

**IN THE HIGH COURT OF JUSTICE**  
**FEDERAL CAPITAL TERRITORY OF NIGERIA**  
**IN THE ABUJA JUDICIAL DIVISION**  
**HOLDEN AT APO – ABUJA**  
**ON, 14<sup>TH</sup> DAY OF FEBRUARY, 2023.**  
**BEFORE HIS LORDSHIP:- HON. JUSTICE A. O. OTALUKA.**  
**SUIT NO.: -FCT/HC/CV/2861/2020**

**BETWEEN:**

**NUFI BARNABAS YOHANNA:.....CLAIMANT**

**AND**

**1. MAJE INVESTMENT AND CONSTR.  
COMPANY NIG. LTD.**

**2. UNITY HILLS GARDEN ESTATE LTD.**

**3. NAFIU UMAR MAJE**

**:.....DEFENDANTS**

Abdurahman Momoh for the Claimant.  
Friday Ibru for all the Defendants.

**JUDGMENT.**

The Claimant by a Writ of Summons dated and filed the 9<sup>th</sup> day of October, 2020, brought this suit against the Defendants claiming for the following:

- a. A declaration that the Claimant having fully settled his financial obligations to the Defendants, is the owner and title holder of that property known as and situate at House No. B8, Unity Hills Garden Estate, Plot 99, Cad. Zone C10, Wumba District, Abuja.
- b. A declaration that the decision of the Defendants to unilaterally do an upward review of the liability of the Claimant on House No. B8, Unity Hills Garden Estate, Plot 99, Cad. Zone C10, Wumba District, Abuja, after the

Claimant had fully paid his financial obligation, is wrongful and constitutes a flagrant breach of contract.

- c. A declaration that the 100% upwards review of the infrastructure fees by the Defendants with an additional N2,000,000.00 (Two Million Naira) is unknown to and in breach of the agreement between the parties.
- d. An order directing the Defendants to issue payment receipts to the Claimant covering payments already made for:
  - i. N500,000 made as 2<sup>nd</sup> instalment on the property.
  - ii. N150,000 additional payment for Development levy.
- e. An order mandating the Defendants to execute a deed of sublease in favour of the Claimant in respect of House No. B8, Unity Hills Garden Estate, Plot 99, Cad. Zone C10, Wumba District, Abuja, he having completed payment for same.
- f. An order directing the Defendants to avail the Claimant copies of the building plan approval for the estate known as Unity Hills Garden Estate, Plot 99, Cad. Zone C10, Wumba District, Abuja; as well as the survey plan for House No. B8 therein.
- g. Refund of N1,000,000.00 (One Million Naira) only deposit made for infrastructure being consideration for a promise to do infrastructure, which promise has failed.
- h. And order of perpetual injunction restraining the Defendants, either by themselves, their privies, agents, staff or assigns from entering into, trespassing on, stopping or otherwise interfering with the Claimant's right/title over No. B8, Unity Hills Garden Estate, Plot 99, Cad. Zone C10, Wumba District, Abuja.
- i. General damages.
- j. Cost of this action.

The case of the Claimant as per his statement of claim is that sometime in June, 2011, the 3<sup>rd</sup> Defendant who is the MD/CEO of 1<sup>st</sup> and 2<sup>nd</sup> Defendants, approached him saying that he had secured allocation of a plot under the FCTA Mass Housing Programme in the name of the 1<sup>st</sup> Defendant.

The Claimant averred that the 3<sup>rd</sup> Defendant offered him a partitioned unit at the sum of N3,500,000.00. That he then obtained an application form for a three Bedroom Dethatched Bungalow which he completed and submitted on the 10<sup>th</sup> of June, 2011, and also issued a cheque of N2,000,000.00 to the Defendants as initial deposit for the property, leaving a balance of N1,500,000.00. He stated that it was agreed by the parties that payment for the property was by instalment, without any schedule or timeline for payment.

The Claimant averred that after about a month or waiting, he went to the Defendants' office and was issued a receipt of payment for the initial deposit and the allocation letter for a 3 Bedroom Detached Bungalow, House No. B8, at Plot 99, Cadastral Zone C10, Wumba District, Abuja. That he asked to be shown the particular unit on ground to commence work but the 3<sup>rd</sup> Defendant told him that he needed to be issued a Letter of Authority to proceed to site which he would show the site Engineer as to be able to identify his partitioned unit and also sign a Joint Venture Partnership/Agreement that would guide his conducts and activities on site. That for this purpose, he was told to pay a total sum of N155,000.00 covering the following:

- a. Setting out, Excavation and Survey fees – N70,000;
- b. Building Plan – N10,000;
- c. Engineering Supervision – N75,000.

He stated that he made cash payment as directed and was issued a receipt and a letter of authority to proceed to site and execute a Joint Venture Partnership.

The Claimant averred that the Defendants informed him that the payments for development levy and infrastructure were to be made any time before completion of the building, while insurance charge, administrative charges and legal fees were not applicable to him since he was a participatory subscriber building by himself.

