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

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT ZUBA, ABUJA

ON FRIDAY THE 23RD DAY OF FEBRUARY, 2024

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

SUIT NO.: FCT/HC/CV/1223/2015

BETWEEN:

MISS MAY CHINWE OBI ------ PLAINTIFF
(Suing by her next friend
Georgina Ehuriah)

AND

1. AJ'S PLAYGROUP FOUNDATION
2. AJ'S PLAYGROUP NURSERY & PRIMARY SCHOOL
3. MRS. HELECOTT VIRTUE BLANKSON
4. SENATOR BASSEY HENSHAW

} DEFENDANTS

.

JUDGMENT

Miss May Chinwe Obi who is the Plaintiff was a Civil Servant and staff of Ministry of Police Affairs. She sued the Defendants - AJ's Playgroup Foundation, AJ's Playgroup Nursery and Primary School, Mrs. Helecott Virtue Blankson and Senator Bassey Henshaw.

According to the plaintiff the 3rd Defendant approached the Plaintiff and offered to sell a portion of land at Plot 150 E which is a portion of a large parcel of land situate at Plot

150 CAD Zone 6 Maitama District Abuja which was granted vide a Right of Occupancy number FCT/ABU/MISC/5702 to the plaintiff to purchase.

The Plaintiff conducted search over the property through her lawyer and the search report showed that it was free from all encumbrances. Based on that the Plaintiff accepted the offer and commenced negotiation with the 3rd Defendant. Meanwhile, the 3rd Defendant presented itself as a king for the 1st and 2nd Defendants. The agreed purchase price was ₦4, 000,000.00 (Four Million Naira). The Plaintiff paid they said money ₦4, 000,000.00 (Four Million Naira) via Citizens Bank Cheque on 26th July, 1999 for the plot 150 I E - herein after called the Res. The 3rd Defendant acting on behalf of the 1st and 2nd Defendant put the Plaintiff in possession after she redesigned the survey plan in order to and actually isolated the said plot 150 I E - the Res from the remaining plots of land in the large plot. Plot 150 I CAD Zone A6. The Deed of Irrevocable Power of Attorney was donated to the Plaintiff and in her favor.

Most unfortunately, the Plaintiff subsequently suffered a stroke while the Irrevocable Power of Attorney was been processed for registration. She was flown to USA for treatment. She spent 10 years battling for her life and later partially recovered and returned to Nigeria. Then she went to find out about the said Res so that she can develop same and return to it as a retirement plan. To her shock and chagrin she realized that someone else had commenced construction of building on the said Res. She naturally confronted the 3rd Defendant and the 3rd Defendant confessed to her that she saw the land to another person on the belief that she the Plaintiff have died. The 3rd Defendant refused to disclose the name and identity of the person she sold the Res to. She offered to refund the Plaintiff of the money she paid for the purchase of the Land which is ₦4,

000,000.00 (Four Million Naira). The Plaintiff outrightly rejected and refused the offer because the market value of the Res then was about N350, 000,000.00 (Three Hundred and Fifty Million Naira). The Plaintiff made several efforts to stop the trespasser but the trespasser who turn out to be the 4th Defendant continued to construct on the said land. The FCDA - Department of Development Control even marked the Res all to dissuade the continued trespass by the 4th Defendant. But the 4th Defendant ignored that but continued the construction. The Plaintiff as a law abiding citizen shunned self help and resorted to seeking redress in Court. She contacted her Counsel, Iheukwumere Esq. and instructed him to file the present Suit. He did and sought the following Reliefs:

A. A Declaration that the Plaintiff is entitled to a Statutory Right of Occupancy over that piece/parcel of land known as plot 150IE of plot 150I Cadastral zone a Maitama Abuja.

B. A Declaration that the purported sale of the said plot 150I Cadastral Zone A6 Maitama Abuja to the 4th Defendant by the 1st – 3rd Defendants is null and void.

C. An Order directing the Defendants to desist forthwith from act of trespass on to the said plot 150IE.

D. General Damages of N100, 000,000.00 (One Hundred Million Naira) only for all the delays, pains and trauma caused to the Plaintiff by the act of the Defendants.

The Plaintiff called two (2) Witnesses. PW2 the next friend of the Plaintiff - Georgina Ehuriah now retired Permanent Secretary and Badarinwa Babawale - PW1. They testified.

The testimony of the PW1 was that he accompanied the next friend of the Plaintiff - PW2 to inquire about the identity of the trespasser who purchased this said Res. They went to the 3rd Defendant to inquire about the person who was constructing on the Res. He testified that the 3rd Defendant refused to disclose that but that she told them that:

> **"I thought the Plaintiff is dead so I resold the plot to another person in 2010. That her lawyer who asked her to sell the land had put her in trouble."**

That the 3rd Defendant agreed to meet with them at a later date. The 1st – 4th Defendants never challenged that oral testimony as they did not Cross-examine PW1 on that statement made by the 3rd Defendant.

On the part of the PW2 - Georgina Ehuriah, the next friend of the Plaintiff, she testified and tendered several documents, **EXH 1 - EXH 8.** The said exhibits are as follows:

1) Draft of Citizen Bank.

2) Official receipt of A.J Group dated 30th July, 1999.

3) Right of Occupancy.

4) Letter from Maria Mayaki & Co. and stamp duty of Power of Attorney.

5) Letter from Cross-Check Solicitors dated 7th April, 2014; 23rd April, 2014 and 21st April, 2015.

6) Pictures of the Res.

7) Medical Report from University of Lagos Teaching Hospital.

8) Letters from St. Nicholas Hospital Lagos dated 15th August, 2002.

PW1 later tendered **EXH 9** - CAC Report on Directors of the 1st & 2nd Defendants.

The highlights of the case of the Plaintiff are as follows:

That she acquired the land from the 2nd Defendant acting through the 3rd Defendant unconditionally.

That the 4th Defendant's Power of Attorney being unregistered shows only equitable title which is the subject of the equitable interest of the Plaintiff having been created first in time. By virtue of the Maxim **Qui Prior est tempore potior est jure** is applicable in this case as the Plaintiff is first in time in this case having purchased the land earlier than the 4th Defendant.

That the subsequent sell of the same Res to the 4th Defendant was invalid as the 2nd Defendant had nothing to transfer or sell to the 4th Defendant as at the time before the 4th Defendant purportedly purchased the Res as the maxim of or based on the maxim of **neno dat quod non habet.**

The 2nd Defendant cannot give what it does not have.

That by the circumstances of the case the 4th Defendant does not qualify as a bonafide purchaser for value without notice as he did not acquire any superior estate to that of the Plaintiff.

And that the sale to the 4th Defendant was tinted with fraud having been purportedly done by the same person who earlier sold to the Plaintiff and had hidden the identity of the 4th Defendant from the Plaintiff.

In the Written Address by the Plaintiff she raised 2 Issues for determination which are:

(1) Whether the Plaintiff has proved that she duly bought the property in dispute from the 2nd Defendant.

(2) Whether the 4th Defendant qualifies as a bonafide purchaser for value without notice of encumbrances.

