

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY  
IN THE NYANYA JUDICIAL DIVISION  
HOLDEN AT COURT 7 NYANYA ON THE 16<sup>TH</sup> DAY OF FEBRUARY,  
2021  
BEFORE HIS LORDSHIP: HON. JUSTICE U.P. KEKEMEKE  
SUIT NO. FCT/HC/CV/245/15

COURT CLERKS: JOSEPH B. ISHAKU & ORS.  
BETWEEN:

- |  |   |                |
|--|---|----------------|
| 1. BANKOLE FATORISA<br>2. TAIWO ADEMO (NEE FATORISA)<br>3. DOTUN FATORISA<br>4. IDOWU FATORISA<br>5. TITILAYO FATORISA | } | .....CLAIMANTS |
|--|---|----------------|

AND

- |  |   |                 |
|--|---|-----------------|
| 1. OLUMUYIWA AYODELE FATORISA<br>2. ASO SAVINGS & LOANS PLC<br>3. MRS. ELIZABETH A. ESHANOMI | } | .....DEFENDANTS |
|--|---|-----------------|

**JUDGMENT**

The 3<sup>rd</sup> Defendant's Statement of Defence and Counterclaim is dated the 29/02/2016.

It prays the Court for the following reliefs:

The 3<sup>rd</sup> Defendant/Counter-Claimant claims against the Claimants and 1<sup>st</sup> and 2<sup>nd</sup> Defendants as follows:

1. A Declaration that having collected the sum of N11,800,000.00 (Eleven Million, Eight Hundred Thousand Naira only) from the 3<sup>rd</sup> Defendant/Counterclaimant by the 1<sup>st</sup> Defendant the contract of selling Block 7, Flat 3, Bacita Close, Area 2, Section 2, Garki-Abuja is valid and subsisting

between the 1<sup>st</sup> Defendant and the 3<sup>rd</sup> Defendant/Counterclaimant.

**2.** AN ORDER compelling the 1<sup>st</sup> Defendant to receive the sum of N3,700,000.00 (Three Million, Seven Hundred Thousand Naira only) from the 3<sup>rd</sup> Defendant/Counterclaimant being the balance of the purchase price.

**3.** AN ORDER that the 3<sup>rd</sup> Defendant/Counterclaimant is entitled to immediate vacant possession of, Block 7, Flat 3 Bacita Close, Area 2 Section 2, Garki-Abuja.

**4.** A DECLARATION that the 1<sup>st</sup> Defendant having agreed to vacate the property on the 30<sup>th</sup> of September 2015, the 3<sup>rd</sup> Defendant/Counterclaimant is entitled to rent of N150,000 per month from 1<sup>st</sup> of October 2015 until Judgment is delivered.

**5.** AN ORDER directing the 1<sup>st</sup> Defendant to pay the sum of N150,000.00 (One Hundred and fifty Thousand naira only) being monthly rent due to the

3<sup>rd</sup> Defendant/Counterclaimant from 1<sup>st</sup> October 2015 till when judgment is delivered.

6. AN ORDER directing the 2<sup>nd</sup> Defendant to give the 3<sup>rd</sup> Defendant/Counterclaimant forthwith the Certificate of Occupancy and all other documents relating to the said house.
  
7. AN ORDER of Perpetual Injunction restraining the Claimants and the 1<sup>st</sup> Defendant, their agents or any other person acting through them from disturbing the 3<sup>rd</sup> Defendant/Counterclaimant's quiet possession and or occupation of the property.

The Claimant, 1<sup>st</sup> and 2<sup>nd</sup> Defendants did not file a reply to defence and defence to 3<sup>rd</sup> Defendant's Counterclaim.

The 3<sup>rd</sup> Defendant/Counterclaimant called two witnesses in proof of her case.

The first Counterclaimant's witness is Bede Ihinegbu of Area 2, Garki.

