

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

**ON THURSDAY 16TH DECEMBER, 2021**

**BEFORE HIS LORDSHIP: HON. JUSTICE O. A. ADENIYI**  
**SITTING AT COURT NO. 8 MAITAMA, ABUJA**

**SUIT NO: CV/1794/2019**

**BETWEEN:**

CLEAN IMPACT MULTIPURPOSE  
CO-OPERATIVE SOCIETY LIMITED }  
}

CLAIMANT

**AND**

WILSON ASINOBI AKE ... ..DEFENDANT

**JUDGMENT**

The Claimant is a registered Co-operative Society whilst the Defendant was a Senator of the Federal Republic of Nigeria. Both parties, sometime in 2018, entered into a conditional agreement for the sale by the Defendant to the Claimant, his property described as Plot B73, Flat 1, 22<sup>nd</sup> Street, Zone B, Gudu District, Abuja, for agreed consideration of ~~₦~~**₦70,200,000.00**

**(Seventy Million, Two Hundred Thousand Naira)**  
only.

The case of the Claimant is that the Defendant, pursuant to the agreement, was at liberty to refund the purchase price for the property to the Claimant within an agreed period; failing which ownership of the property shall pass to the Claimant.

The case of the Claimant is further that the Defendant failed to refund the said purchase price for the property and continued to remain in occupation thereof, contrary to the agreement between the two parties; and that the Defendant has continued to resist all efforts to cause him to vacate the premises.

Being aggrieved by the Defendant's refusal to give up vacant possession of the premises, the Claimant commenced the present action, *vide* Writ of Summons and Statement of Claim, filed in this Court on 02/05/2019, and by the Amended Statement of

Claim filed on 11/12/2020, with the leave of Court, the Claimant claims against the Defendant the reliefs set out as follows:

- 1. A declaration that the Claimant by virtue of a conditional sale agreement coupled with payment of purchase price acquired equitable title over B73, Flat 1, 22<sup>nd</sup> Street, Zone B, Gudu, Apo, Abuja, covered by certificate of occupancy No. 14d2w-14c5f-5dc0r-12156-10 dated 6<sup>th</sup> September, 2007.**
- 2. A declaration that the Claimant is entitled to vacant possession of B73, Flat 1, 22<sup>nd</sup> Street, Zone B, Gudu, Apo, Abuja, covered by certificate of occupancy No. 14d2w-14c5f-5dc0r-12156-10 dated 6<sup>th</sup> September, 2007.**
- 3. A declaration that the Defendant became a trespasser on the property from 22<sup>nd</sup> May, 2018, being the day after the sale became absolute up until the date vacant possession is recovered from the Defendant.**

4. ***An order of mandatory injunction directing the Defendant to deliver the vacant possession of B73, Flat 1, 22<sup>nd</sup> Street, Zone B, Gudu, Apo Abuja to the Claimant.***
5. ***An order of perpetual injunction restraining the Defendant, its servants, agents and privies from trespassing into the Claimant's property know and called B73, Flat 1, 22<sup>nd</sup> Street, Zone B, Gudu, Apo Abuja or in any other manner whatsoever from disturbing, interrupting and interfering with the Claimant's peaceful and quiet possession of B73, Flat 1, 22<sup>nd</sup> Street, Zone B, Gudu, Apo Abuja also known.***
6. ***General damages in the sum of ₦30,000,000.00 (Thirty Million Naira) only.***
7. ***An order directing the Defendant to pay the Claimant the sum of ₦5,000,000.00 (Five Million Naira) only as solicitors fee.***
8. ***The cost of this suit.***

The Defendant denied the Claimant's claim and joined issues with her. His defence is contained in the operative Amended Statement of Defence filed on 04/02/2020. Essentially, the Defendant maintained that he remained the *bonafide* owner of the property in dispute; that the Claimant, by her conduct, waived the time limit agreed for the refund of the purchase price of the property, having received from him, part-payment of the purchase price of the sum of **₦20,000,000.00 (Twenty Million Naira)** only.

The Claimant filed a Reply to the Defendant's defence on 10/09/2019.

At the plenary trial, the Claimant fielded a sole witness, by name, **Ekundayo Busayo**. He claimed to be the Claimant's Secretary. After adopting his *Statements on Oath*, he tendered in evidence a total of **sixteen (16)** sets of documents as exhibits in order to further establish the Claimant's claim. He was

subjected to cross-examination by learned counsel for the Defendant.

In turn, the Defendant testified in person and he called three other witnesses. His first witness is **Sadiq Abubakar Maikobi**, staff of Zenith Bank Plc, called on *subpoena* to give evidence and tender the Statement of Account of **Rojbel Services Nigeria Limited**. The Defendant's second witness is his wife, **Dr. Stella Ake**. The Defendant and the **DW2**, upon adopting their *Statements on Oath*, also tendered documents in evidence. The Defendant's third witness, who also testified on *subpoena*, is **Sunmola Tokunbo**, staff of Access Bank Plc. Between them, the Defendant and his witnesses tendered a total of seven (7) sets of documents in evidence to further establish the Defendant's defence. The Defendant, **DW2** and **DW3** were subjected to cross-examination by the Claimant's learned counsel.

At the close of plenary trial, parties proceeded to file and exchange their written final addresses in the manner prescribed by the **Rules** of this Court.

The Defendant filed her final written address on 22/01/2021 wherein his learned counsel, **Chike S. Ekeocha, Esq.**, formulated a sole issue as having arisen for determination in this suit; to wit:

***What is the state of affairs known to the parties as at the 2<sup>nd</sup> of May, 2019, when the Claimant took out the Writ of Summons in this suit to seek the reliefs endorsed thereon?***

The Claimant in turn filed her final written address on 22/02/2021, wherein her learned counsel, **Tamunotonye Ekundayo, Esq.**, equally distilled a sole issue for determination in the suit, namely:

***Whether by the Claimant has, by credible evidence, proved its case against the Defendant on the balance of probability as to entitle the Claimant to the reliefs sought?***

I have examined the totality of the pleadings filed by the two sides; and the admissible evidence adduced as it stands on the record. On this basis, it appears to me that the focal issue that has arisen for determination in this suit is narrow and it is this:

***Whether or not the Claimant, by her conduct, waived her entitlement to crystallize her agreement with the Defendant for the sale of the property in dispute to her?***

In determining this issue, I state that I had taken due benefits of the totality of the arguments canvassed by the respective learned counsel in their respective written addresses, which I need not recapitulate any more. I shall however endeavour to make reference to specific aspects of learned counsel's arguments as I deem needful in the course of this judgment.