On issue number 1 the Plaintiff submitted and answered in the positive stating that she has proved that she purchased the Res from the 2nd Defendant of PW1 and PW2 and the documents the tendered in support.

That evidence of the purchase of the Res for ₦4, 000,000.00 (Four Million Naira) is undisputed. So also the evidence of the Power of Attorney executed in her favor as shown in EXHs 1, 2 and 4. That the facts are uncontroverted and need no further proof. The referred to **Section 123 of the Evidence Act.**

That she showed that she paid for the Res - ₦4, 000,000.00 (Four Million Naira). That the Defendant/vendor did not challenge those facts.

That contrary to the statement and testimonies of the Defendant's Witnesses that two of the Directors of the 2nd Defendant signed the Power of Attorney given to the Plaintiff by the Defendants.

That by **EXH 1, 2 & 4** shows the transaction between the Plaintiff and Defendants were unconditional contrary to what the Defendants were postulating. That the Defendants did not even prove that the Sale was conditional. That the 3rd Defendant who testified as DW2 admitted that fact. That the documents – **EXH 1, 2 & 4** were not contradicted and were not altered by oral evidence of DW1 & DW2. She urged Court to hold that the submission of the 1st – 3rd Defendants that the sale was conditional should be discountenanced as their submissions are irrelevant and inadmissible.

That the testimony of the 3rd Defendant as to conditional sale was not substantiated or corroborated by any material facts. Hence, it does not fall within the exception to **S. 128 of the Evidence Act.**

That there was no resolution passed by the 2nd Defendant to that effect. That the 2nd Defendant did not show any evidence that it rejected the sale/transaction. That the purchase price was paid to the 2nd Defendant and not to the 3rd Defendant and it accepted the money and acknowledged same. That **EXH 8** shows that the transaction was approved by and endorsed by May with the Directors of Defendants. That 2nd Defendant donated the Powers of Attorney to the Plaintiff and in her favour. That the Defendants did not challenge **EXH 8.** That parties are therefore bound by the agreement/contract they have entered into.

On all these the Plaintiff referred and relied on the following cases:

Segun V. State
(2022) 6 NWLR (PT. 1826) 386 SC

UNIC Ltd V. UCIC Ltd
(1999) 3 NWLR (PT 593) 17

M.F Kent (NA) Ltd V. MartChem Ind. Ltd
(2000) 8 NWLR (PT. 669) 459

Odiwe V. NNajei
(2000) 4 NWLR (PT. 651) 86

Nnubia V. A-G Rivers
(1999) 3 NWLR (PT. 593) 82

Ecobank PLC V. Monye
(2022) 4 NWLR (PT. 1820) 347

BFI Group V. Bureau of Pub. Ent.
(2012) 18 NWLR (PT. 1332) 209

They urged Court to so hold and grant Relief A and resolve the Issue No. 1 in Plaintiff's favour.

On Issue No. 2 – Plaintiff as Bonafide purchaser of value, the Plaintiff submitted that she is a bonafide purchaser of value having purchased the land unconditionally for value which is ₦4, 000,000.00 (Four Million Naira). That the Plaintiff is first in time and the 4th Defendant is not qualified to be purchaser of value as he came later when the 2nd Defendant had nothing to sell, having sold to the Plaintiff first. That the 4th Defendant cannot therefore dislodge the Plaintiff's title over the Res.

That the Plaintiff title is not affected by Larches and Acquiescence as the 4th Defendant never raised that at trial of the case or in its pleadings too, Statement of Oath and as such it is not part of their evidence in this case. He urged Court to discountenance that point as well as the cases cited in support of that principle. He relied on the cases of:

Nigeria Construct Ltd V. Okugbeni
(1987) 4 NWLR (PT. 67) 787

Mallam Yusuf Olagunji V. Chief Adesoye
(2009) 9 NWLR (PT. 1146) 225

Sunday V. State
(2018) 1 NWLR (PT. 1422) 221

That the evidence of the 4th Defendant does not support those principles and the 4th Defendant did not prove that either.

That as 2012 the 4th Defendant was still constructing on the land and all attempt to make him stop failed. That the

Plaintiff proved that by the marking made on the wall by Federal Capital Development Authority (FCDA) for the 4th Defendant to stop work but the 4th Defendant ignored that fact. That the Plaintiff tendered document to prove that. Again, that the 3rd Defendant refused to disclose the identity of the 4th Defendant also. That the 4th Defendant was challenged by the Plaintiff and made aware of his wrong by that because he was a trespasser. By that he was stopped acting as under mistaken belief. He referred to the case of:

Jiwill V. Dimlong
(2002) LPELR – 7083 (CA)

That the doctrine of proportional estoppels does not avail the 4th Defendant. Even where it does, it avails him as a shield. That victim of such estoppels is entitled to compensation, re-conveyance. So also the doctrine of adverse possession as he claimed to have come into the land by right and not by the hostile occupation. Most importantly, that the Plaintiff was not caught by doctrine of statute limitation in bringing this Suit. He relied on the cases of:

Davies V. Ajibona
(1994) 5 NWLR (PT. 343) 234

Maduma V. Jambo
(2001) 15 NWLR (PT. 736) 461

That the 4th Defendant did not prove that he is a bonafide purchaser of value without Notice, an onus which is incumbent on the 4th Defendant to prove. Hence, the 4th Defendant has the notice of the Plaintiff's interest in the Res before he purchased it because the Plaintiff was put into (effective) possession. That the 4th Defendant did not acquire any legal Estate in the Res. That the sale of the Res

to the 4th Defendant is tainted with fraud and the 4th Defendant did not acquire any Estate of any kind.

That the 1st – 3rd Defendants failed to challenge the claim of Plaintiff that she was put into possession after she paid for the value of the Res. Hence, the failure amounts to admission of that fact.

They urged Court to resolve Issue No. 2 against the 4th Defendant and in the negative and in favour of the Plaintiff by holding that the 4th Defendant is not a purchaser of value and that he is not qualified as such and has not proved so.

The Plaintiff urged Court to enter Judgment in her favour and award Exemplary Damages against the 1st – 3rd Defendants.

On their part the 1st – 3rd Defendants claimed that the 3rd Defendant was only a Trustee of the 1st & 2nd Defendants and could not take decision without the Board resolution and without the Board of Trustees ratification.

That the 3rd Defendant made the fact clear to the Plaintiff that the money she paid may be refunded if the Board does not ratify/approve the deal. That the 3rd Defendant could not secure the Board approval; hence, the deal/sale was nullified and the 3rd Defendant wanted to refund the ₦4, 000,000.00 (Four Million Naira) paid by the Plaintiff. That the 1st – 3rd Defendant ignored the letter by Counsel to Plaintiff and treated same as unreasonable.

The 1st – 3rd Defendants called 2 Witnesses one of which was the 3rd Defendant who is now late as stated. The 1st – 3rd Defendants did not tender any document.

In their Final Written Address the 1st – 3rd Defendants raised an Issue for determination which is:

"Whether having regard to the totality of admissible evidence adduced in this case, the Plaintiff has not failed to make out a case as to entitle her to Judgment."