He is a property agent. He deposed to a Witness Statement on Oath dated 26/11/18. He adopted same as his oral evidence.

In the said Statement, he stated that the 1<sup>st</sup> Defendant is a staff of Federal Ministry of Transport Abuja and his neighbour.

That 2<sup>nd</sup> Defendant is a Mortgage Institution where 1<sup>st</sup> Defendant got loan to finance the purchase of his house. That 1<sup>st</sup> Defendant is the owner of Block 7, Flat 3, Bacita Close Area 2, Garki, Abuja.

That 1<sup>st</sup> Defendant met him and said he wants to sell his house Block 7 Flat 3 Bacita Close Area 2, Section 2 Garki Abuja and that he should help them get a buyer.

He gave him a copy of the letter of allocation to the flat evidencing ownership.

It is not true the Claimant's father owned the house as the 1<sup>st</sup> Defendant acquired the house through a successful walk in bid. That 1<sup>st</sup> Defendant took him and the Lawyer to the 2<sup>nd</sup> Defendant to ascertain his indebtedness to 2<sup>nd</sup> Defendant as it relates to his mortgage on the property.

That he in the company of the 1<sup>st</sup> Defendant in the original suit and the 3<sup>rd</sup> Defendant/Counterclaimant's Lawyer were told that he was owing N3 Million. That the 1<sup>st</sup> Defendant is the owner of the house.

That 1<sup>st</sup> Defendant wanted him to help him sell his house because he had a good business engagement that will fetch him good money and that he has also not been able to pay his children's school fees.

He therefore introduced the property to the 3<sup>rd</sup> Defendant/Counterclaimant for sale. He took the 3<sup>rd</sup> Defendant/Counterclaimant and her husband to the property who further confirmed to the 3<sup>rd</sup> Defendant/Counterclaimant and her husband that he wanted to sell the house and he took them round the property

He thereafter made an offer which both parties did not agree and the 3<sup>rd</sup> Defendant/Counterclaimant left the property.

That after a day the 1<sup>st</sup> Defendant in the substantive Suit sent him back to the 3<sup>rd</sup> Defendant/Counterclaimant pleading that she should buy the property that he has an urgent business

engagement and he made a final offer of N15.5 Million to the 3<sup>rd</sup> Defendant for the property and she accepted. That consequent upon the offer and acceptance, the 1<sup>st</sup> Defendant gave him and 3<sup>rd</sup> Defendant/Counterclaimant a photocopy of the letter of offer for the property for the purpose of determining the status of the 1<sup>st</sup> Defendant's mortgage with 2<sup>nd</sup> Defendant and to conduct a search at Adhoc-Committee for the Sale of Government Houses.

That the 1<sup>st</sup> Defendant and PW1 in the company of Lord B. Eshanomi Esq went to 2<sup>nd</sup> Defendant to determine his indebtedness which was N3 Million.

That Lord B. Eshanomi & Co., Solicitors to the 3<sup>rd</sup> Defendant/Counterclaimant caused a search to be conducted at Adhoc-Committee on the Sale of Government Houses and found that 1<sup>st</sup> Defendant applied vide an Expression of Interest Form having paid N10,000 being the prescribed fee and acquired the property through a *walk in bid*.

The 3<sup>rd</sup> Defendant paid N3.3 Million to the 1<sup>st</sup> Defendant i.e N3 Million to defray 1<sup>st</sup> Defendant's indebtedness to 2<sup>nd</sup> Defendant to enable 3<sup>rd</sup> Defendant

have the title documents that are in the custody of the 2<sup>nd</sup> Defendant.

The 1<sup>st</sup> Defendant acknowledged the payment by a handwritten document titled '**Letter of Transaction**' dated 23/06/15 wherein he signed as a witness.

