

**IN THE HIGH COURT OF THE FEDERAL  
CAPITAL TERRITORY, ABUJA  
HOLDEN AT MAITAMA, ABUJA**

**ON THURSDAY, 14<sup>TH</sup> DAY OF APRIL, 2022**

**BEFORE HON. JUSTICE SYLVANUS C. ORIJI**

**SUIT NO. FCT/HC/CV/289/2015**

**BETWEEN**

**MIKE ISRAEL NWADIOGBU**

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**CLAIMANT**

**AND**

- 1. OLUGBENGA ADEOLA ADEYANJU**
- 2. HON. BIODUN MOSHOOD BAKARE**
- 3. NWOKE CHRIS EZE**
- 4. INSPECTOR GENERAL OF POLICE**



**DEFENDANTS**

## **JUDGMENT**

By writ of summons filed on 26/11/2015, the claimant [plaintiff] instituted this action against the defendants. The pleadings in this case are: [i] the claimant's amended statement of claim filed on 1/7/2016; and [ii] the 2<sup>nd</sup> defendant's statement of defence filed on 23/3/2017.

In paragraph 45 of the amended statement of claim filed on 1/7/2016, the claimant seeks these reliefs against defendants jointly and severally:

- a) A declaration of this Honourable Court that the plaintiff is the *bonafide* owner of the land known as Plot No. 558 Cadastral Zone B13, Gaduwa District, Abuja in the Federal Capital Territory, Abuja.
- b) An order of this Honourable Court that the plaintiff is entitled to an order of specific performance compelling the defendants to hand over to the plaintiff the original Certificate of Occupancy of the property known as Plot No. 558 Cadastral Zone B13, Gaduwa District, in the Federal Capital Territory Abuja.

AND/OR IN ALTERNATIVE

- c) An order of this Honourable Court directing the 1<sup>st</sup> and 2<sup>nd</sup> defendants to return all the monies collected from the plaintiff over the sale transaction totalling sixteen million, two hundred and eighty seven thousand, six hundred and fifty Naira [N16,287,650].
- d) An order of perpetual injunction restraining the defendants, by themselves or through their agents, servants, privies, workmen and/or cohorts from trespassing and/or remaining in Plot No. 558 Cadastral Zone B13, Gaduwa District in the Federal Capital Territory, Abuja or in any manner whatsoever from interfering with the possessory right of the plaintiff over the said 558 Cadastral Zone B13, Gaduwa District.
- e) An order of this Honourable Court awarding the sum of five hundred thousand Naira [N500,000.00] in favour of the plaintiff being the cost of bringing this suit against the defendants.

At the trial, the claimant testified as PW1. He adopted his statement on oath filed on 26/11/2015 and his additional statement on oath filed on 1/7/2016. He tendered Exhibits A, A1, B, C, D1, D2, D3, E, F, G, H & J. Yusuf Mohammed gave evidence as PW2. He adopted his statement on oath filed on 26/11/2015.

The 2<sup>nd</sup> defendant testified as DW1. He adopted his statement on oath filed on 23/3/2017. The 1<sup>st</sup>, 3<sup>rd</sup> & 4<sup>th</sup> defendants did not file any process and did not attend Court.

**Evidence of PW1 - Mike Israel Nwadiogbu [the Claimant]:**

In his 44-paragraph statement on oath filed on 26/11/2015, PW1 stated that on 5/12/2013, the 1<sup>st</sup> defendant approached him through one Alhaji Ubali to buy Plot 558 Cadastral Zone B13 Gaduwa District, Federal Capital Territory [FCT], Abuja. When he met 1<sup>st</sup> defendant, he introduced himself as solicitor for the 2<sup>nd</sup> defendant [who he said owns the said Plot] and said he had the mandate to sell the Plot. He [PW1] instructed his agent [Yusuf Mohammed] to follow the 1<sup>st</sup> defendant and Alhaji Ubali to identify the said Plot. The 1<sup>st</sup> defendant took Yusuf Mohammed to the Plot and also took him to an office in the National Assembly, which he claimed was the 2<sup>nd</sup> defendant's office.