He stated that the price for the property would have been the sum of N30,000,000.00 as reflected on the offer letter if the Defendants were to build and sell to him; but being a participatory subscriber building by himself, he was offered the partitioned unit for the sum of N3,500,000.00.

The Claimant stated that 3<sup>rd</sup> Defendant stamped copies of the letter of authority to proceed to site and the joint venture partnership as paid, to signify that he had completed all payments relating to his movement to site and all payment obligations under the joint venture partnership. That by the joint venture partnership contract agreement, the requisite payments for the authority to proceed to site can be made within 3 months of the allocation, the failure of which would attract interest of 21% per annum, but that he completed the said payment on the date of the allocation and that the Defendants had acknowledged same.

The Claimant averred that some days after the Site Engineer had taken him to his apportioned unit and after setting out and excavation had been done for commencement of building, the 3<sup>rd</sup> Defendant called him, saying that he was in urgent need of money to solve issues relating to the estate land, and that if the Claimant could get a client that would buy one unit for

N5,000,000.00, he was going to issue the Claimant a receipt of N500,000 and reduce his outstanding on the property to N1,000,000.00.

He stated that he immediately swung into action and was able to get a buyer within same week who bought a 3 Bedroom Detached Bungalow for the said N5,000,000.00; after which he made several attempts to collect the receipt, to no avail as the 3<sup>rd</sup> Defendant was never on site each time he visited his office and the 3<sup>rd</sup> Defendant's staff would always say that they had no instruction to issue the receipt.

The Claimant averred that on 3<sup>rd</sup> September, 2012, he received the Defendants' letter dated 31<sup>st</sup> August, 2012 requesting him to pay the outstanding sum of N1,510,000 for the cost of property and application form; the Defendants' record thus capturing his outstanding balance as N1,500,000 instead of N1,000,000. That after several visits and calls, he was able to meet the 3<sup>rd</sup> Defendant on 27<sup>th</sup> February, 2014 and complained to him about the fact that he was yet to issue the receipt for the N500,000 commission since 2011, and that he still received letters demanding payment of outstanding balance of N1,500,000 on the property instead of N1,000,000. That the 3<sup>rd</sup> Defendant apologised and asked him to do a formal request for the receipt of N500,000 for his company's accounting and auditing purposes, and that the 3<sup>rd</sup> Defendant personally gave him a plain sheet of paper on which he wrote the request on 27<sup>th</sup> February, 2014. That the 3<sup>rd</sup> Defendant promised to update his records accordingly to reflect that his outstanding balance on the property is N1,000,000 and that he would be called by the 3<sup>rd</sup> Defendant's staff to come and pick up the receipt at their office.

The Claimant further averred that all efforts to get the receipt from the Defendants were to no avail. Then, that he later received a letter dated 19<sup>th</sup> January, 2015 wherein the Defendants made reference to letters dated 7<sup>th</sup> April, 2014 and 7<sup>th</sup> August, 2014 that were purportedly sent to him, which letters he never received; and threatened that failure to pay his outstanding bills would have adverse implications on the ownership of the property.

He stated that on 24<sup>th</sup> July, 2015, he paid the total sum of N1,076,000.00, comprising the outstanding balance of N1,000,000.00 and security levy of N76,000.00, but that when he went to the Defendants' office for the receipt of the payment, the accountant issued the receipt which still showed that he had an outstanding of N500,000.00; meaning that the 3<sup>rd</sup> Defendant was yet to update his records as promised. That he there and then protested profusely causing the 3<sup>rd</sup> Defendant to take responsibility for forgetting to instruct the accountant to correct the error and issue receipt for N500,000; and asked him to come back later in the evening for the receipt because 3<sup>rd</sup> Defendant was rushing out of the office.

That when he called the accountant later in the evening of the same day to confirm whether the receipt was ready and was told by the accountant that the 3<sup>rd</sup> Defendant had not given instruction to issue the receipt, it dawned on him that the 3<sup>rd</sup> Defendant had ill intentions as far as the transaction between them is concerned.

The Claimant averred that on the same evening of 29<sup>th</sup> July, 2015, his Site surveyor went to drop sand and blocks on the site and was denied entry into the site by staff of the Defendants. That he kept calling the 3<sup>rd</sup> Defendant on phone but he refused to pick his calls. That the next morning, his Site

Surveyor was eventually issued a Clearance Certificate and was able to gain access and continued with the work. About two weeks later, he took doors and windows for installation but was denied entry with the materials.

He stated that he visited the Defendants' office severally between late 2015 and the whole of 2016 but never met the 3<sup>rd</sup> Defendant. That on a particular date, he called the 3<sup>rd</sup> Defendant, who fortunately picked his call but informed him that a committee had been set up to administer the estate and collect all payments, and then referred him to the chairperson of the committee.

The Claimant averred that when he contacted the chairperson of the committee, she asked him why he abandoned his building, with all the materials wasting. That he gave her the story of his experience and travails with the developer; following which she told him to continue with the work, that nobody will stop it. That on the strength of this assurance, he paid N1,000,000.00 as payment for infrastructure on 8<sup>th</sup> September, 2017, leaving a balance of N1,000,000 payable any time before completion of the building.

