

IN THE HIGH COURT OF JUSTICE OF THE F.C.T.

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT ZUBA, ABUJA

ON TUESDAY THE 27TH DAY OF JUNE, 2023

BEFORE HIS LORDSHIP: HON. JUSTICE K. N. OGBONNAYA

JUDGE

SUIT NO.: FCT/HC/CV/0276/2017

BETWEEN:

MITHIA CONSTRUCTION LIMITED ----- CLAIMANT

AND

**1. PAULINE OLONTA
2. CAPT. PATRICK OLONTA } DEFENDANTS**

JUDGMENT

On the 28th November, 2017 the Claimant, Mithia Construction Limited filed this Suit against the Defendants, Pauline Olonta and Capt. Patrick Olonta claiming the following:

- (1) That he is the bonafide Beneficial owner of House 15 Street 353, Gwarinpa Abuja with Certificate of Occupancy made in favour of Peter Idu Elaigwu dated 7th February, 2007**

registered in Abuja as 20858 page 20858 in Vol. 105.

- (2) An Order mandating the 1st & 2nd Defendants to vacate the house which is the Res in this case.**
- (3) An Order of this Court mandating the Defendants to pay One Million, Five Hundred Thousand Naira (₦1, 500,000.00) yearly from date of Execution of the Deed of Assignment until vacation of the house – the Res.**
- (4) One Million Naira (₦1, 000,000.00) as cost of this Suit.**
- (5) Omnibus prayer.**

The Claimant alleged that the 1st Defendant – Pauline Olonta sought for financial help to enable her complete execution of the contract she had with Nigeria Immigration Service. That she presented the Res for sale. Meanwhile, the Res is a house owned by the 2nd Defendant. The Claimant claimed that the 1st Defendant said that she is the owner of the Res but purchased same in the name of the 2nd Defendant.

According to the Claimant, he gave the 1st Defendant the sum of **Twenty Million Naira (₦20, 000,000.00)** for the price of the house. That the 1st Defendant gave the document of title – Certificate of Occupancy and Deed of

Assignment made between the 2nd Defendant and the Claimant on the 4th June, 2016 and Agreement to sale of house/Res between Peter Idu Elangwu and the 2nd Defendant – Capt. Patrick Agwo Olonta made on the 28th June, 2006.

That the 1st Defendant asked for 2 months of grace before she can pack out of the Res. That after the expiration of the 2 months the 1st Defendant refused to vacate the Res and have not done so even now. That after all entreaties failed, the Claimant instituted this action seeking the Reliefs as sought.

On their own part the 1st Defendant denied the sale of the Res to the Claimant stating that she sold. That she only obtained “loan,” financial assistance from the Claimant and used the document of title as collateral. That the 1st Defendant has no right to sell the house as it belongs to the 2nd Defendant who did not give its consent. That the claim of the Claimant is fraudulent and that the Claimant should show any evidence of receipt issued for the sale of the house. That the document – Deeds filed by the Claimant were done without consent as there is fundamental disparity in the signature of the 2nd Defendant who is the owner of the house and who never sold the house to the Claimant. That the only amount she received from the Claimant is Fifteen Million Naira (₦15,000,000.00) and not Forty Million Naira (₦40,000,000.00) as the Claimant claimed.

They had urged Court to dismiss the case of the Claimant as it was froth with fraud and illegality and the Claimant was not able to establish that the house was sold to it at any time.

The parties called One (1) Witness each and they both tendered several documents in support of their stances in the Suit.

In the Written Address the Claimant raised Six (6) Issues for determination which are:

- (1) Whether from the Claimant's evidence it has proved its claim on preponderance of evidence and on balance of probability to earn its Reliefs.
- (2) Whether defence of non est factum and technicalities is available to 1st Defendant to void a valid Contract Agreement for Sale of the Res in the absence of vitiating factor such as fraud especially as the 1st Defendant has derived benefit from the transaction.
- (3) Whether the refusal, neglect or failure of the 1st Defendant to call the 2nd Defendant to appear in this case to state his own side of the case should not be presumed as withholding of evidence.
- (4) Whether hand over or transfer of documents of title of the Res, Certificate of Occupancy, TDP, Deed of Assignment etc is not an evidence of an intention to transfer title in the Res by the 1st Defendant to the Claimant.

