IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT GWAGWALADA- ABUJA

THIS TUESDAY, 30TH MAY, 2023

BEFORE HIS LORDSHIP: HON. JUSTICE ALIYU YUNUSA SHAFA

SUIT NO: FCT/HC/CV/2668/23

BETWEEN:

1.MR MAURICE ESIEN ARCHIBONG
2. MRS MARY OLEMIUKO ARCHIBONG………….. CLAIMANTS
AND

THE LIFE CAMP PARADISE LIMITED………………DEFENDANT

JUDGMENT

The claimant comes to this court by an application to place the matter under the fast track division pursuant to order 37, Rule 4(e) of the High Court of the Federal Capital Territory (Civil Procedure) Rules 2018 and under the inherent jurisdiction of this honorable court dated on the 14th day of march, 2023 and filed on the same date. Attached to the application is the originating summons, affidavit in support of originating summons of 19 paragraph deposed to by one Maurice EsienArchibong of 266 kwara Drive, war college Estate Gwarinpa, Abuja and exhibits marked A1, e2, B, C, D, E, F1 e2, G, H, I, J, K, & L a written address of 10 pages and pre-action counseling Certificate dated the 14th March, 2023.

Upon the filing, the defendant was served, proof of process received by one Joyce Oguamanam of Paradise Estate, life camp (Legal officer) dated the 5-4-2023

accompanied with Hearing notice which was also acknowledged against the 19-4-2023 for hearing.

On the 19-4-2023 when this matter came up for hearing one Isaac T. Stephen appeared for the claimant, while no appearance for the Defendant. The claimant counsel who then applied that the matter be deemed mentioned since the Defendant was duly served with acknowledged proof of service filed in the court file. Thus the court granted the claimant's request and the matter was deemed mentioned and adjourned to 3-05-2023 for hearing.

Before I proceed I have to set out the claim of the claimant on the originating summons, he stated that, MR Maurice EsienArchibong and Mrs Mary OlemikoArchibong of 26 kwara Drive, war college Estate, Gwarinpa, Abuja who claims to be a (subscriber of the Defendant) and is thus entitled to the determination of the following questions;

1. **Whether by a proper construction and interpretation of the letter of Allocation dated the 5th day of January,2021 and the letter of offer dated the 15th day of January, 2021 in respect of the sale to the claimants of one unit of 480 square meters service plot of land at paradise life camp II Dape District Abuja, subsist and remains binding in the claimant and Defendant.**

2. **Whether by a proper construction of the letter of allocation dated the 5th day of January, 2021 and the letter of offer dated the 15th January, 2021 the defendant conveyed to the claimants, a unit of 480 square meters' service plot of land of paradise life camp II Dape District Abuja.**

3. **Whether the claimant having paid the purchase price in the sum of #11,816,064.00 (Eleven Million Eight Hundred and Sixteen Thousand, sixty-four Naira) only in respect of the unit of 480 square meters serviced plot of land at paradise life camp II Dape District Abuja within the time limit as stipulated by in the letter of offer dated the 25th day of January,2021 as evidenced by receipt dated 11th and 14th January, 2021**

are deemed to have accepted the terms and limitations contained therein.

4. **Whether the Defendant is prevented, after the acceptance by the Claimant of the conditions as stipulated in the letter of Allocation dated the 5th day of January 2021, From Unilaterally imposing terms and condition with regards to the sale, 0f the unit of 480 square meters serviced plot of land at paradise life camp II Dape District Abuja, on the claimant without their consent and acceptance?**

5. **Whether having regard to the letter of Allocation dated the 5th day of January, 2021 andthe letter of offer dated the 15th of January,2021 as well as the receipt dated 11th and 14th January,2021. The defendant is duty bound to deliver and allocate to the claimant, a unit of 480 square meters serviced plot of land at paradise life Camp II Dape District Abuja.**

And if the questions be answered in the affirmative, the claimants claim against the Defendant as follows;

1. **A Declaration that by a proper construction and interpretation of the letter of Allocation dated the 5th day of January, 2021 and the letter of offer dated the 15th day of January, 2021, the sale to the claimant of a unit of 480 square meters serviced plot of land at paradise life camp II Dape District Abuja subsists and remains binding on the claimant and defendant.**

2. **A Declaration that by the letter of Allocation dated the 5th day of January, 2021 and the letter of offer dated the 15th day of January 2021, the Defendant conveyed to the Claimant a unit of 480 square meters serviced plot of land at Paradise life camp II dape District Abuja.**

3. **A Declaration that the claimant having paid the purchase price in the sum of #11,816,034.00 (Eleven Million Eight Hundred and Sixteen**

thousand, sixty-Four) Naira only in respect of the unit 480 square meters serviced plot of land at Paradise life camp II, Dape District Abuja, within the time limit as stipulated in the letter of offer dated the 15th January, 2021 as evidenced by receipt dated the 11th and 14th January 2021 as seen to have accepted the terms and condition contained therein.