The 1st – 3rd Defendants submitted that the Plaintiff has failed to put forward credible evidence through her Witnesses and material documentary evidence to prove her case to entitle her to grant of the Reliefs sought. That the PW1 only came into the contact with the deal in issue when he came with PW2 to the house of DW2 (3rd Defendant) where and when he said (DW2 said) that:

"I thought that the Plaintiff was dead, so I sold the land to another person."

That the above statement was made by the 2nd Defendant before matter went to Court. He urged Court to discountenance his statement.

On testimony of PW2, the 1st – 3rd Defendants' Counsel submitted that the PW2 said the same as PW1 about the DW2 saying that she thought the Plaintiff was already dead and she sold the Res to another person. That there was no case in Court as at the time the DW2 made the statement and that DW2 could not have referred to Miss May Chinwe Obi as a Plaintiff.

That PW2 came into the picture in 2012 when she accompanied the Plaintiff to the house of DW2 – 18 years after the transaction. She did not witness the sale of land. That the Plaintiff falls within exception to **S. 126 of the Evidence Act** but that the Plaintiff failed to plead that fact.

That the PW2 testified as next friend of the Plaintiff who had lost her voice because of the stroke she suffered. That PW2 told Court that Gadzama said that DW2 informed her that they wanted to sell the land since she could not see

Plaintiff as people were offering her mouth-watering amount for the Res. He urged Court to reject that statement by PW2.

That going by the Medical Report from St. Michael's Teaching Hospital – **EXH 7 & 8** respectively, that the Plaintiff suffered stroke and lost her voice and memory. Hence, she could not be called as a Witness in this Suit. That the testimony of PW2 should not be relied on because the information is from the Plaintiff who had lost her voice and/or memory.

That it was orally agreed that the condition is that there should be ratification by the Board. He urged Court to so hold.

That the Court should expunge the statement in paragraph 6 of the Plaintiff's Reply and the document – **EXH 9,** CTC of List of Directors of the 1st & 2nd Defendants.

That DW1 confirmed that he signed as Witness for the Plaintiff in the sale of the Res. That the DW2 who did the authorizing and finishing in the sale deal confirmed that fact and testified about Board ratification which the Plaintiff vehemently and consistently denied. That the oral evidence of DW1 & DW2 as regards **EXH 4 –** Letter from Maria Mayaki & Stamp Duties of Power of Attorney fall within purview of exception to **S. 128 (1) (b) & (c) of the Evidence Act.**

That **EXH 4** was silent on ratification by the Board of 1st & 2nd Defendants and as such oral evidence of DW2 should be adopted/accepted. That given clause 4 of the Power of Attorney the parties did not intend that registration of **EXH 4** will be final/complete statement of the transaction between them. The 1st – 3rd Defendants' Counsel referred to the cases of:

Yonwuran V. Modern Signs Ltd
(2021) 14 NWLR (PT. 1795) CA Lagos Division

Jack V. Whyte
(2001) 6 NWLR (PT. 709)

He urged Court to accept the testimony and depositions of the DW1 & DW2 concerning the Oral Agreement. That the Plaintiff failed to establish her case and therefore she is not entitled to the Reliefs sought. That she failed to establish the Declaratory Reliefs. He referred to the cases of:

Emenike V. PDP
(2012) 12 NWLR (PT. 1315) 557

Alechenu V. MTN Nigeria Communication Ltd
(2021) 18 NWLR (PT. 1809)

Nduul V. Wayo
(2018) 16 NWLR (PT. 1646) SC

That since the Plaintiff failed to establish and prove her Declaratory Reliefs that the Consequential Reliefs will crumble. He urged Court to so hold and relied on the cases of:

CBN V. Okemuo
(2018) 15 NWLR (PT. 1642) 357

Yil V. Ngumar & 1 Or
(1998) 8 NWLR (PT. 560) CA (Jos)

That the Plaintiff failed to prove her case and the Defendants has nothing to react to by way of Defence. He urged Court to so hold. Hat both Declaratory Reliefs were not established and Ancillary Reliefs were not proven and all should crash. He urged Court to dismiss the case of the Plaintiff.

The Plaintiff filed a Reply to the 1st – 3rd Defendants Final Written Address on Points of Law thus:

On weight of evidence of PW1 the Plaintiff responded that the submission of 1st – 3rd Defendants' Counsel is misconceived and speculative. He referred to the cases of:

Adefulu V. Okulaja
(1996) 5 NWLR (PT. 473) 668

Orhue V. NEPA
(1998) 7 NWLR (PT. 557) 187

That the evidence of PW1 is admissible as he gave evidence on what he heard directly from the 1st Defendant. That the 1st – 3rd Defendants' Counsel playing on word "Plaintiff" by the PW1 & PW2 is childish and uncalled for. That the evidence of PW1 is credible and has probative value and is unchallenged. That the DW2 did not deny that she made that statement and she failed to discharge that burden. He urged Court to so hold and ascribe probative value to its evidence.

In response to the 1st – 3rd Defendants' Counsel submission on evidence of PW2, the Plaintiff Counsel responded thus: On what the PW2 heard from DW2, he submitted that her evidence is very descriptive and unchallenged and credible with high probative value. That DW2 (3rd Defendant) reselling the land to 4th Defendant is in consonance with the evidence of PW1 who heard the DW2 make the statement of sale of land. That there is corroboration of the act of the 3rd Defendant/DW2 which is the statement she made to the hearing of PW1 and PW2.

That PW2 is the person who stood in the stead of the Plaintiff as her next friend and her evidence is same as that of a person who sued as next friend and she has full powers over the proceeding as if she is the Plaintiff in this Suit. Her

evidence is equivalent of the evidence of the Plaintiff herself. He referred to the cases of:

Adekunle Adesoye & Ors V. Nathaniel A. Williams & Ors (1964) NGHC 110

Chief Christian Onyenwe & Anor V. Godwin Anaejionu (2014) NGCA 40 (CA) Owerri

On the statement of Defendant – paragraph 6, he submitted that the Defendants contention is misconceived as the Plaintiff has right to challenge the allegation of facts. The Plaintiff Counsel referred to the cases of:

Ariori V. Elemuo
(1983) 1 SCNLR 1

Chukwuma V. Federal Republic of Nigeria
(2011) 13 NWLR (PT. 1264) 418

He urged Court to discountenance the submission of the 1st – 3rd Defendants.