- (5) Whether the Fifteen Million Naira (₦15, 000,000.00) loan by the 1st Defendant requires any further proof.
- (6) Whether the admission by PW1 under Cross-examination that he made Witness Statement on Oath at his lawyer's office is the same as signing of the said Witness Statement on Oath at the same office.

On Issue No. 1, the Claimant submitted that it has, by its evidence and documents tendered, proved its case on preponderance of evidence and is entitled to his claim. That there is a Contract Agreement between the Claimant and the Defendants as there was Offer, Acceptance and Consideration – **Forty Million Naira (₦40, 000,000.00)** for the purchase of the Res – House 15, 353 Street Gwarinpa, Abuja, Certificate of Occupancy in the name of Elaigwu. That the Claimant tendered documents of title, Certificate of Occupancy, Deed executed by the 1st Defendant in favour of the Claimant. That the 1st Defendant did not tender any document.

That the demeanor as to the amount of interest payable on the alleged loan upon Cross-examination made her testimony to be less probable. That the 1st Defendant is not a Witness of truth. That she denied \$65 given to her to complete Fifteen Million Naira (₦15, 000,000.00) of the sum of the property which is Forty Million Naira (₦40, 000,000.00). That the Claimant showed there was sale of the property. They tendered the Deed of Assignment and

act of handover to the Claimant all show here was proof of intention to transfer the title to Claimant. They relied on the cases of:

Adeboye Olanlege V. Agro-Continental Nig Ltd.
(1996) 7 NWLR (PT. 458) 29 @ 39

Olaoye V Balogun
(1990) 5 NWLR (PT. 148) 24

S. 128 of the Evidence Act.

That the signature in the Deed is the same as signature of the 1st Defendant on her Witness Statement on Oath. They urged Court to take note of same. They referred to the cases of:

Colonial Dev. Board V. Kamsin
(1955) 2 NLR 21

Union Bank V. Ozigi
(1994) 3 NWLR (PT. 333) 385

That the parties in this case are bound by the contract agreement they have entered into. That the 1st Defendant is bound by the agreement to sell the Res in this case. That there was a valid contract between the 1st Defendant and the Claimant. That the 1st Defendant, after enjoying and taking benefit of the contract, should deny that there was sale but loan Agreement and that the property belonged to the 2nd Defendant. That the 2nd Defendant never came to defend jointly or separately after being served with the Writ and all other Processes including

Hearing Notices in this Suit. That the 1st Defendant is bound by the terms of the contract. They referred to the cases of:

**Max Blossom Ltd V. Victor & Ors
(2019) LPELR – 47090 (CA)**

**Dennis Nwoye Okafor V. Anthony Iguito & 2 Ors
(1997) 11 NWLR (PT. 527) 36**

That the assertion that the 2nd Defendant whose name is on the document is the owner of the property is not true as the 2nd Defendant never came to Court to challenge the Suit. That the 2nd Defendant is a necessary party sued in this case but he refused, ignored and neglected to defend the Suit to prove that he is the owner of the property. That the 1st Defendant is fraudulently attempting to drag the 2nd Defendant, her son, into the matter to make false claim. That her action is a gross abuse of Court Process. That the 1st Defendant claim is lacking in merit. That the property was bought by the 1st Defendant in the name of her son who was only a student as at that time. That she, the 1st Defendant, is in occupation and has all the documents of title in her possession which she handed over to the Claimant and promised to vacate the premises within 6 months after the transaction.

They urged Court to hold that they have adduced more than enough evidence to be entitled to the grant of their Reliefs.