The 1<sup>st</sup> defendant also brought to him the original Offer of Terms of Grant/Conveyance of Approval dated 22/10/02 [Exhibit B] with which he conducted a legal search on the said Plot 558 at AGIS. The legal search report dated 18/07/2014 indicated that the Plot was allocated to Asabe Mammako but

has been transferred to the 3<sup>rd</sup> defendant and had no encumbrance. He paid the sum of N12,000,000 for the said Plot to the 1<sup>st</sup> defendant who posed as a solicitor to the 2<sup>nd</sup> defendant. He paid cash of N1,000,000 and transferred N11,000,000 through his Diamond Bank accounts numbers 0025843506 and 0026764099 to the 1<sup>st</sup> defendant's FCMB account number 1808355018.

After making the payment for the Plot, the 1<sup>st</sup> defendant handed over these documents to him: [i] original Offer of Terms of Grant/Conveyance of Approval dated 22/10/02; [ii] Re-certification and Re-issuance of C-of-O Acknowledgement dated 02/08/06 [Exhibit C]; [iii] Irrevocable Power of Attorney given by AsabeMammako to the 3<sup>rd</sup> defendant registered as No. FC 52 at page 52 in 43PA of FCT, Abuja Land Registry; [iv] Power of Attorney between the plaintiff and 3<sup>rd</sup> defendant dated 6/12/2013 [Exhibit G]; and [v] Deed of Assignment executed between the plaintiff and 3<sup>rd</sup> defendant dated 6/12/2013 [Exhibit H]. The Deed of Assignment and Power of Attorney were executed between him and the 3<sup>rd</sup> defendant for easy registration at AGIS since the 2<sup>nd</sup> defendant had not registered his interest in the Plot.

Mike Israel Nwadiogbu further testified that he paid N600,000 as agency fee to the 1<sup>st</sup> defendant's agent. He made the following payments to AGIS: [i] N3,467,500 for R-of-O [C of O] bill; [ii] N70,650 for ground rent; and [iii] N150,000 for Title Regularization fee for C of O [Power of Attorney]. The receipts of these payments are respectively Exhibits D1, D2 & D3. He collected the Certificate of Occupancy No. 1586w-d704z-6f5dr-109d2-10 dated

6/10/2006 in respect of the Plot from AGIS after making requisite payments; the Certificate of Occupancy in the name of the 3<sup>rd</sup> defendant is Exhibit A. The attached survey plan of the said Plot is Exhibit A1.

Sometime in January 2015, the 2<sup>nd</sup> defendant trespassed into the said Plot. He received a phone call from the 2<sup>nd</sup> defendant claiming that he [PW1] intruded into the Plot. He and the 2<sup>nd</sup> defendant agreed to meet at the Plot. When he got there, he met the 2<sup>nd</sup> defendant with another man [later identified as Collins Ehime] who was "*wielding a pistol gun*" and threatened to shoot anybody that dared step into the Plot. He fled from the Plot because of the intimidation and threat. He reported the matter to the Police. At the first instance, 2<sup>nd</sup> defendant denied having knowledge of any transaction with any person over the Plot. Prior to the incidents, the 2<sup>nd</sup> defendant never declared the documents of the land in his possession missing or tampered with.

As an investigation was on-going, it was discovered that 1<sup>st</sup> defendant was in the custody of the Independent Corrupt Practices Commission [ICPC] and was in Kuje Prison, Abuja for another crime he committed. He wrote a petition to ICPC dated 12/3/2015 to help recover his money. Later, he received a call from the Police that the 2<sup>nd</sup> defendant admitted giving out the documents of the said Plot 558 to his brother-in-law named Danre. When the 1<sup>st</sup> defendant came out from detention, he informed him [PW1] of his intention to come to his office to "*settle*" the matter. The 1<sup>st</sup> defendant came to his office with Policemen from Police Headquarters and he [PW1] was detained for 2 days.