On status of **EXH 4** and clause 4 of the Power of Attorney – on clause 4 not being final agreement, he submitted that the 1st – 3rd Defendants failed to show that or point out that there is any clause in **EXH 4** that point out to existence of superior Agreement. That clause 4 of **EXH 4** is in consonance with the complete Agreement of the parties. That it shows that Defendants were committed and were obliged to perfect the title of the Plaintiff and that there was a complete contract of sale and concluded contract. They referred to the cases of:

A-G Federation V. Ajayi
(2000) 12 NWLR (PT. 682) 500

Gbadamosi V. Kao Travels Ltd
(2000) 8 NWLR (PT. 668) 243

On the allusion to **S. 128 of the Evidence Act,** the Plaintiff Counsel responded that there is nothing to show that the parties agreed to any ratification as it was not part of the Agreement. And that as such **S. 128 (1) (c) of the Evidence Act** is not applicable in this case. That there is nothing in **EXH 4** clause 4 or any other clause that supported the issue of ratification. That clause 4 is an undertaking by the 1st Defendant to execute other documents of Demarcation and Mapping out of the Res from the large Plot at a later date and the documents to be executed in the future. That **EXH 4** cannot be varied by oral evidence as the 1st – 3rd Defendants tried to do.

On Plaintiff's proof of Declaratory Reliefs, the Plaintiff Counsel responded that she did. That by admission of the **EXH 4** the case to prove by the Plaintiff became very narrow as the contract is between the parties. That the Defendants failed to prove that there was other agreement to ratify. That the Defendants are therefore estopped from denying their own document which they executed in favour of Plaintiff. The Plaintiff Counsel referred to the case of:

Iloabachie V. Iheabachie
(2000) 5 NWLR (PT. 656) 178

That the Defendants selling to and donating Power of Attorney to the Plaintiff and turning around to resell the land/Plot/Res to the 4th Defendant are estopped from denying and challenging their own conduct. The 1st – 3rd Defendants having failed to prove the oral ratification Agreement, their Defence thereto fails.

The Plaintiff Counsel urged Court to enter Judgment in Plaintiff's favour having established both Declaratory and Ancillary Reliefs as sought.

On the part of the 4th Defendant who the Plaintiff described as the Trespasser who the 3rd Defendant resold the Res to for **₦65, 000,000.00 (Sixty Five Million Naira),** he claimed that the 3rd Defendant/DW2 approached him and offered the land – Plot 1501E to him for sale with a promise to carve out the Plot from the large Plot 1501 CAD Zone A6 Maitama, Abuja. He conducted and made due diligence search to ensure that the land has no encumbrances. He purchased same for **₦65, 000,000.00 (Sixty Five Million Naira)** and Irrevocable Power of Attorney and Land Purchase Agreement were issued to him and dated 28th January, 2010. That the 4th Defendant completed the construction of the building there and packed into same since 2012.

That on 15th August, 2015 the 4th Defendant saw a document lying in front of the entrance gate which he said was a copy of FORM 49 issued against an Unknown Person who allegedly disobeyed the Order of the Court made on 30th June, 2015. He contacted his lawyer on17th August, 2015 for advice and investigation.

The 4th Defendant called one Witness – 4th Defendant himself. He testified on 16th March, 2021 and tendered 3 documents which include:

= Letter from his lawyer, Kanu Ajabi & Associate, CTC of Rulings and Application for Search.
= Power of Attorney donated by 3rd Defendant on behalf of the 2nd Defendant to the 4th Defendant.
= Purchase Agreement between the 2nd Defendant as represented by the 3rd Defendant and 4th Defendant.

It was the position and submission of the 4th Defendant/4DW1 that he was not aware of existence of the Plaintiff or of any defect on the said Plot 1501E. That he was already living in the Res before his attention was

brought to the Suit. That **EXH 6** tendered by the Plaintiff and testimonies of PW2 & DW2, that no disclosure was made to him about the existence of the Plaintiff by anyone.

In his Final Written Address the 4th Defendant Counsel on behalf of the 4th Defendant raised 1 Issue for determination which is:

> **"Considering the uncontroverted facts and evidence that the 4th Defendant is a Bonafide Purchaser for value without notice in respect of the Res, whether the Plaintiff's claim in so far as it affects the 4th Defendant, ought not to be dismissed?"**

The 4th Defendant Counsel submitted that as purchaser for value without notice the Plaintiff's case ought to be dismissed. That upon careful appraisal of evidence before the Court and Exhibits tendered, that the 4th Defendant is qualified as a bonafide purchaser for value without notice and had acquired a valid title over the Res and that his title is protected under the law.

That the evidence of the star Witness of Plaintiff exculpated the 4th Defendant from any wrong doing. That the 4th Defendant did not know of the Plaintiff's title to the Res as the process to register same was not completed before the Plaintiff took ill and was flown outside to USA for treatment. That **EXH 6** shows completed building on the Res.

That the testimony of PW2 as pertain to paragraphs 9 – 14 of the Statement of Defence is inconsistent. That Court should discountenance same. The 4th Defendant Counsel referred to the cases of:

Egbuche V. Egbuche
(2012) LPELR – 22512 (CA)

Nwokoro V. Onuma
(1999) 9 SC 59 @ 64

He urged Court to dismiss same and enter Judgment for the 4th Defendant.

That the 4th Defendant has established that he purchased the Res in 2010 for **₦65, 000,000.00 (Sixty Five Million Naira).** That the Suit was instituted in 2015 after development of the Res. That the 4th Defendant had completed construction when **EXH 6 –** Pictures were taken as it depicts fully developed property. That he did not know any Defendant in the title as at the time of purchase and the 3rd Defendant did not disclose that the Plaintiff had purchased the Res earlier or any adverse to the title. That the 4th Defendant would not have been a party if the 3rd Defendant had settled with the Plaintiff.

That the 4th Defendant is not responsible as he has an honest claim to the Res. He urged Court to dismiss the case of the Plaintiff against the 4th Defendant and affirm the 4th Defendant's title to the Res. He referred to the case of:

Global Fleet Oil & Gas Nigeria Ltd V. Orok & Ors
(2020) LPELR – 50270

That since the 4th Defendant had proved that he is a purchaser for value without notice (a fact which this Court does not believe because he has not proved that) which is an absolute Defendant that absolved of any liability. He referred to the case of:

Ibeyeye V. Fajule
(2006) 3 NWLR (PT. 968) 640

That the Plaintiff has no grouse against the 4th Defendant going by the appraisal of the testimony of PW2. That the Plaintiff did not involve the 4th Defendant in the settlement

meeting in 2012 with the 3rd Defendant before this Suit was filed. That the 4th Defendant is not aware of any equitable interest. Hence, he takes priority over pre-existing equitable interest despite competing adverse claim.

That the 4th Defendant paid the purchase price in good faith as the 1st – 3rd Defendants never informed him about the previous sale of the Res. That he made prior reasonable inquiries. He derived valid transfer of title to the Res through the Land Purchase Agreement and Irrevocable Power of Attorney.

That he had already lived in the Res for 3 years before the Suit was instituted. That the Plaintiff failed to prove title to the Res and that his Power of Attorney was not registered before he was flown out of Nigeria because of ill-health.

That the Plaintiff's title is defeated by Defence of Larches and Acquiescence. That delay by the Plaintiff in filing the Suit when the wrong was discovered defeat the Plaintiff's claim. That by the testimony of PW1 & PW2 there was development in 2012 and Suit was filed in 2015 while the 4th Defendant had moved into the Res. Hence, Defence of Laches & Acquiescence is therefore applicable. He referred to the case of:

Daylop V. Madalla
(2017) LPELR – 43349 CA

That PW2 evidence contradicted her pleading. Hence, the Court should dismiss the case of Plaintiff by discountenancing the testimony of PW2.