### **RESOLUTION OF SOLE ISSUE**

As a starting point, I must remark that the agreement between the parties that threw up the instant action is indeed somewhat strange. The Claimant purported to buy the Defendant's property; paid purchase price; but still opted to give the Defendant opportunity to repurchase the property by refunding the purchase price to her within a given period, failing which the title in the property shall pass to her. That, in simple term, is the purport of the **Exhibit C3**, the **Conditional Sale Agreement** executed between the two parties on 22<sup>nd</sup> February, 2018. This agreement, tendered by the Claimant's sole witness, is clearly central to the dispute between the parties in this suit.

Nevertheless, no matter how unreasonable, odd or awkward intentions of parties, freely expressed, especially in a written agreement, may appear, the Court is bound, when called upon, to enforce and give effect to wishes of parties; in so far as the agreement

is not illegal or against public policy. See Oyeneyin Vs. Akinkugbe [2001] 1 NWLR (Pt. 693) 57.

As I had noted, it is apparent that the Claimant's claim is weaved around the said Conditional Sale Agreement, **Exhibit C3**, tendered by the **CW1**. It was executed between the Defendant and the Claimant, on 22<sup>nd</sup> February, 2018, for the sale of his property described *supra* to the Claimant for the consideration of the sum of **₦70,200,000.00 (Seventy Million, Two Hundred Thousand Naira)** only.

In paragraph 4 of his Amended Statement of Defence, the Defendant admitted to having entered into the said agreement with the Claimant. The focal conditions, to which parties agreed, as shown in **Exhibit C3**, are:

1. That, for consideration of the sum of **₦70,200,000.00** paid by the Claimant to the Defendant, which payment the Defendant

acknowledged, the Defendant agreed to transfer, surrender and assign all his interests in Plot No. 384, Dwelling Plot No. 2342, Floor 00, Block B73, Flat 1, 22<sup>nd</sup> Street, situate at Cadastral Zone B01, Gudu District, Abuja to the Claimant.

2. That the Defendant, without any conditions attached, reserved the liberty to refund the consideration paid to him by the Claimant for the purchase of the property not later than 21<sup>st</sup> May, 2018; and that in the event that the Defendant opted not to refund the purchase price; the sale, transfer, surrender and assignment of the property from him to the Claimant shall become effective.
3. That in the event that the Defendant took advantage of the option to refund the purchase price within the agreed period (not later than

21<sup>st</sup> May, 2018), the Claimant shall be obliged to return to the Defendant the original certificate of occupancy and other title documents of the property handed to her and executed in her favour.

4. That in the event that the Defendant did not comply with the option to refund the purchase price latest by 21<sup>st</sup> May, 2018; and parties do not extend the time to refund, in writing, the sale shall become absolute and that the property shall pass to the Claimant.
5. That the Conditional Sale Agreement, Deed of Assignment and the Power of Attorney executed by both parties in pursuance of the agreement between the parties shall stand revoked in the event that the Defendant took advantage of the option to refund the purchase price to the Claimant within the agreed timeline.

In furtherance of parties' agreement *vide* **Exhibit C3**, the **CW1** tendered in evidence the following relevant documents:

1. Original Acknowledgement of Payment dated 22<sup>nd</sup> February, 2018, by which the Defendant acknowledged receipt of the sum of **₦70,200,000.00** from the Claimant, being the purchase price for the conditional sale of the property in dispute to the Claimant – **Exhibit C6**;
2. Original unregistered Deed of Assignment, dated 21<sup>st</sup> May, 2018, executed by the Defendant in favour of the Claimant for the assignment of the property in dispute to the Claimant – **Exhibit C4**;
3. Original unregistered Power of Attorney, dated 21<sup>st</sup> May, 2018, donated by the Defendant to

the Claimant with respect to the disputed property – **Exhibit C5;**

4. Certified true copy of Certificate of Occupancy granting to the Defendant parcel of land being Plot No. 384 Cadastral Zone B01, Dwelling Plot No. 2342, Floor No. 00, Block B73, Flat 1, 22<sup>nd</sup> Street – **Exhibit C7.**

The **CW1** further testified that with respect to all transactions relating to **Exhibit C3**, the Claimant's President at that time, **Mr. Christian Chukwuka Wigwe**, and himself, as the Secretary, represented and signed all documents on behalf of the Claimant; and that the Claimant did not at any time appoint her President, **Mr. Christian Wigwe**, as her agent with respect to the transactions with the Defendant.

The case of the Claimant is further that the Defendant failed to take advantage of the option given to him to refund the purchase price of **₦70,200,000.00** to the

Claimant at the agreed period of not later than 21<sup>st</sup> May, 2018 and as such the sale of the property became absolute as agreed to by parties in **Exhibit C3**; and that the Claimant became entitled to legal interest over the property in dispute.

The **CW1** further testified that the Defendant refused to give up vacant possession of the property to the Claimant after the expiration of the time of grace granted to him as a result of which the Claimant issued letter of authority to her Solicitors to issue notices to the Defendant to quit the premises. He tendered in evidence as **Exhibit C8**, the said Letter of Authority dated 5<sup>th</sup> June, 2018; and co-signed by both the President and the Secretary of the Claimant.