PW1 further stated that the original copies of the Certificate of Occupancy and Offer of Terms of Grant/Conveyance of Approval of the said Plot were forcefully collected from him by the Policemen and retained them till date. At the 4<sup>th</sup> defendant's office on 6/10/2015, the 1<sup>st</sup> defendant undertook in writing to pay back to him all the monies he collected over the said Plot; the 1<sup>st</sup> defendant's undertaking dated 6/10/2015 is Exhibit E. He was later informed by his agents that the 2<sup>nd</sup> defendant "recently" placed the Plot for sale. The caveat which was placed on the Plot at AGIS by the 4<sup>th</sup> defendant has since been removed to enable the 2<sup>nd</sup> defendant sell the Plot.

The additional evidence of PW1 in his 4-paragraph statement on oath filed on 1/7/2016 is that at all material times during the land sale transaction, he was convinced and he believed that the 1<sup>st</sup> defendant was the solicitor and agent of the 2<sup>nd</sup> defendant. He had no reason to suspect the 1<sup>st</sup> defendant who had the original documents of the Plot. Other documents tendered by PW1 are: [i] the claimant's letter to ICPC dated 12/3/2015 is Exhibit F; and [ii] Form CAC 7 of Pameec Services Integrated Ltd. is Exhibit J.

During cross examination by the 2<sup>nd</sup> defendants' counsel, PW1 stated that the 1<sup>st</sup> & 2<sup>nd</sup> defendants undertook to refund his money at the 4<sup>th</sup> defendant's office; the 2<sup>nd</sup> defendant has paid N500,000. He was not given a copy of 2<sup>nd</sup> defendant's undertaking. He has received a total of N5 million from the 1<sup>st</sup> defendant. The 1<sup>st</sup> defendant did not show or give him a letter of instruction from the 2<sup>nd</sup> defendant. The 1<sup>st</sup> defendant told him that he had the instruction

of the 2<sup>nd</sup> defendant to receive the money for the land into his [1<sup>st</sup> defendant] account. In the course of the transaction, he did not see the 2<sup>nd</sup> defendant. He did not sign Exhibits G & H in the presence of the 2<sup>nd</sup> defendant. The witnesses to Exhibits G & H had signed before the documents were brought to him to sign.

*Evidence of PW2 -Yusuf Mohammed:*

In his 14-paragraph statement on oath, PW2 testified that he is a property consultant and agent. On 5/12/2013, 1<sup>st</sup> defendant sent Alhaji Ubali to meet with the claimant in his office to buy the Plot in issue. The 1<sup>st</sup> defendant introduced himself as solicitor for the 2<sup>nd</sup> defendant whom he said owns the said Plot; and he said he had the mandate to sell the Plot. The claimant instructed him [PW2] to follow the 1<sup>st</sup> defendant and identify the Plot. The 1<sup>st</sup> defendant took him to the Plot and also took him to an office in the National Assembly, which he said was the 2<sup>nd</sup> defendant's office. He did not see the 2<sup>nd</sup> defendant in the office.

PW2 further testified that at all times, 1<sup>st</sup> defendant had the original Offer of Terms of Grant/Conveyance of Approval dated 22/10/02 and Re-certification and Re-issuance of C-of-O Acknowledgement dated 02/08/06 in respect of the Plot. The claimant paid N12,000,000 to the 1<sup>st</sup> defendant for the Plot. The 1<sup>st</sup> defendant asked the claimant to prepare Deed of Assignment and Power of Attorney between the claimant and the 3<sup>rd</sup> defendant for easy registration at AGIS. He witnessed for the claimant on the Deed of Assignment and Power

of Attorney executed between him and the 3<sup>rd</sup> defendant. The “defendants” having sold the Plot to the claimant via “his agent” have no right over the Plot.