That the contradiction in evidence of the Plaintiff against the 4th Defendant renders the Suit incompetent against the 4th Defendant.

That all evidence in this case shows that and supports the fact that the 4th Defendant is a Bonafide Purchaser of value without notice. That the Plaintiff exonerated the 4th Defendant of any wrong doing and that the Suit is caught up by doctrine of Larches and Acquiescence because of the inordinate delay in instituting this action. Again that the inconsistency and contradiction in the Plaintiff's evidence renders her Suit incompetent. He urged Court to uphold the argument of the 4th Defendant and dismiss the Suit against him.

In their Reply on Points of Law to the Plaintiff's Final Written Address, the 4th Defendant made almost the same submission as his Final Written Address save as follows:

That the 4th Defendant was not aware of any encumbrances or even this case until he saw the document – Form 49. That the only Agreement of Sale is the one tendered by the 4th Defendant as **EXH 10.** That the Plaintiff has only Power of Attorney – **EXH 4.**

That the 4th Defendant raised the issue of Larches and Acquiescence in paragraphs 9 – 11 of his Statement of Defence.

That the Plaintiff did not show that the 4th Defendant was served any "stop work Order." He relied on the case of:

Hydro-Hotels Ltd V. Amcon
(2020) LPELR – 50740 CA

He urged Court to discountenance the Plaintiff's submission that the 4th Defendant did not plead the doctrine of Larches and Acquiescence and that he cannot therefore canvass that. He urged Court to discountenance argument on Building Plan as it was never pleaded. That the Plaintiff's title is inferior to that of the 4th Defendant because he has both Power of Attorney and Land Purchase Agreement. That

the Plaintiff's star Witness exonerated the 4th Defendant from any wrong doing.

That by the 4th Defendant paying **₦65, 000,000.00 (Sixty Five Million Naira)** shows that he acquired a legal Estate on the land going by the decision in the case of:

Gbadamosi V. Akinloye & Ors

(2013) LPELR – 20937 (SC)

Hence, the 4th Defendant is immuned from any liability to Plaintiff. That the Plaintiff was not let into possession and as such she is not first in time. That the 4th Defendant is. He urged Court to so hold and dismiss the Suit against the 4th Defendant. That the 4th Defendant had expended money on the Res and urged Court to protect the 4th Defendant's interest with regard to the property.

COURT

Having summarized in great details the issues and case of all the parties above, can it be said that the Plaintiff has proved that she duly bought the Res from the 2nd Defendant a she claimed? Again, whether by the testimony of the 4th Defendant, he has shown, proved and established that he is a bonafide purchaser for value without notice of any encumbrances over the Res as he claims and as such he has no liability and has superior title to the Res and therefore the Plaintiff's claim should therefore be dismissed against the 4th Defendant. That going by the totality of evidence before this Court in this case the Plaintiff has failed to prove her entitlement to the Judgment of this Court having failed to prove and establish her case as the 1st – 3rd Defendants have postulated. And finally, whether the Plaintiff delayed in instituting this case and as such the 4th Defendant has in his favour the Defence of Larches and

Acquiescence and as such the case of the Plaintiff should be dismissed and the 4th Defendant exonerated?

It is the very humble view of this Court that the Plaintiff has established and proved that she duly purchased the Res – property in issue – ***Plot 1501E*** *from the 2nd Defendant though legitimately midwife by the 3rd Defendant who has the authority of the 1st & 2nd Defendants to do so.* This the Plaintiff did by tendering documents especially the Irrevocable Power of Attorney and Certificate of Occupancy and other documents. The 1st – 3rd Defendants know that she purchased the Res and that they sold to her. She proved that the issue of Ratification was never part of the Agreement of the parties. The Plaintiff was convinced that the land was not encumbered after doing he due diligence and she paid **₦4, 000,000.00 (Four Million Naira)** for that Plot – the Res. If there was any agreed subsequent ratification the Plaintiff would not have paid the full purchase price as agreed. The 1st – 3rd Defendants attempt to prove otherwise failed because they have not shown that there was a concrete oral Agreement or documentary evidence of agreement to back up the ratification. The issue of ratification was purely an afterthought. That sudden theory of Ratification is a fluke, a sham, an afterthought and the last tenacious cling on a rid by a drowning man, the 1st – 3rd Defendants in this case.

From all indication the 4th Defendant DOES NOT in any way qualify as a purchaser of value without notice of any encumbrances. He could not prove that he was a purchaser without notice. It is the law that whoever alleges must prove. The 4th Defendant failed to prove that he has no inkling about the Plaintiff's existence. The claim that he packed into the house in 2012 was not established. He did not defend the submission of the PW1 & especially PW2 on the fact that when they went to the Res in 2012 there was

construction going on. He did not deny or defend the fact that PW1 said that when they went to the Res in 2010 it was not developed. His claim that he was already living in the Res in 2015 before he was notified about the Suit cannot hold. This is because his claim that it was after he saw Form 49 that he became aware of the Suit is equally not true. This is because there is no how the Court will serve Form 49 on a party by substituted means without ensuring that the same party was served the Motion and other Processes by substituted means after personal service failed. Again, by agreeing of seeing the Form 49 dropped or pasted means and confirmed that the Court must have given an Order which was still subsisting and that such Order was flaunted and based on that the Court issued the Form 49. It is imperative to point out that the 4th Defendant was all the while an Unknown Person and was treated as such by documents – Court Processes been served on him as Unknown Person until he surfaced.

That brings me further to the issue of the Plaintiff purchasing the land. She did. The Defendants showed her the portion of the land. They issued her with Irrevocable Power of Attorney which the Defendants did not deny. It was because the act of sale was completed and the Plaintiff took possession though not completely effectively because of ill-health but at least she took possession of the Res.

She had a drawing. She registered the Power of Attorney. She made other moves to secure the Res before she had and suffered the stroke.

The 1st – 3rd Defendants knew that the deal was completed. They agreed to carve out that particular Plot as contained in Irrevocable Power of Attorney.

The subsequent Power of Attorney purportedly given to the 4th Defendant has no probative value ad evidential weight

because as at the time of the giving of that subsequent Power of Attorney the 1st – 3rd Defendants have nothing to give as far as the said Plot 1501E was concerned. Neno Dat quod nor habet. In that case the *blessing of Isaac has already finished by the time Esau came with his game. Isaac had no other blessing to give.* So also the 1st – 3rd Defendant had no other power to donate to the 4th Defendant as far as the Res – Plot 1501E was concerned.

Moreso, the power donated to the Plaintiff was irrevocable and first in time. So this Court holds that that Power of Attorney donated to the 4th Defendant was second in time as far as Plot 1501E is concerned.

The 4th Defendant is not a purchaser of value without notice because he never tendered before this Court any document to show that he applied for search and Search Report was given. It was because he had an inkling and because he was aware of the Plaintiff's claim over the Res that he decided to rush and complete the building. Going by the Court record, documents were pasted and the Affidavit of Bailiff showed that pictures of documents pasted were taken in prove of the service of the said Processes long before the Order was made and the Form 49 was issued.