On Issue No. 2, they submitted that from the evidence of the parties, it is clear that the 1st Defendant, at the stage of signing of the Agreement, was aware of the nature of the document she signed after collecting consideration of **Forty Million Naira (₦40, 000,000.00)** and handing over all the title documents in respect of the Res. That the defence of **non est factum** is not available to the 1st Defendant as she had not established any fraud or other vitiating factor. That she has mental capacity to enter into the contract as a very educated person – a graduate. That documentary evidence stands firmer than oral evidence. That the 1st Defendant did not deny that those documents emanated from her and that she signed them. They referred to the cases of:

Chidoka V. First Financial City Finance Company Ltd.
(2013) 5 NWLR (PT. 1346) 162 – 163

Lubcon Ltd V. Classmate Tech.
(2019) LPELR – 46414 (CA)

That the signature in the Deed is not different from the signature of the 1st Defendant in her Statement on Oath before the Court. That it is only that the 1st Defendant signed the document confirming that the transaction was for a sale of property and not a loan. That it is strange that the Claimant will give the 1st Defendant a loan of **Fifteen Million Naira (₦15, 000,000.00)** without any documentary evidence in support of same. That the documentary evidence of Deed of Assignment fully and

duly executed speaks louder than oral evidence of the 1st Defendant. They referred the Court to the case of:

**Abubakar Injidda Gabara V. Daniel Yadzimai
(2022) LPELR – 45015 (CA)**

They urged Court to discountenance the feeble defence raised by the 1st Defendant as it is not credible and grant the Reliefs of the Claimants as sought in the interest of justice. That the Deed of Assignment is evidence of the transaction between the parties. That the 1st Defendant did not tender any document evidencing the Loan Agreement she alleged. They urged Court to dismiss that assertion that the contract is a loan and grant the Claimant's Reliefs. That she did not raise fact to vitiate the contract of sale. That she admitted that she received the consideration and made use of it. She feebly denied receiving the \$65 US Dollars paid to her cash to complete the price for the sale of the property. That the 1st Defendant is bound by the content of the document signed by her voluntarily. They referred to the case of:

**Estrange V. Graucob
(1934) 2 K.B**

That the Defendants did not provide all factors available for them to stand on Defence of non est factum. They urged Court to discountenance all the Defendants submission and grant the Reliefs of the Claimants as sought.

That Court is duty bound to enforce the valid contract entered into by the parties in this case. They relied on the case of:

**Maryam Isiaku V. Dr. J.S. Zwmgina
(2001) FWLR (PT. 72) 2096**

On Issue No. 3, on failure of the 2nd Defendant to appear in this Suit, the Claimant submitted that the 2nd Defendant was duly served with all the Originating Processes and Hearing Notices since he is a person whose name appeared in the document of title presented by the 1st Defendant to the Claimant. That the 2nd Defendant is a son of the 1st Defendant. That the 1st Defendant deceived the Claimant into the contract by stating that the 2nd Defendant is not aware that she bought the property in the name of the 2nd Defendant and has possession of all the documents and the property too. That under Cross-examination the 1st Defendant said that the 2nd Defendant is aware of this case and does not want to appear in Court and that nothing concerns him. That it is a clear case of withholding evidence which is likely to be unfavorable to the 1st Defendant. That the 2nd Defendant absented himself because there is every likelihood that the evidence he will give will be unfavorable to him. They referred to the cases of:

**Prudent Bank PLC V. Obadaki
(2012) NWLR (PT. 50)**

Ajao V. Ademola

(2005) 3 NWLR (PT. 913) 638

Adedeji V. Kolawole

(2004) All NWLR (PT. 214) 91

They urged Court to hold that failure of the 1st Defendant to bring the 2nd Defendant to Court is an act of withholding valuable information and grant all the Reliefs of the Claimant as sought.

On Issue No. 4, on transfer of documents of title to the Claimant as evidence of intention to transfer full title of the Res to the Claimant by the 1st Defendant, they submitted thus: that there is no other way to the transaction of sale going by the Deed of Assignment executed by the Defendant which is the best evidence in this case. That the handing over of the documents to the Claimant confirmed the sale transaction notwithstanding that the 1st Defendant is still in occupation based on her appeal to the Claimant to allow her 6 months of grace to be in the Res after the sale. That fact is also a confirmation of the transaction. That documentary evidence is the best of evidence. It speaks for itself. They relied on the case of:

Gabara V. Yadzimai Supra

They urged Court to hold that the Claimant's case has been established from the evidence adduced. They urged Court to grant all the Reliefs sought or the alternative prayer in the interest of justice.