When PW2 was cross examined, he stated that he never met the 2<sup>nd</sup> defendant before or after the transaction. The 1<sup>st</sup> defendant did not present a letter of authority from the 2<sup>nd</sup> defendant to sell the Plot. He is aware that the 1<sup>st</sup> defendant refunded part of the money to the claimant; the claimant informed him [PW2] that the 1<sup>st</sup> defendant refunded N5,000,000.

**Evidence of DW1 - Hon. Biodun Moshood Bakare [the 2<sup>nd</sup> Defendant]:**

In his 30-paragraph statement on oath, DW1 stated that he does not know the 1<sup>st</sup> defendant and the 1<sup>st</sup> defendant was never his solicitor or agent. The 1<sup>st</sup> defendant has no relationship with him until he was apprehended by the 4<sup>th</sup> defendant. He did not witness any power of attorney or deed of assignment between the claimant and 3<sup>rd</sup> defendant. The 3<sup>rd</sup> defendant never executed the deed of assignment and power of attorney referred to by the claimant. The 3<sup>rd</sup> defendant, in his written statement before the Deputy Inspector General of Police, denied signing the said documents. The claimant was never put into possession of the said Plot. There was never a time he, in conjunction with any person, threatened to shoot any person.

The claimant voluntarily handed the said original instruments to the 4<sup>th</sup> defendant upon realizing at the Police station that he [DW1] never authorized any sale of the Plot and that he [the claimant] had been scammed.

He is not interested in selling the Plot. He is not aware of any caveat placed on the Plot. The claimant failed to conduct due diligence over the said sale agreement he entered with the 1<sup>st</sup> defendant. He never received the sum of N12,000,000 or any sum whatsoever either from the claimant or the 1<sup>st</sup> defendant in respect of the said Plot. Oluwadare Adeola made written voluntary statement on 26/4/2015 at the office of the 4<sup>th</sup> defendant that he got N3.5 million from the land sale and that he took the original title document from his [DW1] wardrobe without his knowledge and gave 1<sup>st</sup> defendant to market the Plot.

The 2<sup>nd</sup> defendant further testified that the 1<sup>st</sup> defendant made a voluntary statement on 5/8/2015 at the office of the 4<sup>th</sup> defendant that: [i] he was never a lawyer; [ii] he only read law in University of Lagos and graduated in 1998; [iii] the land document was stolen by Oluwadare Adejumo [2<sup>nd</sup> defendant's relation) and handed over to him; and [iii] the land was sold in conjunction with Alhaji Ubali who received N1 million from Oluwadare Adejumo as his own share of the scam. The 3<sup>rd</sup> defendant [whose real name is Collins Ehime] made a voluntary statement at the office of the 4<sup>th</sup> defendant on 29/1/2015 that he does not know the claimant and the 1<sup>st</sup> defendant; and that he never sold the said Plot to the claimant or any person after selling to him [DW1].

At the 4<sup>th</sup> defendant's office on 5/10/2015 and with the claimant's consent, the 1<sup>st</sup> defendant undertook to refund the N12,000,000 he fraudulently collected from the claimant as a final settlement of the matter. In fulfilment of the

undertaking, 1<sup>st</sup> defendant refunded to the claimant the sums of N2,500,000 and N2,000,000 on 1/12/2015 and 9/12/2015 respectively. Also, N1,000,000 was transferred to the claimant's account by the 1<sup>st</sup> defendant.

Hon. Biodun Bakare further stated that he bought the said Plot from the 3<sup>rd</sup> defendant after paying him the sum of N17,000,000 in 3 instalments of N9,000,000 [on 31/05/2012], N6,000,000 [on 20/03/2013] and N2,000,000 cash. The 3<sup>rd</sup> defendant executed a Power of Attorney and Deed of Assignment on 27/3/2013. On 2/10/2015, he submitted application to the FCT Land Registry at AGIS for the registration of the Power of Attorney. The processing of the registration is slated for final approval by the FCT Land Registry, AGIS.