He stated however, that upon commencement of work, the Defendants instructed the security to stop his workers from working. That it took the intervention of good spirited co-landlords for the Defendants to allow the workers complete fixing the windows.

That on 11<sup>th</sup> September, 2017, he received a letter dated 28<sup>th</sup> August, 2017 from the Defendants stating that his outstanding balance on the property is N5,608,000.00 comprising of:

- a. N500,000 as still outstanding on the property.
- b. Infrastructure as 100% outstanding.

- c. Perimeter fence.
- d. Security charge.
- e. Boys quarters.
- f. 100% price review.
- g. Development levy.
- h. Processing of C of O.

The Claimant averred that all efforts to reconcile the issues failed. Instead the Defendants did him another letter dated 13<sup>th</sup> July, 2018, putting his purported liability on the property to a total sum of N4,322,000.00 and that the Defendants have threatened to revoke his allocation and demolish his house if he does not pay the unilateral and unlawful upwards review even after he had finished paying for his property.

On the 22<sup>nd</sup> day of November, 2021, the Claimant opened his case. Testifying as PW1, he adopted his witness statement on oath wherein he affirmed all the averments in the statement of claim. He also tendered the following documents as exhibits in proof of his case.

1. Application Form – Exhibit PW1A.
2. Offer letter – Exhibit PW1B.
3. Official Receipt – N2m Deposit – Exhibit PW1C.
4. Official Receipt for Setting out– N2m Deposit – Exhibit PW1D.
5. Authority to Proceed to Site - Exhibit PW1E.
6. Joint Venture Partnership - Exhibit PW1F.
7. Request for Payment of Outstanding Bill - Exhibit PW1G.
8. Commission on B12 Wumba District – Exhibit PW1H.
9. Request for Payment of Outstanding Balance – Exhibit PW1J.
10. Placing of Your House under Caveat – Exhibit PW1K.

11. Completion of Documentation and Final Demand – Exhibit PW1L.
12. Official Receipt for Additional Deposit – N1m – Exhibit PW1M.
13. Official Receipt for Application Form – Exhibit PW1N.
14. Official Receipt – N1m for infrastructure – Exhibit PW1P.
15. Account Statement for A(B8) Unit - Exhibit PW1Q.
16. Re: Account Statement for A(B8)Unit - Exhibit PW1R.
17. Clearance Certificate - Exhibit PW1S.
18. Re: Account Statement for A(B8) Unit - Exhibit PW1T.
19. Re: Account Statement for A(B8) Unit - Exhibit PW1U.
20. Final Demand for Settlement of Outstanding Issues - Exhibit PW1V.
21. Re: Application for Perimeter Fencing - - Exhibit PW1W.
22. Re: Final Demand for Settlement of Outstanding Issues - - Exhibit PW1X.

Under cross examination, the PW1 admitted that the transaction between him and the Defendants is governed by documents, and stated that there is no document stipulating that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants should execute a sublease in his favour. He also stated that there is no document executed between him and the 1<sup>st</sup> and 2<sup>nd</sup> Defendants that building plan approval shall be given to him.

In their defence to the suit, the 1<sup>st</sup> – 3<sup>rd</sup> Defendants jointly filed a Statement of Defence dated and filed the 20<sup>th</sup> day of November, 2020 wherein they admitted the transaction alleged by the Claimant. They however averred that at no time was the Claimant given the condition or privilege to pay all

developmental levy or infrastructure at his own convenience, that the Claimant rather defaulted, as it was clearly stipulated that all payments will be paid before completion of building.

The Defendants averred that the Claimant breached the terms of the Joint Venture Partnership Agreement, as he failed to complete the project and building of the allocated portion, having taken 9 years in developing the project which still remains uncompleted till date.

The Defendants denied offering the Claimant a discount of N500,000.00 to source for a purchaser. They stated that they allocated structures by offer of allocation to prospective subscribers who indicated interest for the acquisition of the property in their estate.

The Defendants further averred that the Claimant's accrued debt stand unliquidated over time and that coupled with his breach of their Joint Venture Agreement, they reserved the exclusive right to revoke the contract and place caveat on the property on grounds of default and non-compliance by the Claimant. They admitted reviewing the terms of the sale of the property by 100%, stating that same was done after realising that the Claimant had failed woefully despite repeated requests to honour the terms of the Joint Venture Agreement and that the economic value of the property appreciated within time.

The Defendants averred that the Joint Venture Agreement gives them the right in Clause 5 thereof to charge 21% interest per annum for defaulters after the maximum time within which defaulters should pay, has elapsed and that the Claimant defaulted in payment. They stated that the Claimant is still indebted to them to the tune of N4,472,000 comprising of infrastructure levy, processing of right of occupancy, development levy, boys quarter and 21% price review of the

purchase price of the property which became applicable and accumulated in consequence of the undue delay by the Claimant.

The Defendants admitted paragraphs 63 of the Statement of Claim wherein the Claimant averred that the Defendants threatened to revoke his allocation and demolish his house if he does not pay the sum demanded by the Defendant's.

