

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

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT ZUBA, ABUJA

ON TUESDAY THE 16TH DAY OF JUNE, 2023

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

JUDGE

SUIT NO.: FCT/HC/CV/1431/2020

BETWEEN:

AL-NURI PROPERTIES LIMITED ----- CLAIMANT

AND

**1. MAJOR HAMZA ALMUSTAPHA
2. MINISTER, FEDERAL CAPITAL TERRITORY
3. DIRECTOR OF LAND, FEDERAL
CAPITAL TERRITORY ADMINISTRATION** } **DEFENDANTS**

JUDGMENT

On the 16th day of March, 2020 the Claimant, Al-Nuri Properties Limited instituted this action against the Defendants – Major Hamza Almustapha, Minister Federal Capital Territory and Director of Lands, Federal Capital Territory Administration claiming the following Reliefs:

- i. A Declaration that the Claimant, Al-Nuri Properties Limited is entitled to and is the**

lawful owner and or the equitable title holder of a piece of Land described as Plot 1755 situate at Asokoro District, covered by Certificate of Occupancy NO:1a37w-d6dcz-646dr-c792u-10 with File NO: KN10714 registered as NO:6913 at page 6913 in Volume 36 of the Certificate of Occupancy Register in the Land Registry Office at Abuja by virtue of an oral agreement of sale between the Claimant and the 1st Defendant and which is confirmed by the 1st Defendant vide a Confidential Agreement dated the 15th March, 2019.

ii. A Declaration that the oral agreement for sale of the piece of Land described as Plot 1755 situate at Asokoro District, covered by Certificate of Occupancy NO:1a37w-d6dcz-646dr-c792u-10 with File NO: KN10714 registered as NO: 6913 at page 6913 in Volume 36 of the Certificate of Occupancy Register in the Land Registry Office at Abuja entered into on behalf of the 1st Defendant by his Agent and Representative, Master Umar Ladan and which was acknowledged and consented to by the 1st Defendant himself vide his Confidential Agreement dated the 15th March, 2019 is still valid, subsisting and binding on the 1st Defendant.

iii. A Declaration that the Claimant is entitled to take actual possession of the described Plot 1755 situate at Asokoro District, covered by Certificate of Occupancy NO: 1a37w-d6dcz-

646dr-c792u-10 with File NO: KN10714 registered as NO: 6913 at page 6913 in Volume 36 of the Certificate of Occupancy Register in the Land Registry Office at Abuja having paid the ₦100,000,000 (One Hundred Million Naira) only as purchase price for the said piece of land.

- iv. A Declaration that the refusal of the 1st Defendant to execute a Deed of Assignment, Power of Attorney and other necessary documents in order to properly vest title in the Claimant in accordance with the terms and condition of the oral agreement for sale of the described Plot 1755 situate at Asokoro District, covered by Certificate of Occupancy NO:1a37w-d6dcz-646dr-c792u-10 with File NO: KN10714 registered as NO: 6913 at page 6913 in Volume 36 of the Certificate of Occupancy Register in the Land Registry Office at Abuja to the Claimant is a breach of contract of sale.**

- v. An Order of specific performance directing the 1st Defendant to forthwith, execute a Deed of Assignment, Power of Attorney and other necessary documents in favour of the Claimant in order to properly vest title in the Claimant in accordance with the terms and condition of the oral agreement for sale of the described Plot 1755 situate at Asokoro District, covered by Certificate of Occupancy NO:1a37w-d6dcz-646dr-c792u-10 with File NO: KN10714 registered as NO:6913 at page 6913 in Volume**

36 of the Certificate of Occupancy Register in the Land Registry Office at Abuja to the Claimant.

ALTERNATIVELY:

- vi. If the 1st Defendant shall refuse and/or neglect to execute a Deed of Assignment, Power of Attorney and other necessary documents in favour of the Claimant in order to properly vest title in the Claimant in accordance with the terms and Condition of the oral agreement for sale of the described Plot 1755 situate at Asokoro District, covered by Certificate of Occupancy NO:1a37w-d6dcz-646dr-c792u-10 with File NO: KN10714 registered as NO: 6913 at page 6913 in Volume 36 of the Certificate of Occupancy Register in the Land Registry office at Abuja within 30 days of the date of Court Order, the 2nd and 3rd Defendant shall upon being served with the Order of this Honourable court effect a change of title to the name of the Claimant or at its option, in the name of its nominee.**

- vii. An Order of Perpetual Injunction restraining the 1st Defendant by himself, Agents, Servants, Or Privies from entry, selling and or assigning the described Plot 1755 situate at Asokoro District, covered by Certificate of Occupancy NO:1a37w-d6dcz-646dr-c792u-10 with File NO: KN10714 registered as NO:6913 at page 6913 in Volume 36 of the Certificate of Occupancy**

Register in the Land Registry Office at Abuja to any other person, corporate or natural and from disturbing the Claimant's possession and enjoyment of the land.

viii. An Order directing the 1st Defendant to take every legal and positive step to put the Claimant in possession of the said piece of land described as Plot 1755 situate at Asokoro District, covered by Certificate of Occupancy NO:1a37w- d6dcz-646dr-c792u-10 with File NO: KN10714 registered as NO: 6913 at page 6913 in Volume 36 of the Certificate of Occupancy Register in the Land Registry Office at Abuja.