When DW1 was cross examined by the claimant's counsel, he stated that the 1<sup>st</sup> defendant is not his in-law.

**Issues for determination:**

When trial concluded, B. T. Maigaskiya Esq. filed the 2<sup>nd</sup> defendant's final address on 10/12/2020. I. D. Haruna Esq. filed the claimant's final address on 27/1/2021. On 27/9/2021, B. T. Maigaskiya Esq. filed the 2<sup>nd</sup> defendant's reply on points of law. The final addresses were adopted on 19/1/2022.

Learned counsel for 2<sup>nd</sup> defendant posed these two issues for determination:

1. Whether or not the plaintiff has proved his case and is deserving of the relief sought in terms of the Writ of Summons bearing in mind that the 2<sup>nd</sup> defendant is the *bonafide* owner of the said land in dispute.
2. Whether or not the 3<sup>rd</sup> Defendant has better title to pass to the plaintiff at the time he signed Exhibits G and H as required by law.

Learned counsel for the claimant formulated one issue for determination, viz:

Whether on the state of pleadings and the totality of evidence before this Honourable Court, the plaintiff has proved that he is entitled to all the reliefs sought.

The claimant's first relief is a declaration that he is the bonafide owner of the land known as Plot No. 558, Cadastral Zone B13, Gaduwa District, Abujain FCT. The success or otherwise of the other reliefs will largely depend on the decision of the Court on the declaratory relief. The law is trite that a party seeking a declaratory relief or order has a duty to adduce credible, cogent and sufficient evidence to prove his case. He must succeed on the strength of his case and not on the weakness of the case of the adverse party. See the case of **Arowolo v. Olowookere [2011] 18 NWLR [Pt. 1278] 280.**

In the light of the evidence of the parties and the submissions of both learned counsel, the Court is of the view that there are two issues for determination in this matter. These are:

1. Whether the claimant has proved that he purchased Plot No. 558, Cadastral Zone B13, Gaduwa District, Abuja in the FCT from the 2<sup>nd</sup> defendant.
2. Whether the claimant is entitled to his reliefs.

## **ISSUE 1**

*Whether the claimant has proved that he purchased Plot No. 558, Cadastral Zone B13, Gaduwa District, Abuja in the FCT from the 2<sup>nd</sup> defendant.*

### **Submissions of Learned Counsel for the 2<sup>nd</sup> Defendant:**

Learned counsel for the 2<sup>nd</sup> defendant stated that in a claim of title to land, he who asserts must prove. He referred to section 131 of the Evidence Act, 2011; and the case of **Garba v. Alh. Gaji [2002] FWLR [Pt. 84] 8.** The claimant's case is that he purchased the said Plot through the 1<sup>st</sup> defendant who was acting as agent of the 2<sup>nd</sup> defendant. He did not show any document executed between the 1<sup>st</sup> & 2<sup>nd</sup> defendants that "legalized" the 1<sup>st</sup> defendant to be an agent of the 2<sup>nd</sup> defendant. From the claimant's case, he admitted that the 2<sup>nd</sup> defendant owns the land as he derived his title from the 3<sup>rd</sup> defendant who derived title from the original allottee [AsabeMammako]. Counsel referred to **Salawu v. Yussuf [2007] 31 NSCQ 550;** and submitted that a party who admitted a fact is bound by such admission and is estopped from denying that fact.

B. T. Maigaskiya Esq. submitted that none of the documents tendered by the claimant shows any nexus between him and the 2<sup>nd</sup> defendant in respect of the alleged transaction. The claimant knew that the title of the land belongs to the 2<sup>nd</sup> defendant but went ahead to transact with the 1<sup>st</sup> defendant and “*slavishly executed the legal instrument with the 3<sup>rd</sup> Defendant*” which, according to him, was for ease of his registration. He also posited that the 2<sup>nd</sup> defendant has no responsibility to establish his case.