The Defendants however stated that they did not threaten to demolish the property, but that the Claimant having failed woefully in performing the terms of the contract, they had no further option than to revoke and re-sale the property in a bid to recover their money and equally refund the Claimant his invested money.

The 3<sup>rd</sup> Defendant gave evidence for the Defendants at the hearing of the case. He adopted his witness statement on oath as he testified as DW1, thereby affirming the averments in the statement of defence. He also tendered the following documents in evidence;

1. Application Form – Exhibit DW1A.
2. Request for Documents – Exhibit DW1B.
3. Re: Account Statement for A(B8)Unit - Exhibit DW1C.
4. Offer letter for purchase of Housing Unit – Exhibit DW1D.
5. Joint Venture Partnership Contract Agreement – Exhibit DW1E.
6. Authority to Proceed to Site – Exhibit DW1F.
7. Request for Payment of Infrastructural Fee – Exhibit DW1G.
8. Request for Payment of Outstanding Bill – Exhibit DW1H.
9. Completion of Documentation and Final Demand – Exhibit DW1J.

10. Request for Payment of Outstanding Balance – Exhibit DW1K.
11. Mortgage Application Details – Exhibit DW1L.
12. Placing of Your Property under Caveat – Exhibit DW1M.
13. Notice of Revocation of Offer Letter – Exhibit DW1N.
14. Re: Account Statement for A(B8) Unit – Exhibit DW1P.
15. Re: Application to Confine Work on House B8 – Exhibit DW1Q.
16. Re: Account Statement/Demand for immediate payment – Exhibit DW1R.
17. Application to continue work – Exhibit DW1S.
18. Request for Documents and Authorization to Apply Funds – Exhibit DW1T.

Under cross examination, the DW1 stated that the Claimant is not currently building on the plot allocated to him as he has stopped the Claimant from building, in line with their agreement, for violating the terms of the offer.

He stated that as at the date of his testimony, the Claimant had made a commitment of around N2.5m out of N3.5m while in respect of other payments like application Form, Excavation, etc, he has made part payments which were duly receipted.

The DW1 stated that what he offered the Claimant was a 3 bedroom bungalow at a discounted rate of N3.5m subject to terms; even though the amount stated in the offer letter, Exhibit DW1D is N30m.

The DW1 told the Court that he did not apply the funds as directed by the Claimant in Exhibit DW1T because the property had been on caveat.

At the conclusion of evidence, the parties filed and exchanged final written addresses which they adopted on the 21<sup>st</sup> day of November, 2022.

Learned defence counsel, Emilia Chukwuocha, Esq, in his final written address, raised three issues for determination, namely;

- i. Whether the Claimant has discharged the burden of proof placed on him by the law to be entitled to judgment in this suit?
- ii. Whether this honourable Court can grant the reliefs sought by the Claimant in this suit?
- iii. Whether the 3<sup>rd</sup> Defendant was not wrongly joined as a party given that a company is a corporate entity distinct from shareholder and directors which the 3<sup>rd</sup> Defendant represent?

Arguing issue one, learned counsel relied on Section 134 of the Evidence Act, 2011 and the case of **Agala v. Egwere (2010) All FWLR (Pt.532)1609 SC**, to posit to the effect that the Claimant is required to prove his case on a preponderance of evidence or balance of probability.

With reference to the documents tendered on evidence by the parties, learned counsel argued that the Offer Letter, Exhibit DW1D in paragraph (ii) contains a clause for price review before full payment. Also, that paragraphs 4 and 5 of the Joint Venture Partnership contract, Exhibit DW1E, stipulate that all payments must be made within 3 calendar months from the date of allocation as well as an interest of 21% per annum.

He contended that the Claimant breached the contract agreement when he made a further payment of N1,076,000.00 on the 24<sup>th</sup> day of July, 2015, 4 years after the initial part payment of N2m made in June, 2011, contrary to the contract

term that all payments must be made within 3 months. He argued that this breach, among others, is the main problem between the parties.

Learned counsel further argued that contrary to his first relief for a declaration that he has fully settled all his financial obligations to the Defendant; the Claimant in paragraph 59 (e) & (f) of his statement of claim, averred that he is still owing same outstanding balance.

He also argued that the Claimant's relief 2 is contrary to the terms contained in paragraph ii of Exhibit DW1D and paragraphs 4 & 5 of Exhibit DW1E.

In respect of the claim for N500,000 commission, learned counsel argued that the Claimant has to specifically prove the existence of an agreement for commission to warrant the grant of the order prayed for in the 4<sup>th</sup> relief.

Also, in respect of reliefs 5 & 6, learned counsel contended that the PW1 under cross examination admitted that there was no agreement that sublease or building plan would be given to him.

Learned counsel contended that the evidence adduced by the Claimant did not prove the claims by the Claimant. He referred to **Odom v. PDP (2015)61 (Pt.2) NSCQ 984, P. 1038** on the point that it is the law that he who asserts must prove.