OR ALTERNATIVELY:

ix. An Order Compelling the 1st Defendant to refund and or pay to the Claimant, the sum of ₦100,000,000 (One Hundred Million Naira) only being the total amount of money paid by the Claimant to the 1st Defendant representing the cost or purchase price of the piece of land, described as Plot 1755 situate at Asokoro District, covered by Certificate of Occupancy NO:1a37w-d6dcz-646dr-c792u-10 with File NO: KN10714 registered as NO:6913 at page 6913 in Volume 36 of the Certificate of Occupancy Register in the Land Registry office at Abuja and paid by the Claimant to the 1st Defendant as purchase price.

- x. **An Order Compelling the 1s Defendant to pay the sum of ₦100, 000,000.00, (One Hundred Million Naira) only as general damages for breach of contract and or agreement as specified and acknowledged and/or consented to by the 1st Defendant himself vide his Confidential Agreement dated the 15th March, 2019.**

- xi. **An Order of this Honourable Court compelling and directing the 1st Defendant to pay interest on ₦100, 000,000.00 (One Hundred Million Naira) only at the rate of 10% per annum till payment of the judgment sum.**

- xii. **The Cost of this Suit assessed at ₦1, 500,000.00. (One Million, Five Hundred Thousand Naira) only.**

The matter started journey before Zenchi JCA before he was elevated to the Court of Appeal. In 2022 the matter was transferred to this Court and kit started denovo. The parties were all notified by service of Hearing Notice on them.

According to the Claimant, the 1st Defendant was in need of financial help and his Agent, Master Umar Ladan approached the Claimant and presented the property in issue for sale. The property belongs to the 1st Defendant. The Claimant offered to buy same for **One Hundred and Twenty Million Naira (₦120, 000,000.00)**. It agreed to pay **One Hundred Million Naira (₦100, 000,000.00)** and upon execution of the Agreement – Power of

Attorney, Deed of Assignment and formal handover/transfer of title/possession, it will pay the remaining **Twenty Million Naira (₦20, 000,000.00)**. The Agent of the 1st Defendant, Umar Ladan was informed. The Claimant insisted that before it can pay the amount there must be an agreement from the 1st Defendant to show that he is the owner of the property and that it is not in any way encumbered. That he has to present the Bank Account details where the money should be paid into.

The 1st Defendant obliged the Claimant the Agreement which they called Confidential Agreement and also the bank details. The Claimant paid in the said **One Hundred Million Naira (₦100, 000,000.00)** into the various Accounts the 1st Defendant presented. The 1st Defendant gave the Claimant the original Certificate of Occupancy of the property. That after the money was transferred the 1st Defendant refused to execute the Deed and refused to donate the Power of Attorney and all the other documents necessary for the full and proper transfer of title to the Claimant. The Claimant wrote a letter to the 1st Defendant demanding for the said documents. That the 1st Defendant initially apologized for the delay in presenting the documents but did not present the documents as promised. The Claimant asked his Counsel to write demanding same. That after the second letter from its Solicitor the Claimant decided to file this action against the 1st Defendant for Court to intervene.

The 1st Defendant was served with the Writ and he filed a Statement of Defence and Counter-Claim against the Claimant.

In the Statement of Defence the 1st Defendant/Counter-Claimant averred that no Agent or representative of the Claimant or any other person approached him for sale of his Plot – Plot 1755 Asokoro District which is the Plot in issue – Res. That sometime in March 2019 Umar Ladan, his Agent and representative held him to source some fund to settle some pending financial commitments. That he was informed by Ladan that the Claimant was ready to help him but requested for written Note from him to confirm that he, Ladan was working for him and had the authorization to act for him. Again that the Claimant insisted that he give collateral before the money could be lent to him. That he gave both written consent and released the Certificate of Occupancy of the Res. That he gave the Note and urged the Claimant to disburse the **One Hundred Million Naira (₦100, 000,000.00)** as directed in the Note.