The **CW1** further testified that pursuant to **Exhibit C8**, the Claimant's Solicitors, **Tamunotonye Ekundayo, Esq.**, of **S. M. Nwosu & Co.**, wrote to the Defendant by letter of 19<sup>th</sup> June, 2018, giving him notice to

vacate the premises on or before 28<sup>th</sup> June, 2018. Copy of the said letter and certificate of service thereof were tendered and admitted in evidence as **Exhibits C9** and **C9A** respectively.

The **CW1** further testified that the Claimant's Solicitor issued yet another notice to the Defendant on 6<sup>th</sup> September, 2018, to quit the premises; but that the Defendant continued to remain in possession thereof. He tendered the notice and certificates of service as **Exhibits C10, C10A, C10B** and **C11** respectively.

The **CW1** further testified that despite the notice, the Defendant failed to yield possession of the premises to the Claimant.

The **CW1** again testified that the Claimant, by letter dated 25<sup>th</sup> May, 2018, admitted in evidence as **Exhibit C16**, nominated **Mr. Christian Chukwuka Wigwe** and **Tamunotonye Ekundayo, Esq.** as her representatives to jointly interface with the Defendant

for purposes of ensuring a peaceful handover of the property in dispute to the Claimant.

The **CW1** testified further that the Defendant's evasiveness in giving up possession of the premises caused the Claimant to issue a Civil Complaint against him at the Chief District Court of the FCT for possession of the premises. He tendered in evidence, certified true copies of the Complaint and other processes filed in respect of the suit as **Exhibits C13, C14 and C15** respectively.

By **Exhibit C15**, the Claimant's Solicitors withdrew the suit against the Defendant for the reason that the Claimant did not perfect their briefs.

The Defendant, on the other hand, had insisted that he remained the *bonafide* owner of the property in dispute. His defence is built on the contention that the Claimant had waived her right to insist on compliance with the Conditional Sales Agreement, **Exhibit C3**. The

Defendant testified that after the expiration of the time stated in **Exhibit C3**, the Claimant continued to communicate with him through her President, **Christian Chukwuka Wigwe**; that it was through the said **Mr. Wigwe** that the Claimant paid the purchase price of the sum of **₦70,200,000.00** for the property to him in four (4) installments as follows:

- (i) The sum of **₦15,000,000.00** paid on 22/11/2017, by Wigwe through the account of his (Wigwe's) company known as Wageez Limited, to him through his account at Diamond (Access) Bank, Plc;
- (ii) The sum of **₦500,000.00** paid on 22/11/2017, through bank transfer by Wigwe through his personal account with GT Bank Plc to his (Defendant's) bank account at Diamond (Access) Bank;

- (iii) The sum of **₦10,000,000.00** paid through bank transfer by Wigwe through his personal account with GT Bank Plc to his (Defendant's) bank account at Diamond (Access) Bank;
- (iv) The cash payment of **₦44,700,000.00** paid to him by Wigwe in his (Defendant's) residence.

The Defendant tendered in evidence as **Exhibits D3, D3A and D3B** respectively, copies of text messages showing Credit Alert payments of the respective sums of **₦15,000,000.00** (from WAGEEZ); **₦500,000.00** (from Christian Wigwe) and **₦10,000,000.00** (from WAGEEZ), to further support his testimony that the Claimant paid the purchase price for the property to him through her President, **Mr. Christian Wigwe**.

The Defendant further testified that the Claimant did not exercise her right to acquire the property after

the expiration of the ultimatum of 21<sup>st</sup> May, 2018, in that thereafter, the Claimant, through her President and agent, that is the said **Mr. Christian Wigwe**, received payment of the sum of **₦20,000,000.00 (Twenty Million Naira)** only from him on 17<sup>th</sup> December, 2018, as part payment of the refund of the purchase price of the property. The Defendant testified that, as directed by the Claimant, the said refund was paid through the account of the said **Mr. Christian Wigwe**, at GT Bank Plc, from his (Defendant's) company account by name **Rojbel Services Nigeria Limited** domiciled with Zenith Bank Plc.

The Defendant *subpoenaed* the said Zenith Bank Plc, represented by her staff who testified as the **DW1**, to tender the Statement of Account of **Rojbel Services Nig. Ltd.** as **Exhibit D2**.

The said **DW2**, in his testimony, made reference to the transaction of 17/12/2018, on the Statement of Account, **Exhibit D2**, showing a debit narration of the sum of **₦20,000,000.00** in favour of **Wigwe Christian Chukwuka/GTB**.

The Defendant further testified that he held several meetings with the Claimant, through her said President, **Mr. Christian Wigwe**, at different occasions, which culminated in the deposit of the sum of **₦20,000,000.00**, which he claimed to have made through the said **Mr. Wigwe**, on 17<sup>th</sup> December, 2018; that at one of such several meetings called at the Claimant's instance, attended by him, one **Elijah Banny, Christian Wigwe**, Claimant's President and her acclaimed duly nominated representative; as well as one **Tamunotonye Ekundayo** (incidentally the Claimant's counsel in this suit), that the Claimant intimated him through her representatives that she was going to give her time to refund the balance of

**₦50,200,000.00** and that he should bring forward his repayment plan; that the Claimant asked him to make the refunds through the said **Mr. Christian Wigwe**.

The Defendant further testified that he was aware that the Claimant acknowledged the part-refund of the **₦20,000,000.00** he made, through the said **Mr. Christian Wigwe**, via a text message he sent to his wife's mobile phone with number **08033108427**.

The Defendant's wife also testified in support of the Defendant's defence. Her testimony is substantially a rehash of the depositions in the Defendant's *Statement on Oath*. The substance of her testimony is that she had the Defendant's authority to continue to negotiate with **Mr. Christian Wigwe**, with a view to resolving the matter of payment of balance of **₦50,200,000.00** to the Claimant; that in the course of their interaction with **Mr. Christian Wigwe**, they both exchanged text message, some of which she tendered as **Exhibit D4**.