It is also the very humble view of this Court going by the testimony of PW1 and PW2 and the evidence adduced and documents tendered especially **EXH 1 – 9,** the Plaintiff was able to properly establish her case and claim and she is therefore entitled to the Judgment of this case in her favour and for her Reliefs to be granted.

To start with she tendered evidence to show that she paid the purchase price of **N4, 000,000.00 (Four Million Naira)** for the Res. This was done as seen in **EXH 1 –** the Citizens Bank Draft. She proved acknowledgment of same and

evidence of receipt of the money issued to her by the 1st – 3rd Defendants on 30th July, 1999 – **EXH 2.** The 1st – 3rd Defendants did not deny that. She equally tendered as **EXH 3** the Right of Occupancy showing co-ordinates hence proving that actually the plot was identified and identifiable. She was shown the Res by the 1st – 3rd Defendants having paid the full price. The 1st – 3rd Defendants would not have shown her the portion or given her the Right of Occupancy if there was any ratification to be done by the Board. Besides, the 1st Defendant signed the document of transfer. Hence, there was no agreement on ratification. It never existed and the 1st – 3rd Defendants knew it.

Of most importance is the **EXH 4.** It was the said Exhibit that sealed the deal as it is on the stamp duties in the Power of Attorney which is IRREVOCABLE. So also the letters from Maria Mayaki & Co. dated 7th April, 2014; 23rd April, 2014 and 21st February, 2014. Again, the Medical Report confirmed the fact as per the claim of sickness of the Plaintiff from both St. Nicholas dated 15th August, 2008 and University of Lagos Teaching Hospital. And of course the tendering of the 9th document – CTC of Search Report on identity of the Directors of the 1st & 2nd Defendants. That document put or laid to rest who did what in the Agreement between the Plaintiff and the 1st – 3rd Defendants. It confirmed those who are the Directors of the 1st – 3rd Defendants and proved that the documents issued to the Plaintiff has legitimacy. It also shows that the 3rd Defendant did not unilaterally sell the Plot in issue – the Res to the Plaintiff. It shows that the deal was authorized and sanctioned by the 1st – 3rd Defendants as the 1st Defendant issued and signed the document. Hence, further confirming the issue of ratification.

The person who had not been given possession of a Res cannot have the effrontery to do a Building Plan. Such a

person cannot out of the blue claim ownership unless she has fulfilled her own side of the obligation by payment of the purchase price and handing of the documents of title.

This Court does not believe that the Plaintiff stormed into the Right of Occupancy in this case out of the blues because it is not possible.

It is also the humble view of this Court that the evidence of the 4th Defendant was controverted as he did not prove that he is the bonafide purchaser of value without notice. He was aware of the existence of the Plaintiff that was why he rushed and completed the building. That is also why he did not and pretended not to be aware of all the Court documents that were pasted at the Res until the Form 49 was issued for flaunting of the Order. Besides, there was Order that the 1st – 3rd Defendants serve the 4th Defendant document – Originating Process along with the Order to past the Processes at the Res. That Order of Court is there for all to see. So it is also the view of this Court that the Plaintiff's claim/case is supposed to be upheld.

This Court therefore upholds the Plaintiff's case.

It is also the humble view of this Court that the doctrine of Larches and Acquiescence does not avail the 4th Defendant as there was no delay in the Plaintiff instituting this action.

To start with, the Plaintiff came back sometime in 2010 and approached the 1st – 3rd Defendants in 2012. The 1st – 3rd Defendants did not deny that fact. The Plaintiff met the 3rd Defendant and invariably the 1st & 2nd Defendants as the 3rd Defendant acted for and on behalf of the 1st – 3rd Defendants. She was surprise that the Plaintiff was still alive. The testimony of the PW1 and PW2 confirmed that fact and also confirmed the fact that DW2 said that she thought that the Plaintiff was dead. Yes, the Plaintiff

suffered stroke and it affected her speech, but it did not affect her mind and memory. After-all, she was able to identify the place of the 3rd Defendant and the Res too. This Court had a cause to see her in the course of this trial of this case. She could not talk but she was sane enough and could write with her right hand. The PW2 also testified to that fact. That must have been how she was able to communicate and reveal to the PW2, her next friend, the details of the transaction and all that concerns it.

That brings me to the submission of the 1st – 3rd Defendants' Counsel that the evidence of PW1 and especially PW2 was hearsay. This Court does not believe that the evidence of PW2 was hearsay because the Plaintiff suing through the PW2 as her next friend had by that authorization empowered the said PW2 to stand in her (Plaintiff's) stead and as such all actions of the PW2 are the actions of the Plaintiff having been so authorized by the Plaintiff. So the issue of the PW2 evidence being hearsay is out of the question and not applicable. This Court holds that the evidence of PW1 and PW2 is not hearsay evidence. Not equally contradictory. They are consistent and cogent. It is the PW2 who stood in the stead of the Plaintiff as her next friend that tendered all the documents which obviously the Plaintiff would have tendered had she been well and not have lost her voice.

Going by the Medical Report, the Plaintiff had considerable improvement in her cognitive functus as shown in **paragraph 3, EXH 7(a) –** Letter from Lagos University Teaching Hospital. Hence, she was "sane" enough memory-wise to authorize the PW2 to stand for her as her next best friend. That letter was written and dated 13th August, 2012. That was about the time she went to see and meet the 3rd Defendant to check on her property – the Res, only to discover that it has been sold to another person who

initially was an unknown person but eventually became known when the Court gave an Order to serve the unknown person Form 49.

Going by the document – **EXH 7 (a),** the Plaintiff had been in stable condition with considerable improvement since 2008. Again, by the letter of 16th August, 2002 she had a malfunction of her left hand, what the hospital called and described as **left Hemispheric Infarctive CVA Hypodense Lesuia.** All these confirmed that her right hand was still functioning well even after the stroke and hence she could write with the same since she could not speak as a result of the speech impediment. This further buttresses the fact that the PW2 evidence is not a Hearsay. Again, the last paragraph of the letter shows and confirms the speech impediment. See **EXH 7 (b) Paragraph 2 paragraph 3.**

A look at **EXH 1 –** Citizens Bank Cheque/Draft shows that it was issued on 26th July, 1999 to the 1st Defendant. It shows that the amount is **₦4, 000,000.00 (Four Million Naira)** and that it was received by the DW2 and the 3rd Defendant – Mrs. Helecott Virtue Blankson. In the face of the **EXH 1 –** the Cheque, the DW2 received the said Draft and acknowledged same thus:

> **"Original Cheque received by me**
> **Mrs. H.V. BLANKSON**
> **in respect of purchase of Plot 1501E**
> **Date: July 26, 1999."**

That was the same day that the draft was issued. By the above acknowledgement it is evidently clear that the draft was for the purchase of the said Plot 1501E. The amount was **₦4, 000,000.00 (Four Million Naira).** The 3rd Defendant/DW2 received same. By tendering same the Plaintiff proved that she actually paid for the Res. The Draft was issued to the 1st Defendant and received by the 3rd

Defendant for and on behalf of the 1st – 3rd Defendants. The 1st – 3rd Defendants corroborated and confirmed that fact through the testimony of DW2 who herself received the said Draft. That Exhibit has the full probative value and weight in proof of the case of the Plaintiff. It showed that the Res was fully paid for by the Plaintiff. It shows that there was offer and acceptance and the payment consideration is the said Draft. It completed the simple contract of sale of the Res. It defined what was sold and what the Draft – **EXH 1** is all and all about.