That he never agreed to sell the Res to the Claimant and never agreed to execute any document transferring the title of the Res to the Claimant. That he only released the document to the Claimant to assure him that he will pay back the money – none Interest Loan given by the Claimant. That the price of the Res is **Three Hundred Million Naira (₦300, 000,000.00)** and he could not have agreed to sell the Res for **One Hundred Million Naira (₦100, 000,000.00)**. That he is willing to refund/pay back the loan of **One Hundred Million Naira (₦100, 000,000.00)** to the Claimant so it can return the original documents given to him as collateral.

The 1st Defendant also filed a Counter-Claim in which he claimed (in addition to the above) the following Reliefs:

- (1) A Declaration that he never sold the Res to the Claimant.
- (2) An Order directing the Claimant to receive the **One Hundred Million Naira (₦100, 000,000.00)** being the amount of the money borrowed from the Claimant.
- (3) An Order directing the Claimant/Defendant to Counter-Claim to release the said original documents of title of the Res to him or his representative – Umar Ladan as soon as the sum of **One Hundred Million Naira (₦100, 000,000.00)** borrowed from the Claimant is repaid.

The 2nd & 3rd Defendants never entered appearance. They never had Counsel representation or filed any Statement of Defence and/or Counter-Claim.

The 1st Defendant who filed a Statement of Defence had a Counsel representative.

On the 26th October, 2022 the Claimant opened its case and called PW1 – Al-Nura Saidu, the Managing Director of the Claimant. The PW1 tendered Six (6) documents in proof of its claim. The documents are the original Certificate of Occupancy of the Res, Plot 1755 Asokoro District with TDP, Evidence of Disbursement of the money to the Abdullahi Abubakar – **Eighteen Million Naira (₦18, 000,000.00)** at Zenith Bank, Okechukwu Onubogu – **Ten Million Naira (₦10, 000,000.00)** at Sterling Bank Account No. 2179043253, Ladan Umar Farouk – **Two Million Naira (₦2, 000,000.00)** at FCMB Account No. 0025648215 and **Eight Million Naira (₦8, 000,000.00)** to the same Umar Ladan Farouk in FCMB

on the 16th March, 2019 and 26th March, 2019 respectively. Also **Three Million Naira (N3, 000,000.00)** to Ladan Umar on 16th April, 2019 etc. The Claimant attached the Zenith Bank Statement of Account.

They also attached the letter – handwritten by the 1st Defendant dated 15th March, 2019 addressed to the Claimant which is titled:

“Confidential Agreement on File No: KN1074 dated 15th March, 2019.”

It is the letter where the 1st Defendant agreed to the terms of agreement regarding the said Res. He also stated in the letter how the said amount should be disbursed and to who and in the respective bank Account of the named individuals. The Claimant also attached DHL Courier Receipt which was used to mail Letter of Demand to the 1st Defendant on the 27th July, 2020. DHL Track Express Shipment Receipt of 7th February, 2020. They equally attached Sign Post (Board) which the Claimant would and actually placed on the gate of the Res evidencing that the Res is the property of the Claimant.

The Court adjourned the case from 26th October, 2022 when the PW1 testified to 21st November, 2022 for the Cross-examination of the PW1 by the 1st – 3rd Defendants/Defendants’ Counsel. Meanwhile, the 1st Defendant Counsel was in Court on the 26th October, 2022 when the PW1 testified in chief and matter was adjourned for Cross-examination. But the Defendant Counsel/Defendant never came to Court to Cross-examine the PW1; so also the 2nd & 3rd Defendants.

On the 21st November, 2022 the 1st – 3rd Defendants/Defendants' Counsel were absent without reason. Though the Claimant applied for foreclosure of the Defendants, the Court refused and adjourned the matter to 7th December, 2022. Because the Defendants were not in Court, the Court, in exercise of its discretionary power, further adjourned the case for Hearing in the interest of fair hearing. The next adjournment was on the 18th January, 2023. The Court had foreclosed the 1st – 3rd Defendants/Defendants' Counsel from Cross-examining the PW1 having failed to do so on 2 previous occasions. The matter was for Defence.

On the 18th January, 2023 the 1st Defendant/Defendant Counsel was not in Court but the 2nd – 3rd Defendants were represented. The 2nd & 3rd Defendants were represented by M.A. Mayamba Esq. The 2nd & 3rd Defendants' Counsel told the Court that the 2nd & 3rd Defendants are not privy to the Agreement between the 1st Defendant and the Claimant. The 2nd & 3rd Defendants opted to make an oral submission to the effect that they stand by the Final Written Address of the Claimant.

Though the 1st Defendant had Counsel representation and filed Statement of Defence and Counter-Claim, he never came to Court to open and close its Defence. They did not also Cross-examine the PW1. They did not file any Final Written Address or respond to the Final Written Address filed and served on them by the Claimant Counsel. The 2nd & 3rd Defendants waived their right to file any Final Written Address as they did not call evidence or file any Statement of Defence.