The **DW2** also tendered in evidence as **Exhibit D5**, copy of letter dated 07/02/2019, written by the Claimant's Solicitors to **Mr. Christian Wigwe**, in which the dealings between the said **Mr. Wigwe** and the Defendant were termed as fraudulent. According to the **DW2**, it was the said **Mr. Wigwe** that sent to her a copy of the said letter, in which the Claimant further threatened to lay a criminal complaint against the said **Mr. Wigwe** and the Defendant for alleged offences of criminal breach of trust, conspiracy, cheating, etc.

The case of the Defendant is further that as a result of the letter, **Exhibit D5**, he held a meeting with **Mr. Christian Wigwe** and the Claimant's learned counsel, **Tamunotonye Ekundayo, Esq.**, at Zee Luxury Hotel, Durrumi, Abuja, where the issue of when the Defendant shall pay the balance of **₦50,200,000.00** to the Claimant was discussed.

The case of the Defendant is further that the Claimant, having received part payment of the refund of the purchase price for the property; and by her subsequent conduct, has waived her right to insist on the performance of the obligations contained in **Exhibit C3**; that she is not entitled to legal ownership of the property; and that he no longer has a time limit to pay the balance of the purchase price to the Claimant.

Now, in view of the defence put forward by the Defendant, the Court must now determine whether, on the basis of the evidence led on the record, the Claimant took any steps to negate or waive the clear obligations of parties *vide* **Exhibit C3**?

Evidence on record established that both parties were not in disagreement that as at 21<sup>st</sup> May, 2018, the date on which the option allowed the Defendant to make a refund of **₱70,200,000.00** in order to

redeem his property elapsed and expired, he had not made the said refund to the Claimant.

According to **clause 6 of Exhibit C3**, it is agreed by parties that in the event that the Defendant is unable to refund the purchase price of the property by the expiry date of 21<sup>st</sup> May, 2018; ***“and there being no written extension of time executed by all the parties thereto, the sale shall become absolute and the title to the property shall pass unto the purchaser (Claimant) without any further reference to the Vendor (Defendant) and without any other condition precedent.”***

According to **clause 6 of Exhibit C3**, the only other factor that would keep the interest of the Defendant in the disputed property alive was if or where there was a written extension of the time limit the Defendant was permitted to refund the purchase price to the Claimant. There is however no evidence of such a

written extension executed by both parties produced in evidence by either of the parties.

Under cross-examination by the Claimant's learned counsel, the Defendant testified as follows:

***“I now read paragraph 6 of Exhibit C3. I do not have a written extension of time because no one told me that I should write one.”***

At first, I should make the finding that the Conditional Sale Agreement, **Exhibit C3**, has not been impeached by the Defendant. As strange as the agreement may seem, its terms are clear and unambiguous. It is not shown to be illegal or against public policy. As such, this Court is bound to give effect to the wishes of the parties as set out in the contract. I so hold.

The position of the law, with respect to an agreement freely entered into by parties thereto, is restated by the Supreme Court in *Babatunde Vs. Bank of the North* [2011] LPELR-8249(SC), where it was held as follows:

***“The law is that written contract agreement freely entered into by the parties is binding on them. A court of law is equally bound by the terms of any written contract entered into by the parties. Where the intention of the parties to a contract is clearly expressed in a document, a contract agreement; the court cannot go outside that document to give effect to the intention of the parties. The general principle is that where the parties have embodied the terms of their contract in a written document, extrinsic evidence is not admissible to add to, vary, subtract from or contradict the terms of the written instrument”***

See also Cannitec Int’l Co. Ltd. Vs. Solel Boneh Nig. Ltd. [2017] 1 SC (Pt. III) 93 @ 104, cited by the Claimant’s learned counsel.

Now, even though the Defendant has not denied the existence or validity of the agreement he had with the Claimant contained in **Exhibit C3**; his defence in this

case is however premised on the contention that by her conduct, the Claimant had waived her right to insist on compliance with the crucial terms agreed to under the said agreement, **Exhibit C3**.

I had considered the totality of the evidence led by the Defendant on the issue of waiver and the totality of the legal arguments canvassed by the Defendant's learned counsel in this regard. It is contended on behalf of the Defendant that the Claimant waived her right to insist on the performance or execution of **clause 6 of Exhibit C3**, in that the Defendant paid the sum of **₱20,000,000.00** to her through her President, **Mr. Christian Wigwe**, as part payment of the refund of the purchase price of the property; which payment, according to learned counsel, the Claimant voluntarily received; and that by issuing the letter, **Exhibit D5**, the Claimant had admitted that **Mr. Wigwe** acted as her agent or representative and all the Claimant was interested in was claiming a refund of the money paid

to the Defendant for the purchase of the disputed property.

However, evidence on record does not support the contentions of the Defendant's learned counsel. Evidence revealed that the Claimant denied outright that she authorized the said **Mr. Wigwe** to receive any such money on her behalf.

In paragraph 13 of his additional *Statement on Oath*, the **CW1** deposed as follows:

***“That the Claimant was not aware of any payment allegedly made to the Claimant through Mr. Christian Chukwuka Wigwe and the same was not brought to the attention of the Claimant either by the Defendant or Mr. Christian Chukwuka Wigwe.”***

I have examined all the pieces of documentary evidence tendered by the Defendant tending to show that he paid the sum of **₦20,000,000.00** to **Mr. Christian Wigwe** on 17/12/2018. The Defendant,

through his witness, tendered the statement of account of one **Rojbel Services Nigeria Ltd., Exhibit D2**, which reflected that on 17/12/2018, a certain sum of **₦20,000,000.00** was deposited into the account of **Wigwe Christian Chukwuka**. I must agree with the analysis of the Claimant's learned counsel, to the effect that apart from orally stating that he made the said payment of **₦20,000,000.00** to the said **Mr. Wigwe**, through the account of *Rojbel Services Nigeria Limited*, the Defendant however led no credible evidence of his said relationship with the said company, apart from tendering the company's statement of account. In short, even though the Defendant claimed that he was a Director in the said company, he however led no credible evidence of his connection or link to the company.