By **EXH 2,** the Plaintiff further proved that there was payment for the Res. It was Receipt issued to the Plaintiff by the 1st Defendant – AJ's Playgroup Foundation. It shows acknowledgment of the **₦4, 000,000.00 (Four Million Naira)** that it was paid to the 1st – 3rd Defendants. It was a Receipt of the 1st Defendant. It was signed by the 3rd Defendant/DW2. It also confirmed the amount it received from the Plaintiff. It also shows that it was for full and final payment of the said Plot 1501E as it is written in the said letter. Hence, establishing all that the PW2 said in her oral testimony in this case in that regard. Even the 1st – 3rd Defendants did not challenge that **EXH 2.** That Receipt is in its original form. It was issued on 30th July, 1999. While the Citizens Bank Cheque/Draft was issued on 26th July, 1999 a few dates earlier. It is obvious that the Receipt was not readily available on the day the Plaintiff issued the Draft. All the same, it proved that there was an agreement, a simple contract which was fully entered into by the Plaintiff and the 1st – 3rd Defendants.

Going by **EXH 3 (a) & (b) –** the Right of Occupancy, that document shows all the said Plot 1501E (a) – (f). It shows the co-ordinates of all the Plots including the Res – **Plot 1501E.** It totally described the Plot 1501 where the Plot 1501E was carved from. **EXH 3B** is the Right of Occupancy

describing specifically the Plot in issue – **Plot 1501E.** It shows the size of the Res – **1253.583sqm²** hence corroborating the claim and pleaded by the Plaintiff. It shows the co-ordinate. It also confirmed that it was granted by the 2nd Defendant. It confirms its location – CAD Zone A6 at Maitama, Abuja with full beacon P9 through P12. The Plaintiff had by tendering same further established hi claim.

The mother of all the documents tendered in establishment of her case is **EXH 4 (a) & (c). EXH 4 (a)** was the letter of the Solicitor of the Plaintiff written in February 2001 forwarding the Irrevocable Power of Attorney to the Director Lands for Stamping and Registration. The other document – **EXH 4 proper** is the said Power of Attorney which is IRREVOCABLE, donated by the 2nd Defendant to the Plaintiff to act in the stead of the Donor – 2nd Defendant in all action relating to the Res – **Plot 1501E.** It bears the Stamp Duty Number of document as issued which is **ABJ/3/2001/1376** as well as the Serial Number **5737.** It shows that it was duly paid for. It shows that it was also duly stamped on 20th March, 2001.

It is imperative to state that by the Stamp Duty Number **ABJ/3/2001/1376** it means that the Stamp Duty was done in Abuja. That it was done in the month of March in 2001. That the Power of Attorney was the **1376th** Power of Attorney/Stamp Duty signed/registered in Month of March. It was also duly stamped by the Commissioner for Stamp Duties. The said Power of Attorney also has the Right of Occupancy showing the co-ordinates. It also shows that the Stamp Duty for the Power of Attorney was duly paid for on 19th March, 2001. That was confirmed by the Commissioner for Stamp Duties. The Power of Attorney was equally signed by the 3rd Defendant and witnessed by Amb. A.D. Blankson who is member of Trustees and one of the Directors of the 1st – 2nd Defendants. The Plaintiff signed and Haruna

Gadzama also witnessed for the Plaintiff. All signed on 11th November, 1999. The Stamp Duty was on 12th March, 2001. The Plaintiff also exhibited evidence of the Stamp Duty. The amount paid – **₦28, 020.00 (Twenty Eight Thousand Twenty Naira)** which is the Receipt for the amount of Stamp Duty paid and the purpose too and the name of the issuing officer and date which is 20th March, 2001. Hence, corroborating the said date in the Stamp itself. That document – **EXH 4** was not challenged.

EXH 5 (a) – (c) are letters written to the 1st – 3rd Defendants by Solicitors of the Plaintiff – **Crosscheck Solicitors.** All the 3 letters were to the attention of 3rd Defendant/DW2. They were all titled:

"May Chinwe Obi's Portion of Land in your Possession."

The first letter **EXH 5 (a)** was personally served on the 3rd Defendant who received and acknowledged same as seen in the face of the letter. In it the Plaintiff's Solicitors suggested a meeting hinting the 3rd Defendant/DW2 that their client, the Plaintiff, was seeking redress passionately then. They suggested a meeting. Meanwhile, there has been meeting visit in 2012 when the Plaintiff came back and had noticed trespass on the Res. The 3rd Defendant was to choose date between 24th – 26th February, 2014 and venue of her choice. She acknowledged receipt as shown in the face of **Pg. 2 EXH 5 (c).**

The second letter from same Solicitors of the Plaintiff written on 7th April, 2014 was received by the company Secretary of the 1st & 2nd Defendants by name Rosemary Nwabuzor. It was received on 9th April, 2014 at 3:28pm. It is a more comprehensive letter and titled:

EXH 5 (a) dated 7th April, 2014

"Re: May Chinwe Obi's Portion of Land in your Possession."

It was written after the 1st – 3rd Defendants failed to meet with the Plaintiff, ignored the letter of 21st February, 2001. The Solicitors on behalf of the Plaintiff formerly demanded for the return of the Res – Plot 1501E to the Plaintiff or payment of **₦300, 000,000.00 (Three Hundred Million Naira)** which was the prevailing value of the Res as at that time if the 1st – 3rd Defendants had decided to repurchase same. The Plaintiff's Solicitors on her behalf gave the 1st – 3rd Defendants 7 days ultimatum to respond or face litigation.

Also **EXH 5 (b) –** Letter dated 23rd April, 2014, **"Final Letter of Demand"** in which the Plaintiff asked through her Solicitors for return of the Res – Plot 1501E or **₦300, 000,000.00 (Three Hundred Million Naira)** within 3 days or the Defendants will face full wrath of law in Court. It was received by the company's Secretary on 29th April, 2014 at 9:30am. By the content of the 3 letters it shows that the 1st – 3rd Defendants had a complete Agreement of Sale of the property, Plot 1501E. The 1st – 3rd Defendants did not doubt those documents or facts contained therein. By this fact the Plaintiff further established its claims in this regard and assented its claims.

By **EXH 6 –** Picture of Completed Building in the Res. This is evidence of trespass as alleged by the Plaintiff. It is not in doubt that the buildings were constructed on the Res by the 4th Defendant who initially was unknown person.