So this Judgment is based on the Claimant's proof and the Statement of Defence filed by the 1st Defendant which was abandoned. The Court decided to consider the Statement of Defence of the 1st Defendant in exercise of its discretion to do justice and based on the fact that Court has a right to look and take judicial notice of all Processes filed and served on it which were never withdrawn or struck out. Though the 1st Defendant abandoned the Statement of Defence and Counter-Claim, the same Statement of Defence and Counter-Claim were never withdrawn.

In the Claimant's Reply to the Statement of Defence and Counter-Claim, it insisted that the Agreement between the Claimant and the 1st Defendant was based on sale of the Res and not on Loan as the 1st Defendant stated in its Statement of Defence and Counter-Claim. That there was oral Agreement for Sale of the Res – Plot 1755 between the Claimant and the 1st Defendant represented by Umar ladan. That that Agreement was sealed by the Confidential Agreement dated 15th March, 2019. That the Claimant never entered into any Loan Agreement with any one or even the 1st Defendant and his Agent – Umar Ladan. And that it never held itself out as a company involved in money lending business in the course of dealing with the representative of the 1st Defendant. That it has no license as money lending outfit. That the averment of the 1st Defendant that the money was a loan transaction is not true. That the 1st Defendant never mentioned in the letter that the money was a loan.

Again, that the original title documents of the Res was never deposited as a collateral for the money – **One Hundred Million Naira (₦100, 000,000.00)**. That it was

handed over to the Claimant with arrangement that other documents of transfer will be prepared and duly executed in favour of the Claimant when the 1st Defendant who was out of the Country then comes back. That the 1st Defendant and his Agent never hinted the Claimant as to the worth of the Res. Besides, that the Claimant is not into the business of property valuation.

That the Representative of the 1st Defendant bargained the price on behalf of the 1st Defendant and both parties mutually agreed on the terms and condition of the sale and transfer of fund was confirmed by the 1st Defendant in his Confidential Agreement dated 15th March, 2019. The letter was tendered in evidence as an Exhibit.

On the Claimant's Defence to Counter-Claim he averred adopting their Reply to Statement of Defence and further submitted that all the Reliefs sought by the 1st Defendant/Counter-Claimant are not grantable. They urged Court to dismiss the said Counter-Claim with substantial cost.

In the Final Written Address the Claimant Counsel on behalf of the Claimant raised Three (3) Issues for determination which are:

- (1) "Having regard to the position of the act of an Officer or Agent on behalf of his Principal as well as the state of pleading and evidence adduced by parties, whether the Oral Agreement between the Claimant' Director – Al Nura Saidu and the Representative of the 1st Defendant on behalf of the 1st Defendant which was acknowledged and assented to vide**

Confidential Agreement dated 15th March, 2019 is valid.

- (2) Having regard to the extant provision of law on Specific Performance as well as the state of pleading the evidence adduced by parties, whether the 1st Defendant owe the Claimant a specific duty to perform his part of the contract as agreed to in the Oral Agreement between the Claimant through its Director – Al Nura Saidu and the Representative of the 1st Defendant on behalf of the 1st Defendant which was acknowledged and assented to vide Confidential Agreement dated 15th March, 2019 is valid.**
- (3) Whether considering the state of pleadings and evidence adduced by parties, the Claimant is not entitled to the Reliefs sought in this case.”**

The Claimant answered the 3 Issues together and submitted thus:

That the Oral Agreement between the Claimant and the Representative of the 1st Defendant/Counter-Claimant is valid and subsisting and binding too on both the Claimant and the 1st Defendant. They referred to Confidential Agreement letter dated 15th March, 2019 – **EXH 1** in which the 1st Defendant acknowledged the contract/Sale Agreement between the parties. They relied on the case of:

Bilante International Ltd V. NDIC

(2011) LPELR – 781 (SC)

That there is a valid contract and that there is a Principal-Agent relationship between the 1st Defendant and the Umar Laden. That **EXH 1** is a ratification of Oral Agreement between the 1st Defendant and his Agent in which the 1st Defendant ratified the action/act of his Agent – Umar Laden.

That the PW1 had testified that the said Agent – Umar Laden approached the Claimant who the PW1 represents for the sale of the property for the sum of **One Hundred and Twenty Million Naira (₦120, 000,000.00)** as purchase price of the Res. That by the Confidential Agreement letter the 1st Defendant ratified the earlier Oral Agreement between the Claimant and the Agent of the 1st Defendant – Umar Laden made on behalf of the 1st Defendant which was for sale of the said Plot 1755. That by that ratification it was acceptance of the offer as there is offer and acceptance in the said deal which makes it a contract between the parties. That this was further strengthened by the letter hence a binding contract was fully created and made between the parties.

