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

**IN THE ABUJA JUDICIAL DIVISION**

**HOLDEN AT ZUBA, ABUJA**

**ON FRIDAY THE 15TH DAY OF MARCH, 2024**

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

**SUIT NO.: FCT/HC/CV/2766/2018**

**BETWEEN:**

CEMAL COMPANY LIMITED ------- CLAIMANT

**AND**

NEUTRAL RESOURCES -- DEFENDANT

# JUDGMENT

In this case the Claimant claims 2.5% of the value of the Defendant's property valued interest in the Res – Plot 876 – 884 Wiser Estate Mabushi, Abuja as facilitation fee. It also wants the Court to declare that it is entitled to the said payment. He want 20% Interest on the Judgment sum and **₦50, 000,000.00 (Fifty Million Naira)** as the General Damages.

The Claimant tendered through its Managing Director (M.D) who testified as PW1 9 documents marked as **EXH 1 – EXH 9.**

The Defendant called a Witness who also testified as DW1. He is the Deputy General Manager of the Neutral Resources Limited. On his own he tendered 5 documents marked as **EXH 10 – EXH 14.**

They both filed and exchanged Final Written Addresses.

According to the Claimant which is a Real Estate Consultant, sometime in 2013 they said that the Defendant – Neutral Resources Limited and its sister company – Uslasiya Nig. Ltd and Resource Improvement and Manufacturing Company Ltd engaged the services of the Claimant to sell properties at Wuye, Utako and Mabushi District.

That it advised and counseled the Defendant and its sister companies to explore development of the properties rather than to sell same. That they engaged the Claimant's services to facilitate and solicit for Developer for the said properties. On the 13th February, 2013 they gave the Claimant Letter of Mandate for the said Facilitation – **EXH 2 & 8.** That they agreed at Facilitation Fee of **2.5%** of the value of the entire Interest of the properties when developed into the several units as detailedly stated in the Statement of Claim and confirmed in the Statement of Defence. But that after, the Defendant changed the narrative by claiming that the Claimant is only entitled to **2.5%** of the **45%** of the Defendant's value of the property before the Development. That in 2017 the property was valued at **₦1, 470,000,000.00 (One Billion, Four Hundred and Seventy Million Naira)** as shown in **EXH 9.** Hence, the Claimant is entitled to **₦16, 537,500.00 (Sixteen Million, Five Hundred and Thirty Seven Thousand, Five Hundred**

**Naira)** representing 2.5% of the 45% of the Defendant's value of the developed property. That because of that disagreement the Claimant instituted this action.

In the Claimant's Final Written Address filed on the 1st December, 2023 it raised a lone Issue for determination which is:

> **"Whether from the pleading and evidence adduced, the Claimant has proved its case and therefore is entitled to the 2.5% of the Defendant's value of the developed property?"**

The Claimant submitted that it has through the testimony of its sole Witness and the documents tendered before this Court adduced more than enough evidence to establish its claim and as such it merits the Judgment of this Court in this case to be entered in its favour and the sole Issue determined in its favour too.

That from the state of the pleadings it has elicited enough evidence to prove his case and it is therefore entitled to the said 2.5% of the Defendant's developed value of the property which is 45% of the value of the property after the said development. That the Defendant erroneously contended the Claimant's Facilitation Fee of the 2.5% of the said 45% value of the land. That the cases relied on by the Defendant are inapplicable. That the said cases are:

**Oyinloye V. Esinkin**

**Nkechi Nwoga V. Emeka Ahima & Ors**

**Enilobo V. SPDC**

That the said cases are all erroneous position and are inapplicable.

That every case is an authority on the issue that is decided therein as it relates to the facts of the case and circumstance. He referred to the following cases:

**Emeka V. Okadigbo**
**(2012) 18 NWLR (PT. 1331) 55**

**Dingyadi V. INEC**
**(2011) 10 NWLR (PT. 1255) 347**

That by their documents and testimony of their Witness they have proved their case on the issue of 2.5% and all their claims. That they deserve the Judgment of the Court. They urged Court to so hold.

That the parties are ad idem on the issue of 2.5% except on the Defendant's value of the Res before or after the development of same. That from the conduct of the parties and the circumstance of the case the intent of the parties is that the 2.5% Facilitation Fee is based on the value after development of the property.

That the parties agreed that Uslasiya and Resources Improvement & Manufacturing Company Ltd are sisters companies to the Defendant and that all the 3 agreed in the same place and time and to give the Letter of Mandate to the Claimant on the 13th February, 2013. That payment of the agreed 2.5% was not done then at the point when the Agreement was executed with the Developer introduced by the Claimant. That it was done after the development in

order to ascertain the value of the development stake after the development, been on mutual agreement of the parties. That this is evidenced in the 2 different Agreements the Developers brought to the Defendant by the Claimant which has 2 different separate values/interest allotted to the Defendant and its sisters companies.