Finally, learned counsel for the 2<sup>nd</sup> defendant submitted that the claimant has repudiated the contract to purchase the land in dispute when he affirmed to this Court during cross-examination that he has received part of the purchase price for the land from the 1<sup>st</sup> defendant. He noted that this fact will not escape the mind of the Court as the claimant, having failed to prove his case of title to the said Plot, will revert to the alternative relief [c] for refund of his consideration. In the 2<sup>nd</sup> defendant’s reply on points of law, Mr. Maigaskiyastressed that the termination of a contract brings it to an end; citing the case of **Suleiman v. NBC Plc. [2015] LPELR 22225911 [CA]**.

**Submissions of Learned Counsel for the Claimant:**

Learned counsel for the claimant stated that the claimant led evidence to prove his case as it relates to ownership of the Plot. The claimant tendered Exhibits B & C to establish root of title of the said Plot and proved that: [i] the original allottee is AsabeMammako who vide a registered power of attorney

transferred title to the 3<sup>rd</sup> defendant; [ii] the 3<sup>rd</sup> defendant is the holder of the certificate of occupancy over the said Plot; and [iii] the 3<sup>rd</sup> defendant vide Exhibits G & H transferred the Plot to him [the claimant]. He submitted that none of the defendants led any evidence or tendered any document to challenge or put in doubt the root of title as established by the claimant.

Mr. I. D. Haruna also argued that the 2<sup>nd</sup> defendant only filed and adopted his statement of defence. There was nothing to counter the claimant's root of title. He relied on Adejumo v. Ayantegbe [1989] 3 NWLR 417 to support the principle that where evidence is not challenged or contradicted, it ought to be accepted. He urged the Court to accept the claimant's evidence. He argued that since the defendants could not counter claimant's evidence establishing his title to the said Plot, they, especially the 4<sup>th</sup> defendant who illegally snatched and held the claimant's original title documents from him, did so *ultra vires* his powers. He submitted that the Court has power to correct such injustice.

**Decision of the Court:**

It is not in dispute that AsabeMammako is the original allottee of the said Plot. AsabeMammako transferred her title or interest in the Plot to the 3<sup>rd</sup> defendant. The 3<sup>rd</sup> defendant has a registered power of attorney and was later issued a Certificate of Occupancy [Exhibit A] over the Plot.

The case of the claimant is that on 5/12/2013, the 1<sup>st</sup> defendant approached him through one Alhaji Ubali to buy the said Plot. When he met 1<sup>st</sup> defendant, he [1<sup>st</sup> defendant] introduced himself as solicitor for the 2<sup>nd</sup> defendant [who he said owns the said Plot] and that he had the mandate to sell the Plot. The 1<sup>st</sup> defendant showed him the original Offer of Terms of Grant/Conveyance of Approval dated 22/10/02 [Exhibit B] with which he conducted a legal search on the said Plot. He paid N12,000,000 to the 1<sup>st</sup> defendant. He tendered the Power of Attorney [Exhibit G] and Deed of Assignment [Exhibit H].

In his additional statement on oath filed on 1/7/2016, he stated that during the transaction, he was convinced and he believed that the 1<sup>st</sup> defendant was the solicitor and agent of the 2<sup>nd</sup> defendant. He had no reason to suspect the 1<sup>st</sup> defendant who had the original documents of the Plot.

The 2<sup>nd</sup> defendant's case is that the 1<sup>st</sup> defendant was never his solicitor or agent. He did not witness any power of attorney or deed of assignment between the claimant and the 3<sup>rd</sup> defendant. The 3<sup>rd</sup> defendant never executed the deed of assignment and power of attorney relied on by the claimant; the 3<sup>rd</sup> defendant denied signing the said documents in his written statement before the Deputy Inspector General of Police.