He posited that the Claimant has not been able to establish that he has fully paid all the money in respect of the contract to entitle him to the reliefs sought for in this suit.

On issue two, learned counsel posited that there is no cogent and compelling evidence adduced by the Claimant in accordance with the required standard of proof in a civil case.

He referred to Section 131(1) of the Evidence Act, 2011 and **Iyere v. BFFM Ltd (2001)FWLR (Pt.37)1106.**

Proffering arguments on issue three, learned counsel contended that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants are corporate entities distinct from its executive officer, and that the purported contract, the subject matter of this suit, was entered between the Claimant and the 1<sup>st</sup> and 2<sup>nd</sup> Defendants, and not the executive officer. He submitted that a contract binds only the parties to the contract.

He contended that by PW1's admission under cross examination, the Claimant entered into the contract with the 1<sup>st</sup> and 2<sup>nd</sup> Defendants while the 3<sup>rd</sup> Defendant served as the CEO/Managing Director and did not contract in his personal capacity.

Learned counsel submitted that it is trite law that a company is an artificial person, separate and distinct from its directors and shareholders, and that neither the directors nor shareholders are personally liable for the defaults of the company, save in special narrowly defined circumstances. He thus argued that a party is misjoined if the alleged claim against him does not arise out of the same transaction or occurrence as other defendants, and there are no common questions of law or fact.

He relied on Order 13 Rule 18 (2) of the High Court of the Federal Capital Territory (Civil Procedure) Rules, 2018 to submit that the Court can order at any time that the name of a party be struck out if improperly joined. He urged the Court to so hold.

He further urged the Court, in conclusion, to dismiss the claims of the Claimant on the whole as being wholly unsustainable in

law and a futile attempt at gold-digging, and to award a cost of N1m against the Claimant.

The Defendants also filed a reply on points of law to the Claimant's final written address. Relying on **Oforishe v. Nigerian Gas Company Ltd (2018) LPELR-45003(CA)**, learned defence counsel submitted that parties are bound by the terms of their contract.

He contended that contrary to the Claimant's contention, in paragraph 5.10 of his final written address; that notice before review was not part of the contract as entered into by the parties.

In his own final written address, learned Claimant's counsel, Oluwafisayomi S. Aina, Esq, adopted issue (i) as formulated by the Defendants, to wit;

***“Whether the Claimant has discharged the burden of proof placed on him by law to be entitled to judgment in this suit?”***

He argued to the effect that the Claimant led evidence to prove his assertion of having paid fully the total cost of N3,500,000 for the plot offered him by the Defendants. That by Exhibits PW1C and PW1N, he established the payment of N3m, while his assertion to entitlement to N500,000 commission from the Defendants was admitted by the Defendants in their letter, Exhibit PW1T.

He relied on **Cameron Airlines v. Otutuzu (2011)LPELR-827(SC)** to posit that Exhibit PW1T is the hanger on which to place the Claimant's oral testimony regarding his entitlement to a N500,000 commission from the Defendants. He argued that the Defendants having acknowledged the existence of the said transaction and the commission of N500,000 arising therefrom,

cannot now turn around to deny same as the DW1 tried to do in this case.

Arguing further, he contended that even though by Exhibit PW1B, the Defendants reserved the right to do a price review before full payment; that the Claimants never received any notice of price review from the Defendants between 13<sup>th</sup> July, 2011 when the offer was made and 24<sup>th</sup> July, 2015 when he made the final payment of the purchase price of the plot. That it was two years after completion of the payment that the Claimant received a letter dated 28<sup>th</sup> August, 2017 (Exh. PW1Q) from the Defendants containing an item referred to as “100% price review” which the Claimant immediately rejected vide his letter dated 12<sup>th</sup> September, 2017 (Exh.PW1R).

Learned counsel argued that he purported upwards review of the purchase price of the plot after the Claimant had fully paid for same, is a breach of the agreement between the parties by the Defendant, and contended that same cannot stand as parties are bound by the terms of their agreement.

He further argued that the 21% interest contemplated by Clause 5 of Exhibit PW1F, cannot by any stretch of imagination apply to the Claimant, since it is evident from the Defendants bold stamp on Exhibits PW1E and PW1F that the payments stipulated therein had been duly paid by the Claimants. He urged the Court to hold that the oral testimony of DW1 that the Defendants are entitled to charge 21% price of the purchase price of the plot, cannot stand in the face of documentary evidence to the contrary. He referred to **Cameron Airlines v. Otutuizu (supra)**. He further urged the Court to hold that the Claimant has sufficiently established his entitlement to the grant of all the reliefs sought in his statement of claim.

On the Defendants' contention that the 3<sup>rd</sup> Defendant was improperly joined as a party to the suit; learned counsel contented that the 3<sup>rd</sup> Defendant is a necessary party to the suit, being the alter ego, directing the mind and will of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants. Furthermore, that the role played by the 3<sup>rd</sup> Defendant in the transaction was more than just the role of an alter ego; that as such, that he was properly so made a party to the suit.