That the Claimant, having accepted the offer, furnished the 1st Defendant's Account with the sum of **One Hundred Million Naira (₦100, 000,000.00)** into the designated Account of the 1st Defendant as stated in the said **EXH 1**. They referred to the transferred receipt of the money paid into the various Accounts as per the 1st Defendant's instruction in the said Confidential Agreement. Those Receipts were admitted as **EXH 2**.

That the 1st Defendant also handed over the Certificate of Occupancy of the said Plot 1755 – Res pending the

conclusion of payment of **Twenty Million Naira (₦20,000,000.00)** by the Claimant withy understanding that the 1st Defendant will execute the necessary documentation to vest title to the Claimant. The Certificate of Occupancy was exhibited as **EXH 3**.

The Claimant also took steps to take possession as agreed and erected a Billboard showing that the Claimant is the owner of the Res. That picture showing the Billboard was admitted in evidence and tendered by the PW1 as **EXH 6**.

That from the above the Claimant had established that there is a binding contract of sale of property between the Claimant and the 1st Defendant. That the parties especially the 1st Defendant is bound by the said contract. That the 1st Defendant is obligated to do his own side of the contract as the Claimant had done its own side of the contract. That the 1st Defendant is therefore duty bound to execute the Power of Attorney, Deed of Assignment and all other necessary documentation required of him so that title should be vested on the Claimant without further delay. They referred to the case of:

**Mekwunye V. WAEC
(2020) 6 NWLR (PT. 1719) 1 SC**

That the Claimant has proved its assertion in this case with the oral documentary evidence of the PW1 which is not challenged by the 1st – 3rd Defendants.

They urged Court to Order specific performance for the 1st Defendant to do the needful by vesting the title of the Res on the Claimant as agreed by the parties so as to

dispose off the binding contract between the parties. That the 1st Defendant should perform his own side of the contractual obligation in the contract which he has failed to perform. That failure of the 1st Defendant to do so is a breach of the said contract. They relied on the case of:

**Univesal Vukanizing (Nig) Ltd V. IUTTC
(1992) 9 NWLR (PT. 266) 388 SC**

That the 1st Defendant is in breach of the subsisting contract between the parties – Claimant and 1st Defendant. They urged Court to so hold and compel the 1st Defendant to execute the Deed of Assignment and the Power of Attorney and all other documents in order to properly vest title to the Claimant in accordance with the Terms and Condition of the Oral Agreement between the parties.

That the Claimant has adduced evidence and tendered documents as it were in prove of its case and as such had discharged the burden of proof as required by law. But that the 1st Defendant has failed to fully its own obligation and is stuck with the onus shifted on it. The Claimant urged Court to grant the Reliefs as sought.

That the Claimant is not a money lender. That the value of Naira has fallen drastically and greatly as it has been devalued too since the time of the contract. They urged Court to put that fact into consideration in granting of the Reliefs sought as the **One Hundred Million Naira (₦100, 000,000.00)** paid for the Res has not same value today as at the time of the contract. They relied on the case of:

Gbadamosi V. Kabo Travels Ltd

(2000) 8 NWLR (PT. 608) 243

That the Suit of the Claimant is not challenged as the 1st Defendant abandoned his Defence though he was given all the judicial leverages to defend the Suit. Hence, the Claimant is entitled to all his Reliefs as sought. They urged Court to so hold and enter Judgment in favour of the Claimant.

That the 1st Defendant is in breach of the contract of sale of the property – Plot 1755, File No: KN1074. That the Claimant is entitled to Judgment against the 1st Defendant and also the 2nd & 3rd Defendants who did not file any Statement of Defence in this Suit.

COURT

Once there is a consent and meeting of minds between parties it is said to be a contract once it relates to offer made and acceptance of the offer. Once there is eagerness and readiness to accept offer made on an issue between parties and it is accepted by them it is said to be in existence a binding contract whether penned down in paper or not. See the case of:

**Bilante International Limited V. NDIC
(2011) LPELR – 781**

Contract is contract said the President – Asiwaju Bola Ahmed Tinubu.

A contract between parties can be in form of oral or written or both. Such contract is still valid. Contract can be deciphered from the correspondence or body language or relationship between the parties. In that case though there is no terms written down in black and white in

paper, it can be inferred from the conduct of the parties and their relationship with each other. Contract can be entered initially by oral agreement and understanding of the parties and can culminate into written Agreement by them or any of them. Such writing may contain reference or confirm what the parties had orally agreed to do or what they had done and what they will do in future all towards the achievement of the goal of the contract. In all these circumstances the Court can hold that there is a contract between the parties and that contract is binding legally and lawfully. This is so where there is offer acceptance and consideration which are the 3 main traditional pillars upon which all basic contracts are built or premised.