In the light of the evidence of the 2<sup>nd</sup> defendant, the submission of I. D. Haruna Esq. that the 2<sup>nd</sup> defendant did not challenge the claimant's evidence is not correct. The 2<sup>nd</sup> defendant testified that he bought the Plot from the 3<sup>rd</sup>

defendant and that he did not authorize the 1<sup>st</sup> defendant to sell it. It is noteworthy that since the 2<sup>nd</sup> defendant has no counter claim, no burden of proof lies on him. So, it does not matter that the 2<sup>nd</sup> defendant did not tender any document. The claimant has the burden to prove his case.

Now, the following facts are evident from the claimant's case:

- a) The 1<sup>st</sup> defendant informed him that the 2<sup>nd</sup> defendant is the owner of the said Plot. In other words, the claimant knew that the Plot belongs to the 2<sup>nd</sup> defendant.
- b) The 1<sup>st</sup> defendant informed the claimant that he is acting as the solicitor or agent of the 2<sup>nd</sup> defendant and that he has the authority or mandate of the 2<sup>nd</sup> defendant to sell the Plot. The 1<sup>st</sup> defendant did not show or give to the claimant any letter of authority or mandate from the 2<sup>nd</sup> defendant.
- c) Neither the claimant nor his agent [Yusuf Mohammed] met the 2<sup>nd</sup> defendant to confirm that he authorized the 1<sup>st</sup> defendant to sell the said Plot on his behalf.
- d) The claimant paid the sum of N12,000,000 to the 1<sup>st</sup> defendant being the purchase price for the Plot. The claimant did not pay any money to the 2<sup>nd</sup> defendant.
- e) The claimant never met the 3<sup>rd</sup> defendant and he did not see when the 3<sup>rd</sup> defendant signed the Power of Attorney [Exhibit G] and Deed of Assignment [Exhibit H].

- f) The 1<sup>st</sup> defendant wrote an undertaking in the office of the 4<sup>th</sup> defendant to refund the money he collected from the claimant; that undertaking dated 6/10/2015 is Exhibit E.
- g) Pursuant to the undertaking, the claimant has received a total of N5 million from the 1<sup>st</sup> defendant.

Flowing from the above pieces of evidence, I am of the respectful opinion that in the ordinary or natural course of events, the claimant ought to have: [i] requested for 1<sup>st</sup> defendant's authority or mandate from 2<sup>nd</sup> defendant to sell the Plot; [ii] made efforts to see 2<sup>nd</sup> defendant whose address was disclosed by the 1<sup>st</sup> defendant as the National Assembly, Abuja; and [iii] requested for the account details of the 2<sup>nd</sup> defendant from the 1<sup>st</sup> defendant to enable him pay the N12,000,000 to the 2<sup>nd</sup> defendant.

The claimant's evidence is that he believed and was convinced that the 1<sup>st</sup> defendant was the solicitor and agent of the 2<sup>nd</sup> defendant. The Court is unable to find the basis for the claimant's conviction and belief. The mere fact that the 1<sup>st</sup> defendant was in possession of the original Offer of Terms of Grant/Conveyance of Approval of the Plot is not sufficient for the claimant to be convinced that the 1<sup>st</sup> defendant had the authority of the 2<sup>nd</sup> defendant to sell the Plot.

The Court is of the humble opinion that the claimant was not diligent - and did not take reasonable step - to verify the authenticity or genuineness of the

representations of the 1<sup>st</sup> defendant before he went into the transaction. As it eventually turned out, the 1<sup>st</sup> defendant did not have the authority or consent of the 2<sup>nd</sup> defendant to sell his Plot.

In the light of the foregoing, the Court holds that the claimant failed to prove that he purchased the Plot from the 2<sup>nd</sup> defendant who he knew to be the owner before he went into the transaction with the 1<sup>st</sup> defendant.