He urged the Court to find that the Claimant has discharged the burden placed on him by law, having proved his case on the balance of probability, thus entitling him to judgment as per his claims.

The Claimant took out this action against the Defendants following the threat by the Defendants to revoke his purchase of a plot in the Defendants' estate and resell the plot with his house erected thereon on the purported ground of the Claimant's failure to pay off all outstanding payments on the property.

The contention of the Claimant is that he has paid off all outstandings on the property and thus, that there is no basis for the 100% price review imposed by the Defendants and the threat to revoke his "allocation" and sell off his house.

Apart from asserting their right to effect price review on the property and maintaining their claim that the Claimant is still indebted to them, the Defendants in their defence asserted that the Claimant transacted with the 1<sup>st</sup> and 2<sup>nd</sup> Defendants only and not with the 3<sup>rd</sup> Defendant whose involvement in the transaction was merely as the alter ego of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants, being their Managing Director and Chief Executive Officer. They thus argued that the 3<sup>rd</sup> Defendant was

improperly joined as a party to the suit and that his name should therefore be struck out of the suit.

In the determination of this suit therefore, the following questions are thrown up for consideration, namely;

1. Whether the joinder of the 3<sup>rd</sup> Defendant as a party to the suit is proper in the circumstances of this case?
2. Whether the Claimant has liquidated his indebtedness to the Defendants in respect of the transaction in issue?
3. Whether the 100% price review by the Defendants is valid as it affects the Claimant herein?

The first issue to consider is whether the 3<sup>rd</sup> Defendant was properly joined as a party to this suit.

From the pleadings of the parties and evidence led in the case before this Court, it is apparent that the 3<sup>rd</sup> Defendant herein is the Managing Director and Chief Executive Officer of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants companies.

The 3<sup>rd</sup> Defendant, in the eyes of the law, acted in the capacity of an agent for the 1<sup>st</sup> and 2<sup>nd</sup> Defendants. Thus, except where he is shown to have acted outside or in excess of his powers or functions as an agent, he incurs no liability in respect of actions performed or contracts entered into on behalf of the companies.

This much was stated by the Supreme Court in **Okolo & Anor v. U.B.N. Ltd (2004)LPELR-2465 (SC)**, where it held per Tobi, JSC, that;

***“... a director of a company is, in the eyes of the law, agent of the company for which he acts and the general principle of the law of principal and agent would apply. Thus, where a director enters into a contract in the name of or purporting to bind the***

***company, it is the company, the principal, which is liable on it, not the director.”***

Also, in **Bebeji Oil Allied Prod. Ltd v. Pancosta Ltd (2007)(Vol.31)WRN 163**, the Court of Appeal, per Mshelia J.C.A. held thus;

***“The only circumstances where managing director could properly be pursued against is where he acts as a surety or guarantor of the company, or where he is caught by the conditions provided under Section 506 of the Companies and Allied Matters Act. That is, if he is involved in fraudulent and reckless transactions on behalf of the company or when a petition for winding up of the company is under consideration.”***

None of the circumstances under which a Managing Director of a company may be proceeded against exists in the circumstances of this case. I therefore agree with the learned counsel for the Defendants, that the joinder of the 3<sup>rd</sup> Defendant as a party to this suit, is improper.

Accordingly the 3<sup>rd</sup> Defendant is hereby struck out of this suit on account of misjoinder.

The next issue to consider, which is the crux of the dispute between the parties, is whether the Claimant has liquidated his indebtedness to the Defendants in respect of the transaction in issue.

The main documents that govern the transaction between the parties are the Offer Letter, Exhibit PW1B and the Joint Venture Partnership Contract Agreement, Exhibit PW1F.

Although by Exhibit PW1B, what was offered to the Claimant was a housing unit of about 620sqm at a disposal price of

N30m, the evidence adduced before the Court established that what was in fact offered to him was a bare partitioned plot for the construction of a 3 bedroom detached bungalow, the construction of which was to be undertaken by the Claimant himself, and the price agreed by both parties, was the sum of N3.5m.

The parties however, were ad idem on the fact that all the terms on Exhibit PW1B would apply to their contract, except the term as to the cost of N30m. Of particular relevance to this suit, in Exhibit PW1B is the term on price review before full payment. This will be examined much further when considering the next issue.

By Exhibit PW1F, the parties agreed to abide by the “rules and regulations” contained in Exhibit PW1B. They further agreed that the time frame to exhaust all payments for the purchase of the property offered per Exhibit PW1B, would be within 3 months from the date of the allocation, and that 21% interest would be charged to defaulters after the expiration of the period.

There was no contest as to the fact that the Claimant did not exhaust his payments within three months, as stipulated in Exhibit PW1F. The contest is as to whether or not the Claimant has in fact completed his payments or is still indebted to the Defendants.