The 3<sup>rd</sup> Defendant paid the 1<sup>st</sup> Defendant additional N8.5 Million. The 1<sup>st</sup> Defendant made another handwritten document acknowledging the receipt of the total sum of N11,800,000 from the 3<sup>rd</sup> Defendant/Counterclaimant. He also signed as a witness. The 1<sup>st</sup> Defendant in the substantive suit also agreed with the 3<sup>rd</sup> Defendant to vacate the property on or before the 30<sup>th</sup> of September 2015, to enable the 3<sup>rd</sup> Defendant take possession.

That 1<sup>st</sup> Defendant signed an indemnity of release of Account/information/security document to 3<sup>rd</sup> Defendant/Counterclaimant authorising the release of the Certificate of Occupancy to him by 2<sup>nd</sup> Defendant to enable him collect his balance. He also signed as a witness.

He urges the Court to grant all the reliefs.

He tendered the following Exhibits:

Exhibit A – Letter titled ‘*Irrevocable letter of transaction*’ dated 23/06/15.

Exhibit B - Document dated 7/07/15 acknowledging payment of N11,800,000.

Under cross-examination by 2<sup>nd</sup> Defendant, he answered that he has been an agent for more than 15 years.

The 2<sup>nd</sup> witness for the 3<sup>rd</sup> Defendant/Counterclaimant is Mrs. Elizabeth Adedoyin Eshanomi.

She lives at Block 8, Flat 4, Ogun Street, Area 2, Garki, Abuja.

That on 29/02/16 she deposed to a Witness Statement on Oath. She adopted it as her oral evidence before this Court. She stated thus:

She is the 3<sup>rd</sup> Defendant in this suit.

That 1<sup>st</sup> Defendant acquired an expression of interest form having paid the sum of N10,000.00 being the prescribed fee and acquired the property through a successful *walk in bid*. That having paid the N10,000 for the said form, the 1<sup>st</sup> Defendant became successful in a *walk and bid* and a letter of offer dated 6/12/07

was issued to him in his name by the Hon. Minister of the FCT.

He fulfilled the conditions for acquiring the property. He was financed by the 2<sup>nd</sup> Defendant being a mortgage institution. That 1<sup>st</sup> Defendant is the owner of Block 7, Flat 3, Old Bacita Close, Area 2 Section 2 Garki Abuja and he is in occupation.

It is not true that Claimant's father or Claimant owns the property.

That 1<sup>st</sup> Defendant through his agent Bede Chidi Ihinegbu put up the property for sale and on a visit to inspect the property in company of the said agent and her husband he gave her a letter of offer to the property to enable her conduct search.

That the CW1 introduced the property to her for sale. That she was taken to the property by the said CW1 in the company of her husband and they met the 1<sup>st</sup> Defendant in the substantive suit at the property who told them he wanted to sell the property. He took them round. He made an offer after the inspection to which she made a counter offer which he declined and she left the property.

After a day, he sent CW1 who is his agent pleading that she should buy the property because he has an urgent business engagement and he made a final offer of N15,500,000 to her which she accepted.

Consequent upon the offer, the 1<sup>st</sup> Defendant gave her a photocopy of the letter of offer.

That 1<sup>st</sup> Defendant in company of the agent and her husband went to Aso Savings & Loans 2<sup>nd</sup> Defendant to ascertain his indebtedness in the mortgage he took from 2<sup>nd</sup> Defendant.

It was about N3 Million.

That her Solicitors made a search at the Adhoc Committee on the Sale of Government Houses and discovered that the 1<sup>st</sup> Defendant applied vide an expression of interest form having paid the sum of N10,000 and acquired the property vide a walk in bid.

He was given a letter of offer dated 6/12/07 by the Hon. Minister of the FCT.

That after the offer and acceptance by the 1<sup>st</sup> Defendant, she paid N3.3 Million to the 1<sup>st</sup> Defendant out of which N3 Million was paid to the 1<sup>st</sup> Defendant Aso Savings & Loans PLC account to defray the 1<sup>st</sup> Defendant's indebtedness since he acquired the

property through mortgage to enable him have the title documents that are in the custody of the 2<sup>nd</sup> Defendant and the N300,000 paid into his GTB PLC Account so as to enable him pay his children's school fees.