On Issue No. 5, whether the admission of **Fifteen Million Naira (₦15, 000,000.00)** loan by the 1st Defendant requires further proof, the Claimant submitted that the 1st Defendant admitted collecting the said amount from the Claimant in 2016 and utilized it for the contract she got from Immigration. They referred to the cases of:

Achilivu V. Anyatonwu
(2013) 53 NSCQR 513

Bona Textile Mills V. Asaba Textile
(2013) 17 WRN 68

Where Court held that admission is the best proof required in civil litigation. They also referred to the case of:

Ogheneovu V. FRN
(2013) 11 WRN 94

That the 1st Defendant admitted that **Fifteen Million Naira (₦15, 000,000.00)** was given to her by the Claimant in her pleadings. That the Claimant had urged the 1st Defendant to repay the sum at 21% interest from 2016 since the transaction was loan transaction. That the 1st Defendant agreed she took the loan and has not paid it till date. That the 1st Defendant's assertion that her failure to repay the loan was because the Claimant want to claim the property is laughable. That it is a suppression of fact in this case by the 1st Defendant. That she signed the Deed of Assignment over the Res. She did not produce

any document to prove that there was Loan Agreement. Based on that, the Claimant made the alternative Relief if the Declaratory claim fails. That it is not possible for the Claimant who is from Anambra State can loan huge sum of money to another person from Benue State without charging interest on the Loan – Principal sum.

They submitted that facts admitted need no further proof. They relied on the cases of:

Skynt Motors V. UBA
(2021) 5 NWLR (PT. 1768) 123

Moshesha General Merchant Ltd V. Nigeria Steel Production Ltd.
(1987) NWLR (PT. 55) 10 @ 145

That if the 1st Defendant's Defence is true it means that the Claimant is entitled to **Fifteen Million Naira (₦15,000,000.00)** at 21% Interest monthly from July 2016 until repayment and 10% Post Judgment sum till liquidation. They referred to the cases of:

Udeh V. A-G Rivers
(2004) 4 NWLR (PT. 756) 66

Daggash V. Bulema
(2004) 14 NWLR (PT. 892) 14 @ 56

Where Court held that in any admission of indebtedness Court is empowered to enter Judgment as sought in the alternative prayer. He urged Court to enter Judgment in favour of the Claimant. They referred to the cases of:

NBCI V. Danphin Nig. Ltd
(2014) 16 NWLR (PT 1432) 9

WEMA Bank V. IIT Ltd
(2011) 6 NWLR 479

Anason Farms Ltd V. NAL Merchant Bank Ltd
(1994) 3 NWLR (PT. 331) 241

He urged Court to grant the sum admitted with the 21% interest.

On Issue No. 6, on making of Witness Statement on Oath at his lawyer's office, the Claimant submitted that he signed the Witness Statement on Oath in the Court Registry but that the Oath was made in the lawyer's office. That the Commissioner for Oath stamped and sealed the document – Witness Statement on Oath, in the regular course of her duty. They referred to the cases of:

Nyesom V. Peterside
(2016) 7 NWLR (PT. 1512) 452

Awolowo V. Shagari
(1979) 6 SC 51

They urged Court to discountenance the submission of the Defendant/Defendant Counsel and uphold the case of the Claimant Witness Statement on Oath. They referred to S. 168 (1) of the Evidence Act 2011.

That the alimon of fraud on part of the Claimant by the 1st Defendant is a cover up to the sudy steps taken by the 1st

Defendant in his case who committed fraud in this case. That the 1st Defendant is in possession/occupation and has all the documents of title in her position claiming to she wants to bequeath same to her son – 2nd Defendant when she dies. She admitted that the signature in the document is her signature. That she is suppressed facts in the transaction fraudulently and at the same time she alleges fraud against the Claimant who transacted with her in good faith. That Defence in this case is an abuse of Court Process. They urged Court to grant the Reliefs sought and hold that the Claimant had placed before this Court sufficient evidence to prove its case.