Apart from the sum of N350,000.00 for the processing of Certificate of Occupancy which is neither envisaged by the Offer Letter, Exhibit PW1B nor the Joint Venture Partnership Contract, Exhibit PW1F, and which the Claimant apparently did not agree to; the payments due from the Claimant to the Defendants (as per Exh PW1Q) and on which the parties are ad idem are as follows:

- (i) Premium (cost of the plot) – N3.5m.
- (ii) Authority to proceed – N155,000.00.
- (iii) Application Form – N10,000.00.
- (iv) Infrastructure – N2m.
- (v) Perimeter fence – N150,000.00.
- (vi) Security Charge (Jan. 2016 – Dec. 2017) – N72,00.00.
- (vii) Boys Quarter – N250,000.00.
- (viii) Development levy – N286,000.00.

Of the above obligatory payments, the evidence before this Court shows that the Claimant has made the following payments:

- (i) Premium (cost of plot); Exhibits PW1C and PW1M proves the payment of the sum of N3m by the Claimant out of the total cost of N3.5m. With respect to the outstanding balance of N500,000.00, the Claimant asserted that same was paid by way of commission to which he was entitled for bringing a client to the Defendants who paid N5m in purchase of a property from the Defendants. By Exhibit PW1H, the Claimant directed the Defendants to channel the said commission of N500,000 towards reducing his payment liability in respect of the plot. The Defendants in paragraph 4 of Exhibit PW1T, acknowledged receipt of Exhibit PW1H, and admitted the Claimants' entitlement to the said commission by alleging that a cheque had been issued to the Claimant in that regard. The Claimant denied receipt of any such cheque and before this Court, no evidence exists in support of the claim by the Defendants in Exhibit PW1T that the

commission had been paid to the Claimant vide a cheque.

The Defendants having admitted in exhibit PW1T, the Claimant's entitlement to a commission of N500,000.00, their outright denial of same before this Court is considered an afterthought.

Thus, by virtue of Exhibits PW1H and PW1T, I believe the testimony of the Claimant that an agreement existed between the parties whereby the Claimant was entitled to a commission of N500,000 from the Defendants, and that the Claimant clearly instructed the Defendants to apply the said commission to offsetting his payment for the plot.

- (ii) Authority to proceed: N155,000.00 paid – Exhs PW1D&E.
- (iii) Application Form – N10,000.00 paid – Exh PW1N.
- (iv) Infrastructure – N1m paid – Exh PW1P; Leaving outstanding balance of N1m. (The Claimant as a matter of fact is claiming in this suit, for the refund of the N1m already paid, the Defendants having failed to provide the promised infrastructure).
- (v) Perimeter Fence: The Claimant in paragraph 59 (C) of his statement of claim, averred that he paid the sum of N150,000 for perimeter fence, and in response to the said paragraph, the Defendants in paragraph 43 of their Statement of Defence made a general traverse, which in law, amounts to admission, which relieves the Claimant of the duty of proving the said payment. See **NOSPECTO OIL & Gas Ltd V. Kenny & Ors (2014)LPELR-23628(CA)**.
- (vi) Security Charge: The Claimant equally averred in paragraph 59 (d) of his statement of claim, that he paid the Security Charge up to December, 2017

before opting out of the arrangement. The duty to prove this assertion has been obviated by the Defendants' admission of same through their general travers in paragraph 43 of their Statement of Defence. See **NOSPECTO OIL & Gas V. Kenny & Ors (supra)**.

- (vii) Development Levy: Out of the stipulated sum of N280,000.00, the Claimant, in paragraph 59(e) of his statement of claim, averred that he paid the sum of N250,000, leaving a balance of N36,000.00. The fact that the Claimant made some payments and left some outstanding balance was admitted by the Defendants in paragraph 43 of their statement of defence where they responded to the averments in paragraph 59 of the statement of claim.

What is more? The Claimant in Exhibit PW1R alleged that he paid additional N1.1m into the Defendants' account for Development Levy and C of O; which sum is over and above the stipulated amount payable for the subject matter. The Claimant equally alleged that the said amount was unreceipted by the Defendants.

The payment of the said sum of N1.1m by the Claimant and the fact that same was unreceipted, was admitted by the Defendants in paragraph 7 of Exhibit PW1T. Facts admitted need no further proof. – **U.B.A. PLC v. Jargaba (2007)11 NWLR (Pt.1045)247 at 269-270.**

When all the payments made by the Claimant to the Defendants as stated above, and which have been found to have been admitted by the Defendants, are considered, vis-à-vis the alleged outstanding payments due from the Claimant as per Exhibits PW1Q, PW1W and DW1R, the inescapable

conclusion, which I also find as a fact, is that the Claimant is not indebted to the Defendants in respect of the transaction leading to this suit.

In coming to this conclusion, I took into account the fact that no evidence was presented before this Court to show that the Defendants have taken or are taking any steps to provide the infrastructure for which N1m has long been paid by the Claimant. It is thus unconscionable for the Defendants to demand for the payment of the balance of N1m when they have not utilized the N1m long paid by the Claimant.

The last issue to consider in this judgment is whether the 100% price review by the Defendants is valid as it affects the Claimant herein?