He acknowledged receipt of the payment through a hand written document.

The 1<sup>st</sup> Defendant further pleaded for payment to enable him execute his business engagement which is the reason why he was selling the property whereas his balance was supposed to be at the point of handing over the Certificate of Occupancy to her, she obliged and transferred to him N8.5 Million. The 1<sup>st</sup> Defendant acknowledged receipt of the total sum of N11,800,000.

He signed an indemnity for release of Account/Information/Security document to her authorising the release of the Certificate of Occupancy to her by the 2<sup>nd</sup> Defendant to enable him collect his balance.

She was surprised when 1<sup>st</sup> Defendant told her that the property is in contention between Claimants and himself.

That the 1<sup>st</sup> Defendant had earlier agreed with him to vacate the property on or before the 30<sup>th</sup> of September 2015 to enable her take possession.

That 1<sup>st</sup> Defendant is acting in concert with Claimants in the original suit to defraud the 3<sup>rd</sup> Defendant/Counterclaimant.

She urges the Court to grant the reliefs sought. She tendered the following Exhibits:

Exhibit C - CTC of Expression of Interest Form in the name of 1<sup>st</sup> Defendant.

Exhibit D - CTC of Receipt of payment made by 1<sup>st</sup> Defendant to Adhoc Committee on the sale of Government Houses.

Exhibit E - CTC of letter of offer in the name of the 1<sup>st</sup> Defendant.

Identified Exhibit A as her initial payment.

She further identified Exhibit B as her further payment of N8.5 Million.

Exhibit F – Indemnity for release of account information and security to 3<sup>rd</sup> party dated 27/07/15.

She said orally she has not gotten the house. She claims as per her Statement of Claim.

Under Cross-examination by 2<sup>nd</sup> Defendant, she answered that she knows the Claimants. She has a document executed between her and 1<sup>st</sup> Defendant. She does not know how 1<sup>st</sup> Defendant has been in occupation.

The 3<sup>rd</sup> Defendant's/Counterclaimant's Counsel's Final Written Address is dated 17/07/20.

It is adopted by Learned Counsel as his final oral argument. He raised three issues for determination.

Learned Counsel relies on Exhibit A & B and canvassed that the wordings are clear, explicit and unambiguous. He urges the Court to enforce same.

That when a party by his act or conduct causes another to act, he cannot subsequently say he never meant it. That by Exhibit B 1<sup>st</sup> Defendant undertook to vacate the premises on or before the 30<sup>th</sup> of September 2015.

That having failed to vacate, the 3<sup>rd</sup> Defendant/Counterclaimant is entitled to rent for the said period the 1<sup>st</sup> Defendant has been in occupation.

He further contends that the evidence of the Counterclaimants witnesses were not contradicted or controverted. They were not cross-examined.

He urges the Court to accept the evidence as cogent and credible.

That evidence not controverted is deemed admitted. There was no defence to Counterclaim.

He finally submits that the 3<sup>rd</sup> Defendant/Counterclaimant has proved her case to warrant the grant of all the reliefs.

The issue for determination in my view is whether there is a valid and binding contract between the 3<sup>rd</sup> Defendant/Counterclaimant and the 1<sup>st</sup> Defendant for the sale of Block 7, Flat 3, Bacita Close, Area 2, Section 2, Garki, Abuja. The evidence of the 3<sup>rd</sup> Defendant/Counterclaimant has been reproduced before now. The 1<sup>st</sup> Defendant through his agent, CW1 put up his property known and situate at Block 7, Flat 3, Old Bacita Close, Area 2 Section 2 Garki for sale.

She visited the property in company of her husband and the agent

She was given the letter of offer to enable her conduct a search. The search indicated that the 1<sup>st</sup> Defendant owned the property.

She met with the owner of the property the 1<sup>st</sup> Defendant.