Again, the narration of 17/12/2018, as reflected in the statement of account of the said company, **Exhibit D2**, apart from merely showing that the said account

was debited with the sum of **₦20,000,000.00** in favour of **Wigwe Christian Chukwuka**, the purpose for which the money is paid is not reflected in the statement of account, as correctly submitted by the Claimant's learned counsel.

I have also examined the totality of **Exhibit D4**, tendered by the Defendant's wife, the **DW2**, purporting to be transcript of text messages exchanged between the said **Mr. Wigwe** and her. There is nothing in the messages that categorically confirmed that the Defendant paid the sum of **₦20,000,000.00** to the said **Mr. Wigwe** as agent or representative of the Claimant or the purpose for which the money was paid. In one of the text messages credited to the said **Mr. Wigwe**, he stated as follows:

***“You see my fear all these while I was talking about the transaction and now Mene has been sacked and the board now is entirely a strange one and I have***

*been made a liar to the organization, my reputation is already impugned.”*

Only **Mr. Wigwe** could have explained what he meant by the statement he made in that text message.

The said **Mr. Wigwe** also forwarded the letter written to him by the Claimant, **Exhibit D5**, vide the WhatsApp platform to the said **DW2**; and the Defendant’s learned counsel had contended that this letter, **Exhibit D5**, confirmed that the said **Mr. Wigwe** acted for the Claimant in receiving part-payment of the refund of purchase price for the property.

The Claimant denied receiving any money from the said **Mr. Wigwe** and disowned the role purportedly credited to him by the Defendant with respect to the issue of receiving the purported part-payment of **₦20,000,000.00**.

It is sensible and in tandem with the law, to reason that payment of money meant for a party but which

was purported to have been passed through a third party cannot be accepted as payment to the party for which it is meant; except there is clear evidence of receipt of the money by the party for which the money is meant. That is the situation in the present case. The Defendant claimed to have paid the sum of **₦20,000,000.00** to the Claimant through **Mr. Wigwe**. But there is no evidence on the record, either that **Mr. Wigwe** had the authority of the Claimant to solely receive money on her behalf from the Defendant; or that she indeed received the money from **Mr. Wigwe**. In that circumstance, in the absence of any evidence establishing that the Claimant received the said sum of **₦20,000,000.00** from the Defendant, either directly or through **Mr. Wigwe**, I must hold that the Defendant has failed to prove the defence he tried to set up, of making a part-payment of the refund of the purchase price of the property to the Claimant.

I draw a corollary from the evidence of the Defendant to the extent that the purchase price of the sum of **₦70,200,000.00** was paid to him in tranches through the same **Mr. Wigwe**; and not directly by the Claimant. This evidence was led to suggest that in the same vein, it was not strange or abnormal or out of place for the Defendant to pay the sum of **₦20,000,000.00** to the Claimant through **Mr. Christian Wigwe**.

But then, evidence on record revealed that the sum purportedly paid by the Claimant to the Defendant, through **Mr. Wigwe**, for the purchase of the property in dispute, was formally acknowledged by the Defendant, vide a written acknowledgment, **Exhibit C6**, issued by him on 22<sup>nd</sup> February, 2018.

But conversely, the Defendant is unable to put forward any credible evidence of acknowledgment of the said sum of **₦20,000,000.00** which he claimed to

have paid to the Claimant through **Mr. Wigwe**. In the absence of any such evidence of formal acknowledgment, the Court cannot infer from the weak evidence adduced by the Defendant that he indeed made any such payment to the Claimant. I so hold.

Again, the Defendant curiously testified that that **Mr. Wigwe** received the said sum of **₦20,000,000.00** from him upon the Claimant's instructions; and that the Claimant voluntarily accepted the payment from him. However, he was unable to provide any cogent evidence of such instructions given by the Claimant to **Mr. Wigwe**; or voluntary receipt of the payment.

I am mindful that the Claimant is a corporate entity. As such, her communication and transactions could only have been conducted in writing, as it is the pattern with respect to her transaction with the Defendant for the purchase of the property in dispute. In the absence

of such written communication between the two parties, the Court cannot rely on the oral testimony of the Defendant as proof of his contention that the Claimant received any payment from him. I so hold.

Again, the Claimant tendered in evidence, **Exhibit C16**, by which she nominated both the said **Mr. Wigwe** and **Tamunotonye Ekundayo, Esq.**, as representatives of the Claimant to oversee a peaceful handover of the property by the Defendant to the Claimant. As such, any payment purportedly made by the Defendant to the Claimant, not jointly formally acknowledged by both **Mr. Christian Wigwe** and **Tamunotonye Ekundayo, Esq.**, could not be accepted as valid payment to the Claimant. I so hold.

It is trite law that he who asserts the positive must prove the same. See s. **131(1)** of the **Evidence Act**. See also *Okafor Vs. Ezenwa* [2002] 13 NWLR (Pt. 784) 319 @ 334 Paras. E-F.

Now, flowing from the analysis of the evidence led by the Defendant as I had undertaken in the foregoing, it is my view that the minimum the Defendant ought to have done in the circumstances of this case, in order to prove that he paid the sum of **₦20,000,000.00** to the Claimant through **Mr. Wigwe**, who the law regards as a stranger to the agreement between the two parties, in the absence of a written acknowledgment, was to have called the said **Mr. Wigwe** as a witness in this suit to corroborate his oral testimony. But he failed to do so.

As correctly canvassed by the Claimant's learned counsel, whoever desires to have judgment in his favour must establish his case on a preponderance of evidence. See Onovo Vs. Mba [2014] 5-6 SC (Pt. 4) 170.

As such, in the absence of a written acknowledgment of the said sum of **₦20,000,000.00** by the Claimant;

or any other cogent and credible evidence that she received the said sum from the Defendant, the Court hereby hold that the Defendant has failed to establish that he paid any amount of money whatsoever to the Claimant as part-refund of the purchase price of the property in dispute.

The well known position of the law is further that where a party alleges the existence of an oral agreement, which is a unique method and procedure he must give credible evidence as to the modalities of such agreement. In other words, a party alleging oral agreement is duty bound to prove such an agreement to the hilt. See Odutola Vs. Papersack Nig. Ltd. [2007] All FWLR (Pt. 350) 1214 @ 1233.