By the Offer Letter Exhibit PW1B, the Defendants reserved the right to effect a price review. It is however, clear from the said offer letter, that the price review is not all-encompassing in the sense of affecting every item in the transaction requiring payment. It is relative only to the purchase price of the property as that is the only payment stated in the Offer Letter. Also, the clause expressly stated that the price review could only be effected before full payment is made by the purchaser. By the wordings of the parties' contract therefore, once a purchaser has completed his payment, price review cannot be effected or imposed on him retroactively.

In examining when the Claimant made his payments, Exhibit PW1C shows that the first instalment was made on the 13<sup>th</sup> day of July, 2011.

The second instalment, as this Court has found in this judgment, was made by way of earned commission, which from

Exhibit PW1H, was already due to the Claimant as at 27<sup>th</sup> day of February, 2014.

The final payment in respect of the purchase price of the plot, was made per Exhibit PW1M, on the 29<sup>th</sup> day of July, 2015.

Although the Claimant did not comply with the 3 months payment period stipulated in paragraph 4 of Exhibit DW1E, the said paragraph however, did not stipulate or provide for any penalty for non-compliance.

The Claimant having completed the total payment of the sum of N3.5m, from above calculation being the price for the plot offered to him by the Defendants; the question then is: **when was the price review effected by the Defendants?**

By a letter dated 7<sup>th</sup> August, 2014 (Exhibit PW1K), the Defendants stated: "The terms of sale has been reviewed based on our letter dated 7<sup>th</sup> April, 2014".

No detail about the review or the new price was given or stated. Even the said letter of 7<sup>th</sup> April, 2014 (Exhibit PW1J) referred to by the Defendants, did not give any notice or indication about any price review.

However, in their letter to the Claimant dated 28<sup>th</sup> August, 2017 (Exhibit PW1Q), the Defendants indicated a price review of 100%. In effect, the effective date of the price review as it relates to the Claimant, is 28<sup>th</sup> August, 2017. This was two years after the Claimant had completed his payments for the purchase of the property on 29<sup>th</sup> July, 2015.

The purported price review is therefore, contrary to the term in Exhibit PW1B which stipulates that price review would be before full payment. In the circumstances, it is my finding, and I so hold that the purported price review by the Defendants, is

invalid, null, void and of no effect as it relates to the Claimant herein.

The Defendants had by Exhibit PW1K, dated 7<sup>th</sup> August, 2014, placed a caveat on the Claimant's property and by the same token communicated a revocation notice to the Claimant.

The evidence adduced before this Court show that following the said placement of caveat, the Defendants have thereby denied the Claimant access to his property. However, after placing of the said caveat, the Defendants accepted the last instalment made by the Claimant for the Plot on 29<sup>th</sup> July, 2015.

Having thus accepted the full and complete payment for the property, the Defendants have thereby, lost whatever right they may have to revoke the offer made to the Claimant. The caveat placed on the Claimant's property has also become void and ineffectual.

On the whole, this Court finds for the Claimant in this suit, and accordingly judgment is entered for the Claimant as follows:

- a. It is declared that the Claimant having fully settled his financial obligations to the Defendants, is the owner and title holder of that property known as and situate at House No. B8, Unity Hills Garden Estate, Plot 99, Cad. Zone C10, Wumba District, Abuja.
- b. It is declared that the decision of the Defendants to unilaterally do an upward review of the liability of the Claimant on House No. B8, Unity Hills Garden Estate, Plot 99, Cad. Zone C10, Wumba District, Abuja, after the Claimant had fully paid his financial obligation, is wrongful and constitutes a flagrant breach of contract.
- c. It is declared that the 100% upwards review of the infrastructure fees by the Defendants with an additional

- N2,000,000.00 (Two Million Naira), is unknown to and in breach of the agreement between the parties.
- d. The Defendants are hereby ordered to issue payment receipts to the Claimant covering payments already made for:
    - iii. N500,000 made as 2<sup>nd</sup> instalment of payment on the property.
    - iv. N150,000 additional payment for Development levy.
  - e. The Defendants are ordered to execute a Deed of Sublease in favour of the Claimant in respect of House No. B8, Unity Hills Garden Estate, Plot 99, Cad. Zone C10, Wumba District, Abuja, the Claimant having completed payment for same.
  - f. Relief (f) fails for want of proof, the Claimant having failed to show that same is a contractual obligation enforceable by legal action. Accordingly, the said relief (f) is hereby dismissed.
  - g. Relief (g) is refused and also dismissed.
  - h. And order of injunction is made, restraining the Defendants, either by themselves, their privies, agents, staff or assigns from entering into, trespassing on, stopping or otherwise interfering with the Claimant's right/title over No. B8, Unity Hills Garden Estate, Plot 99, Cad. Zone C10, Wumba District, Abuja.
  - i. The sum of N100,000.00 (One Hundred Thousand Naira) is awarded against the 1<sup>st</sup> and 2<sup>nd</sup> Defendants and in favour of the Claimant as general damages.
  - j. Cost of this action assessed at N200,000.00 (Two Hundred Thousand Naira) against the 1<sup>st</sup> and 2<sup>nd</sup> Defendants.

**HON. JUSTICE A. O. OTALUKA**  
**14/2/2023.**