That **EXH 7** was predicated on a total of 3 shop buildings instead of cash after completion of the building. That the Claimant has placed before this Court enough material evidence for Court to determine the matter in its favour. They urged Court to resolve the Issue in his favour against the Defendant and to grant all its Reliefs having proved all its claims.

On the 7th November, 2023 the Defendants filed its Final Written Address. It is the contention of the Defendant that the 2.5% payable to the Claimant was as to the value of the land before development and not the value of the land after development. That the Claimant did not participate in the development of the property. The Defendant called one Witness – DW1 and tendered 5 documents as already stated – **EXH 10 to EXH 14.**

In the Final Written Address the Defendant raised 2 Issues for determination which are:

**(1) Whether from the case and evidence before this Court the Claimant has established that the agreed Facilitation Fee between the Claimant and Defendant for procuring a Developer in respect of**

**the Res is 2.5% of 45% value of the Developed Land?**

**(2) If Issue No. 1 is NO, whether the Claimant is entitled to the claim and damages against the Defendant?**

They submitted that from **EXH 1 & 2** it is very clear that the claim of Claimant that the 2.5% is based on the 45% of the developed land is not true. That the said **EXH 2** which the Claimant relied on does not state that the Facilitation for procurement of a Developer for the Plots is 2.5% of 45% of the developed land. That the onus is on the Claimant to prove that the mandate given to it by the Defendant is based on the 2.5% of the 45% of the developed land. They referred to the case of:

**Ukwenya & Ors V. Nduka & Ors**
**(2022) LPELR – 57880 (CA)**

That the Claimant has failed to prove that assertion. That the Defendant is a different entity and legal personality distinct from its members. That the Claimant believes that since it was given some shops by Uslasiya Nig. Ltd that the Defendant should toll the same line by giving out developed land to satisfy the Claimant's Facilitation Fee. That the Defendant is different from Uslasiya and does not have the mandate of Uslasiya to engage in any contract with the Claimant for solicitation and discussion for procurement of Developer for the properties. That the Defendant did not enter into any Agreement with the Claimant for the procurement of Developer for 2.5% of the 45% of the

developed land. He urged Court to so hold and resolve the Issue No. 1 in the interest of the Defendant.

**On Issue No. 2** – if Issue No. 1 is in the Negative whether the Claimant is entitled to the claims and damages against the Defendant, they submitted that the Claimant is not entitled to the claims and damages having not established and proved its case on preponderance of evidence. They urged Court to dismiss the case. That the Claimant failed to produce any document before the Court to show that the 2.5% was based on developed property and not value of the land undeveloped. He referred to the case of:

**Union Bank PLC & Anor V. Aminu Ishola**
**(2001) 15 NWLR (PT. 735) 47 @ 81 Para B – C**

They urged Court to so hold and dismiss the Suit for lacking in merit.

## COURT

This Court has summarized the stance of the Claimant in proving his case and the challenge of the Claimant's case by the Defendant. The question is: Has the Claimant proved with the testimony of PW1 and **EXH 1 – 9** tendered before this Court that he is entitled to the **2.5%** of the Defendant's value of the Developed property at Plot **876 – 884 Mabushi District, Abuja – FCT?** Has the Claimant really established that the agreed Facilitation Fee between the Claimant and the Defendant for procurement of a Developer is **2.5%** of the **45%** value of the Developed Land; if so is the Claimant entitled to its claim? Is the Defendant liable for payment to

the Claimant the said 2.5% of the 45% value of the Developed property as it did in the similar project at Utako – (Rock of Ages Plaza) having done so in the said Utako project which was equally contracted out to the Claimant and it was paid by shop allocation rather than cash?

It is the humble view of this Court that the Claimant has established that he is entitled to the said 2.5% of the 45% of the Developed property not on the cost of the land. This Court had gone through the testimony of PW1 and the Exhibits, **EXH 1 – 9** it had tendered in support of its claim in this Suit. It is the humble view of this Court that the Claimant having established its claim is entitled to the Reliefs as sought. The Defendant is also liable to pay damages having breached the Contract Agreement it entered into with the Claimant. The Defendant is also liable to pay the Claimant the 2.5% of the Developed land as against the undeveloped land as it did in a similar project which were entered into almost the same time with the Claimant.

To start with, there is no doubt that there was Contract Agreement between the parties for the Claimant to facilitate the project by soliciting and procuring a Developer for the project – Development of Plot 876 – 884 at Mabushi District, Abuja. The parties were ad idem in that regard. The Claimant attached **EXH 2 –** the Letter of Mandate dated 13th February, 2013. The parties were also ad idem on the project and payment mode for the project on the Rock of Ages Shopping Mall project which was undertaken by the same Claimant in which the Claimant was paid as per value by allocation of shop space. It is clear from that and can be properly and

rightly inferred that the Agreement for payment for the Facilitation is per developed land and not as per price of the land. So this Court holds.