The 2nd Defendant did not file any Defence jointly or personally. The Court holds that he has admitted the allegation and claims made by the Claimant in this case because facts not controverted are deemed admitted, moreso where the party was given all the judicial leverages to defend the Suit but failed to do so.

The 1st Defendant testified as DW1. She was Cross-examined too. She laid evidence that the property was never sold but was held out as collateral to the loan – **Fifteen Million Naira (₦15, 000,000.00)** given to her by the Claimant. She tendered Statement of Account.

The 1st Defendant raised 2 Issues for determination which are:

- (1) Whether Court can rely on the Claimant's Witness Statement on Oath.**

(2) Whether based on the facts and circumstance of the case and evidence led at trial the Claimant is entitled to the Reliefs sought in this case.

On Issue No. 1, they submitted that Court cannot rely on it because the Statement on Oath was not made before Commissioner for Oath but at the office of the Claimant's Counsel. Therefore the Oath has no probative value. They referred to the case of:

**Nwakobobi V. Ejemeli & Anor
(2020) LPELR – 513579 (CA)**

They urged Court to hold that the Oath cannot be relied on and to resolve Issue No. 1 in Defendants' side.

On Issue No. 2, whether the Claimant is entitled to the Reliefs sought in this case going by his evidence in this case before the Court, the 1st Defendant Counsel submitted that the Claimant failed to provide compelling evidence in support of its case in this Suit and failed to discharge the onus to be entitled to the Reliefs sought. They referred to:

S. 131 of the Evidence Act 2011

**Olude V. Adeeso
(2015) LPELR – 2557 (CA)**

That there is no evidence to avail the Claimant to be entitled to its claims. That the Claimant has no justification to his claim. That there was no sale of the Res and no justification for sale of the Res because the

property belongs to the 2nd Defendant – Patrick Olonta. That the 1st Defendant could not have sold something she did not have. That the only way should have been by 2nd Defendant selling the property to the Claimant or granted Power of Attorney to 1st Defendant willingly. They referred to the case of:

Ude V. Nwara
(1993) 2 SCNJ 47 @ 66 – 67

That the 2nd Defendant never sold to the Claimant and never authorized sale by the 1st Defendant to anyone. They referred to the case of:

Orah V. Tanko
(2021) LPELR – 56301 (CA)

That the property in issue belongs to the 2nd Defendant and that she has no power to alienate same. That no evidence was laid to that effect. But even if that is true, that the 1st Defendant has no power to alienate the property without legal authority. That the Claimant confirmed that Peter Elaigwe – original allottee, confirmed that the transaction was between him and the 1st Defendant and not the 2nd Defendant and Elaigwe. They urged Court to hold that as hearsay. They referred to the case of:

Kakih V. PDP & Ors
(2014) LPELR – 23277

That **EXH 3** is between the 1st Defendant and Peter Elaigwe.

That the Claimant kept mute in the document of title of the 2nd Defendant which it has situate at Jikwoyi which is in Claimant's custody. That there is discrepancy in the document sought to be tendered by the Claimant – **EXH 1**. That the Deed has seal but the one frontloaded has no seal. 2nd page of **EXH 1** was missing. Lawyer's seal is on **EXH 1** but not in the one frontloaded. That the Deed was dated 4th June, 2016 while the NBA seal attached was 2018. That the Claimant had perpetrated fraud and should not benefit from same. they referred to the case of:

Saleh V. Monguno & Or
(2006) LPELR – 2992 (SC)

That the PW1 is not Witness of truth. That paragraph 7 of DW1 Oath was not controverted. That the Claimant have suppressed facts in this case. That the Claimant has no evidence to show that the 1st Defendant was paid cash in US Dollars. That the 1st Defendant only received **Fifteen Million Naira (₦15, 000,000.00)** and nothing more from the Claimant. They said that assertion by Claimant that no land transaction should be made in foreign currency. They referred to **S. 22 of the Foreign Exchange Monitoring and Misc Provision Act**. That the Claimant is not entitled to his claims because of his fraudulent misrepresentation. They relied on the case of:

Alalade V. Net Bank Nig Ltd

(1997) LPELR – 5540 (CA)

That the Claimant does not deserve the declaratory Relief as he has not proved his case. They referred to the case of:

**A-G Rivers V. A-G Akwa Ibom
(2011) 8 NWLR (PT. 12 48) 31 @ 172**

That the Claimant's evidence has failed to give validity to his case. They submitted that the Court should dismiss the case of the Claimant with punitive cost as it has no legality.