It is clear that the 3rd Defendant was served the Originating Processes and she subsequently briefed a lawyer – Amaleri Esq. who stood for the 1st – 3rd Defendants.

By all these documents the Plaintiff established her case. She showed that there was never any agreement as to Ratification. She proved that she was in possession. That was why she went straight to inspect the Res after she came back and was shocked it was encumbered and trespassed on by the act of construction going on at the Res by the then unknown person who turned out to be the 4th Defendant.

The Defendants did not tender any document because they may be overwhelmed with the documents tendered by the Plaintiff.

A closer look at the documents tendered by the 4th Defendant chief of which is the Power of Attorney purportedly and allegedly said to be donated by the 2nd Defendant and the Land Purchase Agreement was purportedly said to be donated on 28th January, 2010. It does not have any Stamp Duty Number of File Number as required by law and shown in Power of Attorney tendered by the Plaintiff. There is no Stamp Duty of the Commissioner in front of the document as required. It only has the stamp at the back. It was signed by the 3rd Defendant and strangely witnessed by a totally different person who is not a Director in the 1st – 2nd Defendants but a Legal Practitioner. The Legal Practitioner did not even put his Legal Practitioner's Number or his stamp. The same Legal Practitioner is different from the Legal Practitioner who represented the 1st – 3rd Defendants in this Suit. It was signed by the 4th Defendant.

There is no evidence to show that the Stamp Duty was done within Abuja, FCT. There is no Serial Number or Stamp Duty Number and details unlike the Power of Attorney donated by the 1st – 3rd Defendants to the Plaintiff which has and showed the co-ordinate which is scheduled. The

one donated to the 4th Defendant has no such schedule. Again, there is nothing to show that there will be ratification in the **EXH 4 –** Power of Attorney donated to the Plaintiff. But in **EXH 9** there is a clause on Ratification. In fact by that it shows that the Defendants had in the second to last page where it was written thus:

AND WE HEREBY AGREE AND DECLARE

(i) This Power shall be ....irrevocable.
(ii) That we shall ratify and confirm whatever our Attorney shall lawfully do ....

There is no such clause in the Power of Attorney given to the Plaintiff. Hence, the Defendants could not prove their assertion on Ratification. Such assertion does not therefore exist in the Agreement between the Plaintiff and the 1st – 3rd Defendants. So this Court holds. The Defendants failed to prove their assertion. He who asserts must prove.

From the above the Power of Attorney of the 4th Defendant on the Res was second in time while that of the Plaintiff was purely first in time.

The 1st – 3rd Defendants have transferred and exhausted their power and right over the Res – Plot 1501E as at the time they donated it to the 4th Defendant. The purported donation made to the 4th Defendant has no value because the 1st – 3rd Defendants has nothing else to donate in Plot 1501E having earlier since 11th November, 1999 donated same to the Plaintiff. That document has no probative value and attracts no evidential weight. So this Court holds. So also the Land Purchase Deed. As at the time of the purported purchase of Plot 1501E by the 4th Defendant the said Plot was already purchased and all rights fully donated to the Plaintiff by the same 1st – 3rd Defendants. The 1st – 3rd Defendants has nothing to sell in that said Plot. Evidence

had shown that the Plaintiff had paid for the land as far back as 1999. Almost 11 years earlier.

The 4th Defendant was not able to show any documentary evidence that he conducted any legal search to prove that the land was not encumbered as at the time he purchased same. he cannot feign ignorance of the fact that he is not aware that the land belonged to another person, that is why the 4th Defendant rushed to construct the building hoping that by so doing he will be exonerated. But that is not possible because of the maxim/saying "Caveat Emptor – Buyer beware."

To seal the deal and show that she had dealing with the 3rd Defendant and to confirm that the 3rd Defendant who signed the Power of Attorney is a Director in the 1st & 2nd Defendants, the Plaintiff tendered the document **EXH 8 –** letter from CAC dated 30th May, 2018 where the CAC listed the Directors of the 1st Defendant which are the 3rd Defendant, the Witness in Power of Attorney donated to the Plaintiff.

The 4th Defendant tendered 2 documents – **EXH 10 (A) & (B)** which are letter for CTC of Ruling 30th June, 2015 and copy of the Order for substituted service.

Contrary to the assertion of the 4th Defendant, the Court gave and Order for pasting of the documents at the Res – for the Originating Processes and Hearing Notice and Court Order to be pasted at the conspicuous part of the gate or fence of the Res. It was carried out and picture of the pasting was taken by the Bailiff of the Court showing that construction work was going on in the Res. Court refers to the Record of Proceeding of this Court and the Affidavit of the Bailiff of this Court to that effect. Also there is Affidavit of the Bailiff on 18th March, 2015. The Order for pasting was made on 17th March, 2015 after personal service

attempt failed as the 4th Defendant was unknown person and the only way to ensure that the unknown person is aware of the action is by service of the Originating Process at the Res. That Order was carried out as ordered. See the Bailiff Affidavit of 18th March, 2015. The documents were pasted at the gate of the Res. Hence, the submission of the 4th Defendant and his testimony that he was aware of the case only when he saw the Form 49 is not true. This is because it was after the Order for substituted service was effected by pasting of the Processes at the Res and the 4th Defendant continued the construction work that the Court granted an Injunction restraining the 4th Defendant from continuing with construction at the Res, that the Court issued the Order to serve the 4th Defendant with the Form 49.

So the 4th Defendant was duly served the Originating Processes by pasting as an unknown person. He was served the Motion for Interlocutory Injunction. He was equally served the Order for Injunction. And when he continued to flaunt the Order of Injunction the Court issued him the Form 49.

It is imperative to state that the Plaintiff authorized the PW2 to act as her next friend pursuant to Order 10 Rule 14 of the High Court Rules 2004. That document is in the case file. She said in the said letter written before the Suit was filed that she authorizes the PW2 to act in that capacity.

There was also Order of 30th June, 2015 too. Since the Order was made it means that the 4th Defendant was aware of this case long before the Form 49 was issued. It was when the 4th Defendant realized that the Court was not joking, it decided to brief his Counsel and after he rushed and parked into the Res. He then came to Court to cry wolf.

The purported sale of Plot 1501E to the 4th Defendant is a nullity. So this Court holds.

Well, from all above, the Plaintiff has proved her case and she is entitled as I have already stated to the Reliefs sought. Because she has established her claim. This Court therefore enters Judgment in her favour and grants her Reliefs to wit:

(1) Reliefs 1 & 2 granted.

(2) The Defendants are to desist from the act of trespass or to pay the Plaintiff the present equivalent price of the Plot 1501E in today's value.

(3) The Defendants are to pay the Plaintiff the sum of ₦10, 000,000.00 (Ten Million Naira) as General Damages for all the trauma.

(4) The 1st – 4th Defendants are to pay the Plaintiff for the cost of this Suit which is fixed at ₦300, 000.00 (Three Hundred Thousand Naira) each.

This is the Judgment of this Court.

Delivered today the ___ day of _____ 2024 by me.

_____

K.N. OGBONNAYA

HON. JUDGE