In this case the documents – **EXH 1**, the testimony of the 1st Defendant as well as the evidence of payment of various sums of money per the instruction of the 1st Defendant puts no one in doubt that there is a contract. There was an offer to sale by the 1st Defendant's Agent on behalf of the 1st Defendant and acceptance of the sale by the Claimant' Agent on behalf of the Claimant. Though the business/contract started orally. The **EXH 1** confirmed what the parties have agreed to do orally. The documents – Receipts of payment confirmed the consideration in the contract.

It is the law that he who asserts must prove. Where such person fails to prove its assertion, the claim will fail. But in this case the Claimant asserted and had proved the assertion. It has from the oral testimony of the PW1 and the documents tendered established that there was a valid subsisting contract for Sale of the Res.

The oral evidence of the PW1 was not challenged by the 1st Defendant. The Claimant pleaded facts and they had through the PW1 adduced evidence in support of all the pleaded facts. See the case of:

**Oduwole V. West
(2010) 5 – 7 MJSC (PT. 4) 1**

In any matter before a Court of competent jurisdiction any averment of facts in the pleading in such case which was given in evidence and which was not challenged are deemed admitted and reliable. So where such Claimant who has led evidence in such a case is said to have established and proved his case and the Court will hold in addition that the Claimant's case is unchallenged and facts thereon uncontroverted and that such Claimant is entitled to Judgment in his favour.

It is the law and it is trite that any pleaded evidence and mere averments without evidence in proof of their facts pleaded is no proof as long as they are not admitted in evidence. So where a party fails to lead evidence in support of its averment in its pleading, such averments are deemed abandoned. For such averment/pleading to stand, the party must prove the facts pleaded before the Court with both oral evidence and documentary/material evidence as the circumstance of the case warrants. That is Court's decision in the case of:

**Help Nigeria Limited V. Silver Anchor (Nig) Limited
(2006) 5 NWLR (PT. 972) 196**

It has been held in plethora of cases that unchallenged evidence constitutes sufficient proof of special Damages where such special damages are pleaded and established

and the Defendant failed to challenge same. Based on such unchallenged evidence the Court will award such established special damages once the evidence is sufficiently proved. Once that evidence is unchallenged the Claimant shall be entitled to his claim and Judgment will be entered in its favour and its Reliefs granted.

In this case the evidence led by the Claimant in support of its pleadings especially the special damages and all others were not challenged by the 1st Defendant. It then means that the Claimant is entitled to its Reliefs. As already summarized, the Claimant had tendered documents evidencing payment, Agreement to sell confirming the contract and disbursement according to the 1st Defendant's instruction. Those facts were not challenged by the 2nd & 3rd Defendants at all and by the 1st Defendant too though the 1st Defendant filed Statement of Defence blandly denying any Sales Agreement but accepting that there was agreement for non-interest Loan, yet it did not come to Court to adduce evidence in proof of that fact and his Counter-Claim. He did not attach any document to show that the Agreement with the Claimant was for the said Loan. He did not Cross-examine the PW1 or challenged the documents tendered by the Claimant in support of its case. This Court holds that the case of the Claimant is unchallenged. Facts in the averment are all deemed admitted as it were. Hence, the fact as contained in the case of the Claimant is uncontroverted and he is entitled to its claim in that regard. So the Court holds. This is based on the decision of the Supreme Court in the case of:

Onyiorah V. Onyiorah

(2019) 15 NWLR (PT. 1695) 227 SC

Once one party acts with consent and authorization of another person natural or unnatural whether penned down in writing or not it is said to be in existence an Principal-Agent relationship. In that case there must be a fiduciary relationship created in contract or law. In such a case such relationship may arise by either appointment out-rightly done in pen and paper or orally e.g. by Power of Attorney or the like. Again, once the other party ratifies the act of the other person it is said to be in existence Principal-Agent relationship. It may be for a particular deal/duty or for several duties spanning over days, months or years as the case may be. Once the main person ratifies the act of the other person, there exists such relationship. It can also exist by implication of law in case agency of necessity or by personal cohabitation.

In this case it is not in doubt that there existed such Principal-Agent relationship between the 1st Defendant and Umar Ladan who the 1st Defendant referred to in **EXH 1 – Confidential Agreement** as his representative. In the said EXH 1 the 1st Defendant said thus:

EXH 1 paragraph 1

“This is to acknowledge the Terms of Agreement so reached ... between you and my representative, Master Umar Ladan.”

From the above it is clear that there is a relationship – Principal-Agent relationship between the 1st Defendant and the said Umar Ladan who is undoubtedly his Agent as far as the Sale of the land in issue is concerned. The 1st Defendant further described the said Umar Ladan as:

“... my Representative.”