In the Reply on Points of Law to the Claimant's Final Written Address, they submitted that the 1st Defendant tendered Statement of Account to show that money was transferred to her. That 1st Defendant denied signing the Deed of Assignment. That she signed only a handwritten undertaken and not Deed of Assignment. That the 2nd Defendant is not aware of the case and the 1st Defendant said that the 2nd Defendant is not supposed to be aware of the Suit. That the 1st Defendant never asked to be given Six (6) months stay in the property in issue.

The Defendant Counsel Reply was based on most of the submission in the 1st Defendant's Final Written Address in that there was no contract of sale. They referred to cases of:

**Olalenyé V. Afro Continental Ltd
(1996) 7 NWLR (PT. 458) 29 @ 46**

Okwudili Ugo V. Obiekwe
(1989) LPELR – 3319 (SC)

Onwudiwe V. Federal Republic of Nigeria
(2006) 10 NWLR (PT. 985) 383 @ 429

That the Claimant Counsel submission on the demeanor of the 1st Defendant is overreaching. That **S. 128 of the Evidence Act** referred to by the Claimant Counsel to lay credence to **EXH 1** is contradictory and misapplication of the law. That the similarity of the signature referred cannot stand as the 1st Defendant said that she only signed the handwritten document and not **EXH 1**.

That 2nd Defendant was not served personally with the Originating Processes. They urged Court to discountenance the submission of the Claimant in this case in Issue No. 1.

On Issue No. 2, the Defendant Counsel replied this on Doctrine of **non est factum**. They urged Court not to countenance the argument because the 1st Defendant said that she never signed **EXH 1**. They referred to the cases of:

Attanda V. Beauty Fair Lab Ltd
(2006) LPELR – 11606 (CA)

Natasha V. State
(2013) LPELR – 22601 (CA)

That it is not for the Claimant Counsel to draw inference that it is the duty of the Court.

On 1st Defendant failing to indicate any vitiating fact, the Defendant Counsel replied that the Defendant mentioned fraud. They referred to the cases of:

Akpunonu V. Beakart Overseas Ltd
(2000) LPELR – 390 (SC)

Olufinishe V. Falana
(1990) LPELR – 2616 (SC)

That the 1st Defendant pleaded fraud and stated the particulars of fraud. They relied on the case of:

Saleh V. Abah
(2017) 12 NWLR (PT. 1578) 100 @ 135

On Issue No. 3, the Defendant submitted that the Claimant has no right to dictate how the Defendant can conduct its case. That the 2nd Defendant's absence is not withholding of evidence. That he is not listed as Witness and that a party is not bound to call Witness if he can prove his case himself. They referred to the case of:

Musa V. Yerima
(1997) 7 NWLR (PT. 511) 11 @ 27

On Issue No. 4, the Defendant Counsel replied that the argument therein is a distraction and deviation from the record. That the Defendant showed that the documents in Jikwoyi house were collected as security for loan she collected from the Claimant. That handover of document of title of another person's property (2nd Defendant) cannot be term of purchase of the Res.

On Issue No. 5, the Defendant Counsel replied that the Court should discountenance the argument in the Claimant's Final Written Address and ignore alternative claim as it is prejudicial to 1st Defendant's Right and Interest. That the claims of the Claimant are not on recovery of Debt as they are on validation of the sale of land in issue.

That the Claimant never had alternative claim/Reliefs in this Suit. They referred to the cases of:

Osuji V. Ekeocha
(2009) LPELR – 2816 (SC)

Olowokere V. Africa Newspaper
(1993) 5 NWLR (PT. 259) 583 @ 597

Abdul V. Shekwolo & Ors
(2022) LPELR – 56682 (CA)

That the Claimant refused the Fifteen **Million Naira (₦15,000,000.00)** when the 1st Defendant wanted to pay the money back to them.