The business or the service which the Claimant was to render or which he actually rendered is NOT based on sell of land and cannot there be based on payment as per value of the undeveloped land. In the Letter of Mandate – **EXH 2** it stated that the Claimant is given mandate to act as thus:

1. **… our Real Estate Independent Agent in respect of …**
2. **Parcel of Land … at Plot 876 – 884 Mabushi District, Abuja.**

The **EXH 2** further stated thus:

> **"… you have our consent to initiate solicitations … with interested party in respect of the development of the above project."**

From the above it is very clear that the job/service to which the Claimant was engaged for by the mandate is to source, solicit and discuss with interested Developer for the development of the Res. It is very clear that the Claimant was mandated as to development and not as Land Agent. That document has clearly shown the intention of the parties and the actual service to be rendered which the Claimant actually rendered. So this Court holds.

The Claimant also tendered several documents – Correspondence with the Defendant, demanding and requesting for the payment of the Facilitation Fees for the

Development of the said Plot 876 – 884 Mabushi project. The Claimant made several physical demands, when that failed he instructed his Counsel to write to the Defendant and demand for the payment of the 2.5% of the fees as agreed. Rather than pay the Claimant, the Defendant stated that the 2.5% was for the cost of the land and not for the cost of development. The Defendant had in several of their responses to the Claimant's Demand Letter insisted that the Agreement was for payment as per cost of land.

Meanwhile, the same Defendant had confirmed and corroborated that it was for 45% for the developed plot and not for 45% of the portion of land.

If actually the intension and agreement was for the Claimant to be paid for the price of the land, how come the Defendant who are making such assertion did not state or put before the Court any document to prove their assertion. Most probably, the Defendant has no such documentary evidence or any evidence at all.

To prove that contrary to the assertion and denial of the Defendant that the parties agreed to pay the Claimant by 2.5% per development and not on land, the Claimant tendered **EXH 7** which is a letter from the other company/partner where the Claimant was paid via shop space. Hence, challenging and controverting the assertion/claim of the Defendant that their partner based their payment on value of the undeveloped land.

In the length and breadth of the Letter of Mandate the Defendant did not state that the mode of payment was to be

by/per percentage of the land since they have denied the Claimant's claim that payment of his Agency was per the price of the land. The Defendant did not attach any document to prove that fact. They did not prove their assertion.

The Claimant has in his pleading and by his testimony and through the documents tendered proved that the payment was to be per development and not per price of the land. This Court therefore holds that the Claimant has proved his claim establishing that the payment for the services rendered by him in soliciting and actually procuring the interested Developer for the Defendant for the development of the said Plot 876 – 884 Mabushi District, Abuja is per the price of the Development of the Res and not per the land. The Defendants were not able to controvert that fact. The Defendants were not also able to show that the Agreement was based on payment as per 2.5% of the land as they claimed.

In both the testimony of PW1 and under the fire of Cross-examination the Claimant was very consistent on his claims. He had in **EXH 11** tendered in the evidence shown that he acknowledged receipt of the letter of 26th November, 2015 but never accepted the content of the letter showing that the Defendant agreed to pay him **2.5% of the 45% of the Land Value.** Even in the said letter the Defendant did not attach the Valuation Report to show that it was done by an approved and qualified person or organization. They did not also show or exhibit the Report itself and how they came up

with the **₦175, 000,000.00 (One Hundred and Seventy Five Million Naira)** as the value of the land.

It is imperative to state that the Claimant started demanding for the payment of his services as far back as 23rd November, 2015 when he wrote to the Defendant as shown in **EXH 10.** It was after the Defendant failed to pay that he wrote a comprehensive letter detailing that it was based on the Defendant's insistence on paying the Claimant in cash that the Claimant insisted that payment by cash should be in accordance with the value of the improved structure and not on the price of the land. The Claimant also established as shown in the letter that it was so agreed by the parties both for the Rock of Ages Mall project as well as the present project that parties agreed unanimously of the same mode of payment as per the developed properties not on price of the land. Again, the Claimant proved that by exhibiting the letter of 15th April, 2015 – **EXH 7** where payment by a sister company on Rock of Ages Mall was done as per development – by issuing of floor spaces and shops.

As the Claimant has established that it is clearly shown and proved and can be inferred that the parties agreed that payment should be made as the Claimant claimed. Even the sharing formula by the parties was all based on the then structures on the project and its values then.