In the said **EXH 1** the 1st Defendant described what the deal is on in the title to the said EXH 1. In it it is titled:

**“Confidential Agreement
File No: 10714 dated 15th March, 2019.”**

Again in the body of the Agreement the 1st Defendant stated thus:

“I acknowledge the terms of agreement so reached regarding my landed property (File No: KN 10714 Asokoro District, Zone A04 Plot 1755).”

The 1st Defendant also confirmed that he accepted with thanks the terms which obviously he knew was agreed orally between his representative and the Claimant. He further made an offer to the Claimant by stating in the same **EXH 1** thus:

“The said terms were conveyed to me by my representative and I REQUEST YOU TO ACCEPT MY OFFER.”

(emphasis mine)

By the underlined above, the 1st Defendant made an offer formally to the Claimant and urged the Claimant to accept the offer, the 1st Defendant having ratified the oral agreement between the Claimant and his representative. Hence, there is offer. The Claimant accepted that offer by agreement to buy the said land Plot 1755.

The 1st Defendant further confirming and acknowledging the deal stated thus:

“... I request you to accept this not as temporal acknowledgement and directives ...”

He further stated in paragraph 1 (a) – (d) how the money was to be disbursed and the names of the recipients who will get what amount and in **₦** which bank the money should be lodged. The 1st Defendant summed up the amount by stating in page 2 of Exhibit 1 thus:

“Grand total of One Hundred Million Naira (100,000,000.00).”

He further reiterated in the second page of **EXH 1** paragraph 2 thus:

“The total sum of One Hundred Million Naira (₦100, 000,000.00) being the content of the said Agreement so reached.”

To further that there is Principal-Agency Agreement and that Umar Ladan has the consent and authorization of the 1st Defendant and the 1st Defendant stated in **EXH 1** paragraph 2 thus:

“My representative (Umar Ladan) is directed to co-ordinate this aspect of the Terms please.”

The above need no further proof that there is a relationship between Umar ladan and his Principal – 1st Defendant. There is also an agreement which he acknowledged and consented to and agreed to as to the amount involved. The 1st Defendant concluded by stating thus:

“... we earnestly look forward to greater services.”

The 1st Defendant equally signed this Confidential Agreement which was dated 15th March, 2019 and addressed to Al-Nuri Properties Limited, the Claimant in this case.

The Claimant fulfilled its own obligation under the contract by disbursing the sum of **One Hundred Million Naira (₦100, 000,000.00)** as instructed by the 1st Defendant. The Claimant attached the evidence of disbursement in **EXH 3 – 9** and **EXH 10** and in the Statement of Account.

The evidence as shown in the Letter of Demand for execution/release of the remaining documents of title to perfect and vest same on the Claimant are all there to speak for the Claimant. The DHL Courier Receipt shows that the letters were received by the 1st Defendant. The 1st Defendant did not deny that fact either. Those facts are deemed and actually admitted by the 1st Defendant. So this Court holds. Hence, they are uncontroverted and unchallenged too. The 1st Defendant did not mention them in his Statement of Defence and Counter-Claim too.

So also the allegation that the Claimant placed a Billboard in the property and the 1st Defendant stopped them when the Claimant went to take possession after the 1st Defendant failed to release/execute the other documents to vest title properly and fully on the Claimant, was not controverted. Those facts are also admitted. The 1st Defendant did not challenge the Receipts of payment of legal fee of **One Million, Five Hundred Thousand Naira (₦1, 500,000.00)** to the Claimant's Counsel.

By the provision of **S. 132 of the Evidence Act**, in Civil cases, burden of proof lies on the person who will fail if no evidence was given at all by the parties. The Claimant has proved its case with documents and oral testimony of PW1. It has also proved that there is a contract between it and the 1st Defendant, a fact which the 1st Defendant has by himself confirmed in **EXH 1**. The 1st Defendant is therefore bound by the terms of the said agreement which he obviously assented to. So this Court holds. See the case of:

**Mekwunye V. WAEC
(2020) 6 NWLR (PT. 1719) 1 SC**

Every breach of contract once established attracts payment of Damages. That has been held in plethora of cases. Parties are bound by the agreement they had entered into. That is confirmed in the latin maxim **“Pacta Sunt Servanda.”**

Parties are expected to perform their obligation under a binding and subsisting contract which they have agreed and assented to. Such performance must be as spelt out in the Agreement whether made orally or in writing or both. This is so where monetary Damages may not be adequate compensation for the breach of the Agreement. In that case the party who breached will be compelled to perform specifically what he has agreed to do under the Contract Agreement. See the case of:

**Ibekwe V. Nwosu
(2011) 9 NWLR (PT. 1251) 1 @ 5**

As in the present case, the 1st Defendant had breached the Contract Agreement in that he had not executed the

Deed and Power of Attorney which will fully vest the right and possession of the Res on the Claimant as agreed. The Claimant is therefore entitled to urge the Court, as he had done, to Order that the 1st Defendant perform his obligation under the contract which he did not deny existed between him and the Claimant. See the case of:

Ibekwe V. Nwosu Supra

From all indication the 1st Defendant breached the Contract Agreement. The Claimant has established that there is an agreement and that the agreement was breached. The said agreement is still subsisting same having not been cancelled. The Claimant is right to urge the Court to compel the 1st Defendant to specifically perform his obligation in that wise.