On Issue No. 6, the Defendant Counsel replied that the Claimant Counsel cannot give evidence for the Claimant. That the address of the Claimant Counsel cannot stand as evidence. They referred to the cases of:

Oyeyemi V. Owoeye
(2017) 12 NWLR (PT. 1580) 364

Offorshie V. Nigeria Gas Ltd

(2018) 2 NWLR (PT. 1602) 35 @ 57

Obike V. State

(2014) 10 NWLR (PT. 1414) 53 @ 77

The 1st Defendant's Counsel urged the Court to discountenance the submission of the Claimant and dismiss its Suit.

COURT

Having summarized the stances of the parties in this Suit, the question is whether the Court can rely on Witness Statement on Oath of the PW1? Whether the Claimant is entitled to its claim as sought? Whether the Claimant adduced enough evidence in prove of its case on balance of probability and preponderance of evidence to be entitled to the Reliefs sought? Whether there was valid contract of sale in this case? Whether the absence of the 2nd Defendant means withholding evidence? Whether there is intention to transfer title of land in the one at Gwarinpa House 15, 353 Street Gwarinpa Abuja? Whether the loan of **Fifteen Million Naira (₦15,000,000.00)** by the 1st Defendant requires any further proof? Whether signing of Oath and making of Oath are same?

This Court admits as if set hereunder seriatim the submission of the Claimant and aligns itself with same.

Not necessarily answering seriatim, it is the humble view of this Court that the Claimant has proved his case on the preponderance of evidence before the Court and on balance of probability. It is entitled to its Reliefs.

Making of Oath in his lawyer's office is not same as signing of Oath. Assuming, without conceding as lawyers often say, the making or signing of Oath at the office – Registry or elsewhere, it cannot vitiate and stall justice or determination of issues in dispute. Such trivial issues are a mere administrative formality which is left for the Court administration and should not be made an issue to stall substantial justice in this case.

There is a valid contract between the parties. There is offer and acceptance and there were consideration which is in form of payment of certain amount of money – **Fifteen Million Naira (₦15, 000,000.00)** and the exchange of documents of title given to the Claimant as part of the consideration. These facts were not successfully challenged by the Defendants.

The Defendants did not present any document to show that there was Loan Agreement. There should not have been a Loan Agreement and the parties signed the Deed as it were and the other documents which were presented by the Claimant which the Defendants could not deny.

To start with, the 1st Defendant and the 2nd Defendant are one and the same person. It is a case of a son and his mother in a deal. If the 2nd Defendant who has the title to

the Gwarinpa house was not part and parcel of it he would have come to Court to raise alarm. He would have filed a Defence and Counter-Claim. This Court believes that he is aware and in support of what transpired in this case in the deal. He knows that his mother has his authorization to do all she did in this contract. He knows they have no Defence. Besides, the signature in the documents speaks volume. As the Claimant/PW1 stated, they are the signatures of the 1st Defendant who had stated she purchased the house with her money for her son and that she intends to bequeath the house to her son – 2nd Defendant. All these facts are there for all to see. She cannot come to Court to claim that the same house does not belong to her and at the same time she did not alert her son, the 2nd Defendant, that someone is claiming his house. The Deed of Assignment is there, it was signed by the parties as far back as when they agreed was good on the 4th June, 2016.

If the 1st Defendant used the property as collateral as she claims and at the same time denies having the property and/or authorization of the 2nd Defendant, it then means that she has “stolen” as it were the said property. I do not think that she stole the property or used same without the consent and knowledge of the 2nd Defendant. Besides, the 2nd Defendant is aware of the whole transaction and does not want to get stained by coming to Court to contradict himself. The 2nd Defendant not coming to Court after he was duly notified by Order of this Court means

that he had admitted the case of the Claimant having not contradicted those facts. So this Court holds. Facts admitted need no further proof.