He made a final offer of N15.5 Million for the property which the 3<sup>rd</sup> Defendant accepted.

She paid N3,300,000 to the account of the 1<sup>st</sup> Defendant to enable him defray his indebtedness of the mortgage facility and the children's school fees.

She later paid N8,500,000 all totalling N11,800,000.

He was to give or authorise the release to the 3<sup>rd</sup> Defendant of the Certificate of Occupancy of the property when she was told by the 1<sup>st</sup> Defendant that the property is in contention between him and the Claimants.

That he has a valid and subsisting contract. That 1<sup>st</sup> Defendant had earlier agreed with her to vacate the property on or before the 30<sup>th</sup> of September, 2015 to enable her take possession. The Claimants in the substantive case withdrew the claim and it was accordingly struck out.

They also failed, refused and or neglected to defend the action. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants to 3<sup>rd</sup> Defendant/Counterclaimant also failed to give any evidence

The oral agreement entered into for the sale of the 1<sup>st</sup> Defendant's flat was re-enforced by Exhibits A, B and F.

The law is that an oral transaction or agreement freely entered into by the parties is binding on the parties thereto and gives rise to an enforceable contract.

**See *J.E. OSHEVIRE LTD VS TRIPOLI MOTORS (1997) 5 NWLR (PT.503) 1 SC.***

***OMEGA BANK (NIG) PLC VS. OBC LTD (2002) 16 NWLR (PT.794)483 C.A.***

From the oral evidence and Exhibits A, B and F, there was an offer which was accepted. The 3<sup>rd</sup> Defendant paid N11,800,000 with the balance to be paid when he Certificate of Occupancy would be handed over. There was an intention to create legal relationship and parties have the capacity to contract. I have

construed the surrounding circumstances including written and oral statements so as to effect the intention of parties. The evidence of CW1 and CW2 were not controverted.

The 1<sup>st</sup> Defendant's Counsel did not even cross-examine the 3<sup>rd</sup> Defendant's/Counterclaimant's witnesses. The evidence is cogent, credible and believable.

Therefore the evidences of 3<sup>rd</sup> Defendant/Counterclaimant are deemed admitted.

In my humble view, there is a valid contract between the 3<sup>rd</sup> Defendant and the 1<sup>st</sup> Defendant which is enforceable.

The 1<sup>st</sup> Defendant cannot after taking the benefit of the contract shy away from consummating the process.

Prayers 4 and 5 are refused as no arrears of rent was proved while prayer 7 is refused because it was speculative.

Judgment is therefore entered in favour of the 3<sup>rd</sup> Defendant/Counterclaimant against the Claimants, 1<sup>st</sup> and 2<sup>nd</sup> Defendants as follows:

- (1) It is declared that the contract between the 3<sup>rd</sup> Defendant/Counterclaimant and 1<sup>st</sup> Defendant in respect of the sale of Block 7, Flat 3, Bacita Close, Area 2, Section 2, Garki Abuja is valid and subsisting.
  
- (2) The 1<sup>st</sup> Defendant is hereby ordered to receive the sum of N3.7 Million from the 3<sup>rd</sup> Defendant/Counterclaimant as the balance of the purchase price and consequently give to the 3<sup>rd</sup> Defendant/Counterclaimant the Certificate of Occupancy and all other documents relating to the house.
  
- (3) The 3<sup>RD</sup> Defendant/Counterclaimant is entitled to immediate vacant possession of Block 7, Flat 3, Bacita Close, Area 2, Section 2, Garki Abuja.

.....  
**HON. JUSTICE U.P. KEKEMEKE**  
**(HON. JUDGE)**  
**16/02/21.**

Parties absent.

Uyi A. Osewingie for the 3<sup>rd</sup>  
Defendant/Counterclaimant.

C.J. Abengowe for the 2<sup>nd</sup> Defendant.

Signed.

Hon. Judge.

16/02/21