This Court has the right to grant the Order to compel the 1st Defendant as sought since it is glaringly clear that there is a breach. The Claimant who had applied for specific performance had adduced enough evidence to show that there is a contract and that the 1st Defendant breached same. The Claimant has also shown by oral testimony of PW1 and documents tendered especially the Receipts of disbursement of the sum of **One Hundred Million Naira (₦100, 000,000.00)** that it had complied and fulfilled its own obligation under the contract. The Court holds in line with the decision in the case of:

**Best Nigeria Limited V. B.H Nigeria Limited
(2011) 5 NWLR (PT. 1239) 95 @ 116 paragraph G**

That the Claimant is entitled to the Order of this Court to compel the 1st Defendant to fulfill his obligation by executing the said Deed of Assignment and Power of

Attorney and all other necessary documentations and action that will fully vest the legal right and title on the Claimant. So this Court holds. This Court also holds that the Claimant is entitled to his Reliefs in that regard.

The Claimant had properly denied the fact that the contract was a non-interest loan as the 1st Defendant averred in his Statement of Defence and Counter-Claim which he abandoned. The 1st Defendant did not put up any prove to counter that fact or establish that it was a Loan Agreement and not Sale of the Res. He did not also state in his **EXH 1 – Confidential Agreement** that it was a non-Interest Loan Agreement. There is nothing to show that the Claimant is a licensed Money Lender too. This Court holds that the Agreement is not a non-Interest Loan Agreement. The Agreement is for the sale of the property – Plot 1755. The 1st Defendant assented to that fact but did not prove same. Hence, his assertion on non-Interest Loan is hereby **DISMISSED** having been abandoned and not proved.

It is a known fact that the value of Naira had constantly from the time of this contract in 2019 plummeted and continued to plummet even as I read this Judgment. Naturally the value of the sum in issue – **One Hundred Million Naira (₦100, 000,000.00)** as at 2019 and now are not same and may never be same due to the global recession and the particular economic situation in Nigeria. The Court has been called upon to factor such facet into consideration in issue concerning or related to money and award of cost and in Judgment sum in general in a case. That facet was raised since 2000 in the case of:

Gbadamosi V. Kabo Travels Limited Supra

This case cannot therefore be an exception in that regard.

This Court, having summarized the case of the Claimant and the abandoned Statement of Defence of the 1st Defendant as well as analyzed as it were the evidence of the PW1 and the documents tendered in support of the Claimant's case, holds that the Claimant is entitled to his Reliefs main and consequential in that the 1st Defendant breached the Agreement in this case moreso as the case of the Claimant was not challenged as it were and the 1st Defendant abandoned his Defence and Counter-Claim.

The Court hereby enters Judgment in favour of the Claimant having established its case and therefore grants the said Claimant's Reliefs in that regard.

If actually the contract was for non-Interest Loan, there was no attempt by the 1st Defendant to refund the Loan. That shows that the contract is not premised on Loan.

Since the 2nd and 3rd Defendants are not privy to the Contract Agreement and the sum in issue, they are not supposed to be parties in the Suit in the first place though they are the Allocators of the Certificate of Occupancy. They are not necessary or vital parties to the Suit. They are not even normal parties if there is anything like that in Contractual world. They will not be affected in any way by the outcome of this Suit whether positively or negatively. This Court therefore struck out their names as parties. So all Reliefs concerning the 2nd & 3rd Defendants are therefore DISMISSED.

The Court therefore enter Judgment in favour of the Claimant and grants the Reliefs to wit:

Prayer i – v granted.

Prayer vii – viii granted.

Prayer vi NOT granted.

The 1st Defendant to pay the cost of the Suit too.

The 1st Defendant should pay to the Claimant the sum of Two Million Naira (₦2, 000,000.00) as damages for the breach of the said Contract Agreement.

The 1st Defendant should vest the possession on the Claimant as agreed and return all the documents of title and sign the Power of Attorney and all other documents of the property – Plot 1755 to the Claimant immediately without further delay.

This is the Judgment of this Court.

**Delivered today the ___ day of _____ 2023 by
me.**

K.N. OGBONNAYA
HON. JUDGE