1<sup>st</sup> defendant to the counter claim will not be entitled to the relief in paragraphs (d) and (e) of the reliefs, and instead the sum of N10,000,000.00 (Ten Million Naira) only is awarded to the claimant/1<sup>st</sup> defendant to the counter claim as general damages for holding over of the claimant's/1<sup>st</sup> defendant's to the counter claim property payable by the defendant/counter claimant with immediate effect.
5. Post judgment interest at 10% per annum is hereby awarded to the claimant/1<sup>st</sup> defendant to the counter claim payable by the defendant/counter claimant until when the judgment sum is liquidated.
6. An order is hereby given perpetually restraining the defendant/counter claimant, its agents and privies from further trespassing on or holding over the claimant's/1<sup>st</sup> defendant's to the counter claim property as described above.
7. The sum of N11,200.00 is hereby awarded to the claimant/1<sup>st</sup> defendant to the counter claim as cost of this suit payable by the defendant/counter claimant with immediate effect.

The counter claim of the defendant is hereby dismissed.

Hon. Judge

Signed

19/9/2024

Appearances:

A.M. Kayode Esq appeared for the claimant/1<sup>st</sup> defendant to the counter claim.

The claimant is represented by Ishaq Adekunle, the GM Legal.

T.J. Kwange Esq appeared for the defendant/counter claimant.

Chijioke Aneto Esq appeared for the 2<sup>nd</sup> defendant to the counter claim.

A.Ayoba Esq for the 3<sup>rd</sup> defendant to the counter claim.

CT-CC: The judgment is delayed and is not delivered within the 90 days because of the illness of the judge, have you suffered any miscarriage as a result of non-delivery of the judgment within the time?

CC-CT: Not at all.

CT-DC: Have you suffered any miscarriage of justice as a result of non delivery of the judgment within time?

DC-CT: Not at all.

CT-2<sup>ND</sup> DC: Have you suffered any miscarriage of justice as a result of the delay in delivery of the judgment?

2<sup>ND</sup> DC-CT: No, I am not oppose to the delivery of the judgment.

CT-3<sup>RD</sup> DC: Have you suffered any miscarriage of justice as a result of the non-delivery of the judgment within time?

3<sup>RD</sup> DC-CT: No miscarriage of justice.

Hon. Judge

Signed

19/9/2024