In the present case, the Defendant merely testified orally that the Claimant authorized **Mr. Wigwe** to act as her agent to dialogue with him with respect to receiving refunds from him, but failed to tender any

document evidencing such arrangement between the parties. As such, the totality of the oral evidence given by the Defendant of the role played by **Mr. Wigwe** and how he represented the Claimant with respect to the dialogue they both had on the repayment issue cannot be relied upon without the presence of the said **Mr. Wigwe** to clear the air on all that the Defendant and the **DW2** had attributed to him. I so hold.

Learned counsel for the Defendant had cited a gamut of well known authorities with respect to the trite principle of waiver. What is paramount is that in order for the principle to apply in any set of facts, evidence of abandonment of a known legal right by the conduct of a party must be established or apparent on the record. See NPA Vs. Aminu Ibrahim & Co. [2018] 12 NWLR (Pt. 1632) 62 @ 88; Mayeun Vs. Gov., Lagos State [2011] 2 NWLR (Pt. 1230) 154 @ 170, cited by the Defendant's learned counsel.

The concept of waiver was also lucidly espoused by **Tobi, JCA** (as he then was), in Caribbean Trading and Fidelity Corporation Vs. NNPC [1992] 7 NWLR (Pt. 252) 161, @ 185, where his Lordship postulated as follows:

*“Waiver carries some element of abandonment of a known legal right. By his conduct, the person gives a clear impression that he is not ready to pursue his legal right in the matter. He may not say so in specific words. He may not say so at all. But once his conduct shows that trend, a court of law will hold that he has waived his right. ...”*

I have carefully scrutinized the totality of the evidence led on record by both sides, but I am unable to find any such evidence tending to establish the contention of the Defendant’s learned counsel of the presence of any conduct amounting to waiver or abandonment of the Claimant’s legal rights in the instant case. The document, **Exhibit C16**, which was issued by the

Claimant few days after the effluxion of the date the Defendant was allowed to refund the purchase price of the property; and by which the Claimant nominated representatives to interface with the Defendant with a view to ensuring peaceful handover of the property to the Claimant, was one of the positive steps taken by the Claimant to recover the property from the Defendant.

Again, the Claimant issued the letter, **Exhibit C8**, on 5<sup>th</sup> June, 2018, authorizing her Solicitors to take legal steps to recover the property from the Defendant. The **CW1** also tendered the documents, **Exhibits C9, C10** and **C13**, which were respective notices issued by the Claimant's Solicitors to the Defendant to deliver vacant possession of the premises; and Civil Plaint issued by the Claimant's learned counsel, against the Defendant, in order to recover the property.

The Defendant's learned counsel hammered vehemently on a particular meeting purported to have been held on 28<sup>th</sup> March, 2019, between the Defendant **Mr. Wigwe**, one **Mr. Banny** and **Tamunotonye Ekundayo, Esq.**, where, according to the Defendant, the Claimant's representatives intimated him of the Claimant's willingness to allow him refund the balance of the purchase price of the sum of **₦50,200,000.00** and that he should provide his repayment plan.

The Claimant, on the other hand, maintained that the said meeting was held as part of further attempts to ensure that possession of the disputed property was peacefully handed over to the Claimant without recourse to further litigation.

Even though the **CW1**, who gave evidence on the purport of the said meeting agreed that he was not present at the meeting and as such whatever evidence

he rendered thereupon would amount to hearsay; nevertheless, I am not satisfied that the oral evidence led by the Defendant as to what transpired at the meeting was credible considering the totality of the circumstances of the case. Court processes, **Exhibits C13** and **C14** respectively, which were documentary evidence of the pendency of a civil action filed by the Claimant against the Defendant to recover the property, at the material time when the said meeting of 28<sup>th</sup> March, 2019, was held, clearly contradicts the purpose attributed by the Defendant to the meeting. As a matter of fact, the Defendant filed the motion, **Exhibit C14**, on 4<sup>th</sup> April, 2019, contending that the District Court lacked jurisdiction to entertain the suit and thus urging the Court to strike out the action.

In my view, it does not stand to reason that after both parties had agreed that the Defendant should submit a repayment plan for the payment of the balance of purchase price of the property in dispute, in the sum

of **₦50,200,000.00**, at the meeting held on 28<sup>th</sup> March, 2018, as suggested by the Defendant; the same Defendant would soon after proceed to file a motion a District Court to urge the Court to strike out the Claimant's suit seeking to pursue the recovery of her property from him, on grounds of lack of jurisdiction. I so hold.

I am not unmindful of the position of the law that an unrecorded resolution at a meeting may be proved by parol evidence. See Nsirim Vs. Omuna Const. Co. Ltd. [1994] 1 NWLR (Pt. 318) 421. However, in the circumstances of the present case, admissible parol evidence of what transpired at the said meeting of 28<sup>th</sup> March, 2019, referred to by the Defendant is evidence of those who attended the meeting. I so hold.

However, the Defendant failed to call any of the persons he mentioned as having attended the meeting

with him to give evidence of what transpired at the meeting and the resolutions agreed upon.

The Defendant's learned counsel also vigorously argued that **Exhibit D5**, tendered by the **DW2**, the Defendant's wife, copy of letter written by the Claimant's Solicitor to **Christian Chukwura Wigwe**, confirmed that the said **Mr. Wigwe** acted as the Claimant's representative and that the letter is evidence that the Claimant was interested in receiving refund of the purchase price for the property.

At first, it must be borne in mind that the letter was a communication between the Claimant's Solicitor and **Mr. Wigwe**. For that reason, only the said Claimant's Solicitor and **Mr. Wigwe** could validly testify on the said letter.