Even in **EXH 12** the Solicitor of the Claimant stated clearly that the Claimant was retained based on the development of the project which is on the facilitation on the securing of a Developer. The Claimant showed that the agreement to pay 2.5% as per the value of the development was reached when

it accepted payment by cash when the Defendant insisted to pay him by cash. This is couple with the established fact that the same method of payment was agreed upon by both parties unanimously on the 2 projects at Mabushi and Rock of Ages Mall at Utako.

It was when the Defendant failed to pay as demanded that the Claimant instructed its lawyer to write to the Defendant on 8th November, 2015 – **EXH 12.** In that letter the Claimant gave Defendant 4 calendar weeks within which to comply and pay.

The Defendant never tendered any document to show that they gave the Claimant option to opt out if it is not ready to go on with 2.5% payment based on the value of the land. In their letter of 26th November, 2015 – **EXH 11,** the Defendant only stated that it will not pay 5% as requested by the Claimant. The Defendant also stated in the said letter that it will pay **2.5% of the value of land.** They agreed to pay it within 6 months into execution of the project. The Defendant never gave any option of the Claimant opting out if it does not accept the 2.5% payment of the value of land. The Defendant did not also contradict the evidence of the Claimant that the issue of payment based on value of developed project came up when the Defendant opted to pay the Claimant by cash.

The Claimant had in the same letter, **EXH 6,** stated and pointed out to the Defendant that that mode of payment was unanimously agreed at the meeting where the Executive Management Representatives of the Defendant attended. That it was that that informed the mode of payment in the

Utako project. The same Solicitor on behalf of the Claimant equally reminded the Defendant of what is obtainable in statutory Rules guiding Agency and Contractor Agreement in contract of that nature. To prove that fact the Claimant attached **EXH 7. EXH 6** was Claimant's response to the letter of Defendant dated 15th November, 2015. **EXH 11** was the response of the Defendant to the Claimant's letter of 23rd November, 2015 when he demanded for 5% of the total project portion belonging to the Defendant – **EXH 10.**

The Claimant had shown and laid proper foundation for all the documents he tendered which are photocopies. He also tendered acknowledgment copies of the letters – Correspondences it received from the Defendant. He attached **EXH 3 –** the picture showing that the said Plots 876 – 884 were fully developed. Most importantly, the Claimant sent to the Defendant a full Evaluation Report and Valuation Report and Certificate signed by a very qualified Estate Surveyor and Valuer – Fide Okolie Consulting Estate Surveyors & Valuers, **Reg. No.: A 3494.** All these are shown in **EXH 9 –** the Valuation Report dated 6th July, 2017. The detailed Valuation Report was duly signed and sealed by the Expert Quantity Surveyor. It has attached all the details concerning the Estate in issue and request and mandate given to the Claimant by the Defendant to solicit for interested parties in respect of the development of the said Plot 876 – 884.

Even by the nature of the mandate given to the Claimant it is glaringly clear that the payment for the services of solicitation for interested Developer is not meant to be paid by price of land. By the action and correspondences and by

the nature of the service to be rendered and actually rendered by the Claimant, the payment for the service of solicitation was never meant to be based on the price of the land. So this Court holds.

The Defendant did not tender any document to show the actual price of the land. It did not state whether the price of the land was to be based on the price paid for the purchase of the land or the price of a valued price of the land after the mandate or as at the time the mandate was given to the Claimant on 13th February, 2013 or after the land was developed or before.

The Claimant was able to establish that parties agreed as to payment per development of the property. So this Court holds. The Claimant performed his own side of the contract but the Defendant failed to fulfill its own.

From all the above, the Claimant had established his claim and he is entitled to be granted same.

Again, given all that transpired and the fact that from the date of mandate on 13th February, 2013 till date that the Claimant is yet to be paid for services he rendered to the Defendant by bringing the Developer who had developed the Res as seen in **EXH 3 –** picture of fully completed buildings in the said **Plot 876 – 884.** Obviously he had suffered some damages because of the delay in the payment of the said 2.5% of the 45% being the portion of the Defendant in the said Developed properties. Having established that fact, he is also entitled to be paid General Damages too as can be assessed by this Court given the circumstance of this case.

Therefore, this Court in conclusion holds that there is merit in this case and grants the Reliefs of the Claimant and Order as follows:

1. Relief 1 and 2 granted as prayed.

2. Relief 3, the Defendant is to pay to the Claimant 7% interest on the Judgment sum from date of Judgment until date of final and full liquidation of same.

3. The Defendant is to pay to the Claimant the sum of ₦200, 000.00 (Two Hundred Thousand Naira) only as General Damages.

**This is the Judgment of this Court.**

**Delivered today the ___ day of ___________ 2024 by me.**

________________________

K.N. OGBONNAYA

HON. JUDGE