The 1st Defendant did not deny receiving the \$67 US Dollars. She confirmed that the house at Jikwoyi was part of the deal. She could not present any document to show that there was a Loan and not Sale of property. The Claimant was able to present document of sale – Deed of Assignment. The 1st Defendant did not attach any document in Defence. In as much as it is the duty of the Claimant to prove its case, the Defendant has a duty to deny such claims with documents where available and necessary.

If actually the money was for loan, there would have been a Loan Agreement and there would also be time frame within which the loan should be repaid and any interest payable if the time expired. There was no such thing. The 1st Defendant could not controvert the Claimant's submission that it was for sale and not Loan. The 1st Defendant did not deny signing the Deed of Assignment and sending to the Claimant who she claimed said he will send to his brother. She confirmed that she prepared the Deed. Her denial that the copy presented before the Court by the Claimant is not same cannot hold any water because there is nothing different between the Deed of Assignment she claimed she sent to the Claimant and the one before the Court as tendered by the Claimant. She confirmed that she signed the Deed of Assignment. If she

signed as can be seen in the document (she signed every page of the Deed), it is clear that she has the authority of the 2nd Defendant to do so. Besides, she did not deny that she bought the house and intends to bequeath but not yet bequeathed to the 2nd Defendant though his name is in the document.

If the property does not belong to her how come she has all the title documents and handed them over to the Claimant as she claimed for the so called loan? If she is not in charge and in control of the whole property, she should not have used it as collateral for a loan. Again, she should not have prepared and signed a Deed of Assignment and returned same to the Claimant to sign. She is educated enough to know what to prepare and what to sign and not sign. Her silence on the house at Jikwoyi confirms what the Claimant said the said house was for. She did not controvert the fact that that whole price of the property was **Forty Million Naira (₦40,000,000.00)**. She did not deny evidence led by the Claimant in that regard. The handover of title documents for the property in issue covered by the Certificate of Occupancy and the Deed of Assignment is evidence of intention to transfer property title in the Res to the Claimant.

The **Fifteen Million Naira (₦15,000,000.00)** which the 1st Defendant confirmed she received from the Claimant is part of the consideration for the sale of the house. So this Court holds. This Court also holds that there was nothing

like Loan Agreement between the parties in this Suit. If there was there should not have been any Deed of Assignment signed by the Claimant and the 1st Defendant in this Suit. So this Court holds. The claim of **Fifteen Million Naira (₦15, 000,000.00)** being loan was not substantiated by the 1st Defendant. So also this Court holds.

The 2nd Defendant not appearing in Court to defend the Suit had admitted all the submission/claim of the Claimant in this case and had not challenged the facts. So this Court also holds that those facts are deemed and are actually admitted by the 2nd Defendant.

It is very obvious that the action of the Defendants especially the 1st Defendant is a breach of contract of sale of house entered into between the 1st Defendant and the Claimant. The Defendants especially the 1st Defendant and invariably the 2nd Defendant knows that the agreement is for sale of the property and handing over of the title documents and all to the Claimant. That is why the 1st Defendant prepared, signed the Deed of Assignment and sent it to the Claimant to sign. Meanwhile the signature in every page of the document was signed by the 1st Defendant who is one and “same” with her son – 2nd Defendant.

The 1st Defendant cannot feign not being the owner of the property at this stage or not having the consent of the 2nd

Defendant. Besides, there is no adverse claim of ownership as to the said property.

This Court holds that the 1st and 2nd Defendants are in league as to the sale of the property in issue in this case.

The Claimant has established his claim and is entitled to the Reliefs sought. This Court holds that the case of the Claimant is meritorious and grants the Reliefs to wit:

Relief No. 1 granted.

Relief No. 2 granted.

Relief No. 3, the Defendants are to pay to Claimant the sum of Five Hundred Thousand Naira (N500, 000.00) rent per annum from date of filing of this Suit until the date they give up possession and vacate the said house.

The Defendants are to also pay the Claimant the sum of One Hundred Thousand Naira (N100, 000.00) as cost of this Suit.

This is the Judgment of this Court.

Delivered today the ___ day of _____ 2023 by me.

K.N. OGBONNAYA
HON. JUDGE