That aside, I noted that the Defendant's learned counsel had attempted to give the letter his own slanted interpretation, by suggesting that the letter

gave **Mr. Wigwe seven (7) days** of the date of the letter to refund the “**purchase price.**”

But the letter, dated 07/02/2019, spoke for itself. Therein, the Claimant’s Solicitor accused **Mr. Wigwe** of diverting the sum of **₦120,000,000.00**; and that he had fraudulent dealings with the Defendant. He and the Defendant, in the letter, were threatened to be slammed with criminal charges of Criminal Breach of Trust; Conspiracy; Fraud and Cheating. The said **Mr. Wigwe** was then, by the letter, given **seven (7) days** to refund the “**diverted funds.**”

The letter did not make reference specifically to the transaction between the Claimant and the Defendant and no “purchase price” was also mentioned in the letter, contrary to the misleading contention of the Defendant’s learned counsel.

More importantly, by the said letter, **Mr. Wigwe** was asked to refund a certain sum of **₦120,000,000.00**

he was alleged to have diverted. There is nothing in the letter that suggested that the sum of **₦120,000,000.00** purportedly diverted by **Mr. Wigwe**, included the sum of **₦20,000,000.00** the Defendant claimed to have paid to the Claimant through **Mr. Wigwe**. I so hold.

My view is that the letter, **Exhibit D5**, does not in any way portray the Claimant as having accepted to receive a refund of the purchase price of the property from the Defendant. If anything, by the letter, the Claimant, through her Solicitor, accused **Mr. Wigwe** of conspiracy with the Defendant to defraud her. I so hold.

In the circumstances, I totally disagree with the contentions of the Defendant's learned counsel that **Exhibit D5** constitutes evidence of waiver of the Claimant's right to recover possession of the disputed plot.

With due respects to the Defendant's learned counsel, the principle or concept of waiver is totally inapplicable in the circumstances of this case, as it is shown, by credible evidence led on the record, that the Claimant has actively demonstrated her firm intent to claim the property she bought from the Defendant. At no time, in the course of the engagement between the two parties, as the evidence on record revealed, did the Claimant sleep on or abandoned her right to lay claim to ownership of the property in dispute. I so hold.

I have also noted the submissions of the Defendant's learned counsel that the Claimant, having claimed declaratory reliefs, must succeed on the strength of her own case and not on the weakness of the Defendant's case.

The Court is mindful of the position of the law that in an action in which the Claimant claims declaratory

reliefs, he has a bounden duty to lead credible evidence in proof of the declaration sought from the Court. The implication is therefore that, whether or not the Defendant filed a defence, the focus of the Court will be on the evidence adduced by the Claimant in support of his claim; but that the Claimant will be permitted to take advantage of the weakness in the Defendant's case, only where such weakness supports his case. See Gambo Vs. Turdam [1993] 6 NWLR (Pt. 300) 500; Uchendu Vs. Ogbuni [1999] 1 NWLR (Pt. 603) 337; Dumez Nigeria Ltd. Vs. Nwakhoba [2009] All FWLR (Pt. 461) 842.

In the present case, I am firmly satisfied that the Claimant has clearly established the following state of affairs, viz:

1. That both parties in this suit voluntarily and willingly entered into the Conditional Sale Agreement, **Exhibit C3**, on 22<sup>nd</sup> February,

2018; by which the Defendant accepted the sum of **₦70,200,000.00** from the Claimant for the sale of his property described supra to her with the *proviso* that the sale will become void and ineffectual should the Defendant refund the purchase price to the Claimant, not later than 21<sup>st</sup> May, 2018.

2. That the Defendant failed to take advantage of the option to buy back his property from the Claimant by failing to make the said refund within the agreed period.
3. That parties did not extend, in writing, time for the Defendant to make the refund at a future date.
4. That the Defendant is unable to prove that the Claimant received part payment of **₦20,000,000.00** of the said purchase price

purported to have been paid through **Mr. Christian Wigwe**.

5. That the Claimant is not shown to have conducted herself in any way to suggest that she waived her right to enforce **clause 6 of Exhibit C3** by which right to ownership of the property in issue passed to her.
6. That whilst the Defendant flatly failed to take advantage of the window given to him to buy back his property by paying back the sum of **₦70,200,000.00** purchase price to the Claimant; he continued, unconscionably so, to hold on to possession and occupation of the property for which he had received and taken benefit of consideration.

Having found the foregoing firmly established, I hereby resolve the sole issue formulated in the foregoing against the Defendant.

The necessary legal implication of the findings and determinations of the Court in the foregoing is that the Defendant became a trespasser on the disputed property, as from 21<sup>st</sup> May, 2018, having failed to take advantage of the window of opportunity given to him to repurchase the property.

The position of the law is trite that proof of title is about the best way to obtain relief in an action for trespass to land. In Carrena Vs. Akinlase [2008] 14 NWLR (Pt. 1107) 262, the Supreme Court held that a person who has title over a piece of land, though not in *defacto* physical possession, is deemed, in the eyes of the law, to be the person in possession; for the reason that the law attaches possession to title and ascribed it to the person who has title. See also Mogaji Vs. Cadbury Nig Ltd. [1985] 2 NWLR (Pt. 7) 393 SC.

In the instant case, the clear evidence on record is that by operation of law and agreement of parties, the Claimant became the owner of the property in dispute, having purchased the same from the Defendant. The Defendant ingloriously admitted his persistent trespass on the property by continuing to remain in possession thereof, whereas he had taken benefit of the purchase price of the property, for over three years.

Without any further ado, I hereby further hold that the Claimant has clearly established her claim of trespass against the Defendant in this suit and is therefore entitled to be granted **relief (3)** of her claim in that regard.

The Claimant has also prayed for an order of perpetual injunction against the Defendant in this case. The law is trite that where a claimant successfully establishes his right to title of a parcel of land, it is

appropriate, even where it is not specifically prayed for, to grant perpetual injunction in order to prevent continuous or permanent infringement of the rights declared in his favour by the Court. See Oyedoke Vs. The Reg. Trustees of C.A.C. [2001] 3 NWLR (Pt. 701) 621; Rector, Kwara Poly. Vs. Adefila [2007] 15 NWLR (Pt. 1056) 42.