Let me add that in the 2<sup>nd</sup> defendant's statement of defence, he averred that the 3<sup>rd</sup> defendant made a voluntary statement at the office of the 4<sup>th</sup> defendant on 29/1/2015 where he stated that: [i] he does not know the claimant and the 1<sup>st</sup> defendant; [ii] he never sold the said Plot to the claimant or any person after selling to the 2<sup>nd</sup> defendant; and [iii] he did not sign the Power of Attorney and Deed of Assignment relied upon by the claimant. The 2<sup>nd</sup> defendant gave evidence in support of the above averments.

The claimant did not challenge or deny these averments by filing a reply to the statement of defence and the 2<sup>nd</sup> defendant was not cross examined on this fact. The position of the law is that where the evidence of a party is not challenged by the adverse party by way of cross examination, he is deemed to have admitted that evidence or fact. See **Haruna v. Kano State [2020] LPELR-50869 [CA]**. Thus, the claimant is deemed to have accepted the truth of the averment/evidence that the 3<sup>rd</sup> defendant did not sell the Plot to the claimant and that he did not sign the Power of Attorney [Exhibit G] and Deed of Assignment [Exhibit H].

Finally on Issue 1, the Court is of the view that the undertaking made by the 1<sup>st</sup> defendant to refund the money he collected from the claimant for the purported sale of the said Plot and the fact that the claimant has received or collected N5,000,000 from the 1<sup>st</sup> defendant support the finding of the Court that claimant did not purchase the said Plot from the 2<sup>nd</sup> defendant through the 1<sup>st</sup> defendant.

From all that I have said, Issue 1 is resolved against the claimant. The decision of the Court is that the claimant failed to prove that he purchased the said Plot from the 2<sup>nd</sup> defendant.

## **ISSUE 2**

### ***Whether the claimant is entitled to his reliefs.***

From the decision of the Court under Issue 1, the claimant's reliefs [a], [b] & [d] are dismissed.

In relief [c], which is the alternative claim, the claimant seeks an order of the Court directing the 1<sup>st</sup> & 2<sup>nd</sup> defendants to return all the monies collected from him over the sale transaction, which is the sum of N16,287,650.00. The claimant averred and proved that he paid: [i] N12,000,000 to the 1<sup>st</sup> defendant as purchase price for the Plot; [ii] N600,000 as agency fee to the 1<sup>st</sup> defendant's agent; [iii] N3,467,500 to AGIS for C of O bill; [iv] N70,650 to AGIS for ground rent; and [v] N150,000 to AGIS for Title Regularization fee for C of O [Power

of Attorney]. These sums amount to N16,288,150, which is N500 more than the sum claimed by the claimant.

It is not in dispute that the claimant incurred the above expenses as a result of the transaction he had with the 1<sup>st</sup> defendant for the sale of the said Plot. I hold that the 1<sup>st</sup> defendant is liable to refund the monies expended by the claimant in furtherance of the transaction. Since, as I had found, the claimant did not have any transaction with the 2<sup>nd</sup> defendant, the 2<sup>nd</sup> defendant is not liable to refund the monies expended by the claimant.

The claimant claims N16,287,650, which is N500 less than the amount he expended in the said transaction. It is trite law that the Court can grant a sum lower than the sum claimed but not a higher sum. See **GTB Plc. v. Obosi Micro Finance Bank Ltd. [2018] LPELR-44518 [CA]**. The claimant admitted that the 1<sup>st</sup> defendant has refunded the sum of N5 million. The decision of the Court therefore is that the claimant is entitled to the sum of N11,287,650, which is N16,287,650 less N5 million.

**Conclusion:**

I enter judgment for the claimant against the 1<sup>st</sup> defendant in the sum of N11,280,650. I award cost of N300,000 to the claimant payable by the 1<sup>st</sup> defendant.

HON. JUSTICE S. C. ORIJI  
[JUDGE]

*Appearance of Counsel:*

1. M. A. Ogwoni Esq. for the claimant.
2. M. A. Ahmed Esq. for the 2<sup>nd</sup> defendant.