I am therefore in no difficulty to grant the Claimant's relief for perpetual injunction.

With respect to the Claimant's claim for the sum of **₦30,000,000.00 (Thirty Million Naira)** only as damages for trespass against the Defendant, I bear in mind that a claimant for damages for trespass need not prove actual damage since trespass is actionable *per se*. See Akunyili Vs. Ejidike [1996] 5 NWLR (Pt. 449) 381.

In the circumstances, the Claimant's entitlement to general damages to compensate her for the

Defendant's persistent refusal to deliver up possession of the property she lawfully purchased from him is clearly well founded. I so hold.

I have also noted the submissions of the Claimant's learned counsel as to the Claimant's entitlement to recover Solicitors fees of the sum of **₦5,000,000.00 (Five Million Naira)** only.

By my understanding, a claim for payment of Solicitor's fees must be based on or must proceed from a clear agreement by both parties to so bear such fees in the event that the transaction between them results in litigation. It is in a sense, a claim in special damages.

In my view, tendering of the receipt **Exhibit C12**, by the **CW1**, to show that the Claimant paid the sum of **₦5,000,000.00** to her Solicitors as professional fees, without more, cannot be sufficient to substantiate the claim for payment of professional fees. The Claimant

must go further to establish by evidence that both parties agreed that the Defendant must bear the burden of Solicitor's cost of the action in the event that the Claimant was compelled to take out an action to recover the property in dispute from him. No such understanding is expressed in **Exhibit C3**, the Conditional Sale Agreement, or elsewhere.

Nevertheless, the Court of Appeal, considering an appeal on a claim for payment of professional fees, in the case of Guinness Nigeria Plc. Vs. Nwoke [2001] FWLR (Pt. 36) 981, held @ page 998, per **Ibiyeye, JCA** (as he then was) as follows:

***“It is also unethical and an affront to public policy to pass on the burden of solicitor's fees to the other party***

***.....I am of the strong view that this type of claim is outlandish to the operation of the principle of special damages and it should not be allowed.”***

See also Nwanji Vs. Coastal Services (Nigeria) Limited [2004] All FWLR (Pt. 219) 1150; which followed the decision in the case of Ihekwoaba Vs. A. C. B. Limited [1998] 10 NWLR (Pt. 570) 590 @ 610 - 611, where it was held, per **Uwaifo JCA** (as he then was), that:

***“The issue of damages as an aspect of solicitor’s fees is not one that lends itself to support in this country. There is no system of costs taxation to get a realistic figure.....I do not therefore see why the appellant will be entitled to general or any damages....in the present case, on the ground of solicitor’s costs paid by him.”***

So then, it will not matter, whether the Claimant claimed for solicitor’s fees as an item of special damages or as a mere claim for costs. To entertain such a claim will run counter to the demands of public policy. Accordingly I hereby refuse the relief for Solicitor’s fees.

As I draw the curtains on this judgment, it is considered pertinent that I remark the inappropriateness of the Claimant's learned counsel, **Tamunotonye Ekundayo, Esq.**, to have appeared as lead learned counsel for the Claimant in the proceedings this suit. It is apparent, as the evidence on record revealed, that learned counsel played some active roles in the transaction between the two parties, particularly relating to claims made by the Defendant that learned counsel was part of a certain meeting at which a purported controversial decision was made; thereby making learned Claimant's counsel a potential witness in this suit.

In such circumstances, beyond rendering professional services that are not controversial, where facts put forward by parties in a case tend to expose learned counsel as a potential witness, learned counsel ought to refrain from or avoid direct appearance as counsel in the suit.

Although, in the present case, the Claimant's learned counsel escaped being invited by the Defendant to give evidence in this case; I must however, sound a note of caution that such practices should be avoided by legal practitioners.

In the final analysis, I find merit in the Claimant's claim and the same hereby succeeds in substantial part. I hereby enter judgment in favour of the Claimant against the Defendant on terms set out as follows:

- 1. It is hereby declared that the Claimant, by virtue of a Conditional Sale Agreement coupled with payment of purchase price, acquired equitable title over B73, Flat 1, 22<sup>nd</sup> Street, Zone B, Gudu, Apo, Abuja, covered by certificate of occupancy No. 14d2w-14c5f-5dc0r-12156-10 dated 6<sup>th</sup> September, 2007.***
- 2. It is hereby further declared that the Claimant is entitled to vacant possession of B73, Flat 1, 22<sup>nd</sup> Street, Zone B, Gudu, Apo, Abuja, covered by***

**certificate of occupancy No. 14d2w-14c5f-5dc0r-12156-10 dated 6<sup>th</sup> September, 2007.**

- 3. It is hereby further declared that the Defendant became a trespasser on the property from 22<sup>nd</sup> May, 2018, being the day after the sale became absolute up until the date vacant possession is recovered from him.**
- 4. An order of mandatory injunction is hereby issued, directing the Defendant forthwith, to deliver the vacant possession of B73, Flat 1, 22<sup>nd</sup> Street, Zone B, Gudu, Apo, Abuja to the Claimant.**
- 5. An order of perpetual injunction is hereby further issued restraining the Defendant, his servants, agents and privies from trespassing into the Claimant's property know and called B73, Flat 1, 22<sup>nd</sup> Street, Zone B, Gudu, Apo Abuja or in any other manner whatsoever from disturbing, interrupting and interfering with the Claimant's peaceful and quiet possession of the said property described supra.**

6. *I award general damages in the sum of **₦5,000,000.00 (Five Million Naira)** only in favour of the Claimant against the Defendant for trespass.*
  
7. *I award costs of this action, in the sum of **₦500,000.00 (Five Hundred Thousand Naira)** only, in favour of the Claimant against the Defendant.*

**OLUKAYODE A. ADENIYI**

*(Presiding Judge)*

**16/12/2021**

**Legal representation:**

**Tamunotonye Ekundayo, Esq.** – (with **S. M. Nwosu, Esq.**)  
– *for the Claimant*

**C. S. Ekeocha, Esq.** – *for the Defendant*