4. **A Declaration that the Defendant is prevented after the acceptance by the Claimant of the conditions as stipulated in the letter of allocation dated the 5th day of January, 2021 and the letter of offer dated the 15th day of January 2021, from unilaterally imposing terms and conditions with regards to the sale, of the unit od 480 square meters serviced plot of land at Paradise life camp II Dape District Abuja on the claimant without their consent and acceptance.**

5. **A Declaration that having regards to the letter of Allocation dated the 5th day of January, 2021 and the letter of offer dater the 5th day of January, 2021 as well as the receipt dated the 14th day of January 2021, as well as the receipt dated the 11th and 14th day of January, 2021 the Defendant is duty bound to deliver and allocate to the claimants a unit of 480 square meters serviced plot of land of paradise life camp II Dape District, Abuja.**

6. **An order of specific performance mandating the Defendant to deliver and allocate to the claimant a unit of 480 square meters serviced plot of land of paradise life camp II Dape District, Abuja.**

7. **An order of this honorable court directing the Defendant to pay to the claimant the sum of #10,000,000.0 (Ten Million Naira) being Exemplary damages for this unlawful, oppressive, and deceitful conduct displayed in the course of transaction for the sale of the unit of 480 square meters serviced plot of land at paradise life camp II Dape District, Abuja to the claimant**

Attached to the originating summons is an affidavit of 19 paragraph deposed to by one Maurice Esienarchibong of 26, Kwara drive, war college Estate, Gwarinpa Abuja and exhibit A1 & A2, B, C, D, E, F1 & F2, G, H, I, J, K & L a written address in support of originating summons of 10pages.

The process as filed was served on Defendant dated the 5-4-2023 acknowledged by one Joyce Oguamanam of Paradise Estate life camp a Legal officer and a hearing notice

This matter being a suit brought under the fast track in accordance to order 37 Rule 4 (e) which stipulates thus:

> **"where any of the parties specifically requests to proceed by way of Fast Track as in form 32, the fast track court shall have jurisdiction to here and determine that case and any other case requiring exceptional urgency including but not limited to the following.**

Sub (e)

> **"where any of the parties specifically requests to proceed by way of fast track as in form 32.**

The claimant which by order 37 Rule 6 (1) of under the fast track has complied by accompaniedthe listed document or procedure for filing cases.

Upon the service of the process on the Defendants the matter was fixed for hearing on the 19-4-2023 and the defendants having failed to file any counter to the claimant's originating summons, the claimant counsel applied to the court to deem the matter as having been mentioned and the matter adjourned for the claimant to serve the Defendant Hearing notice.

The implication of the above nonappearance of the Defendant nor to file its counter affidavit boils down to the provision of order 37 Rule 14(2) which provides thus:

> **"where the trial cannot commence on a date fixed for trial, due to the absence of the defendant, hearing shall continue and maybe concluded without other notice to the defendant."**

Despite this provision, the claimant counsel still seeks an adjournment to the 3-05-2023. On the 3-05-2023, this court upon being satisfied that hearing notice was served on the defendant and upon the application of the claimant counsel who is present in court, the matter commenced and the claimant counsel commenced hearing.

The claimant counsel upon being satisfied that the defendant was served and upon hearing its submission, urged this court to grant all the reliefs sought in its claim.

Before I proceed, I will first of all highlight the importance of service of court process.

Service of court process is a pre-condition to the exercise of jurisdiction by the event where there is no service. Subsequent proceedings are a nullity ab-initio, this is based on the principle of law that a party should upon or be aware that there is a suit against him so that he can prepare a defense. Service of a process on a party to a proceeding is crucial and fundamental. Therefore, lack of service where it is required deprives the trial court of the competence and jurisdiction to hear the suit. The service of a process is essential to ensure that a party is put on notice of the pending litigation and what stage it is. Service on the defendant or any party is for him to know the claims against him so that he may be aware of, and be able to resist if he so desires, that which is claimed against him. See U.B.A Plc Vs J. Melo (Nig.) LTD (2016) 5 NWLR (PT. 1504) p. 171, GUDA v KITTA (1999) 12 NWLR (PT. 629) 21.

It is trite law, that it is not the duty of the court to wait for a party who is duly served with the process of court and fails the show up, the court is free to begin hearing any matter when it is satisfied that parties to the case were duly served with hearing notices. Nyamati Ent. Ltd v NDIC (2006) All FWLR (PT.293) 350.

In the instant suit it is on the record of this court by the proof of service filed in the court file that the Defendant was served proof of service dated the 5-4-2023 acknowledge by one Joyce Oguamanam of Paradise Estate life camp (legal officer). On this I referred to the case of Afriban (Nig) plc v Yelwa (2011) 12 NWLR (PT. 1261) 286 CA. where it was stated that.

> **"Where a process of the court has been served, it is necessary for the court to have before it the evidence of that fact. The affidavit of service must be a proper affidavit of service proving due service of the process on the defendant is very fundamental to the issue of jurisdiction and competence of the court to adjudicate".**

Having said so, now to the case of the claimant which I will briefly set it down as it appears on the affidavit in support of the summons by paragraph.

Para 2;

> **December 2020, I approached the defendant based on its advancement to purchase a service plot of land measuring 480 square meters in its new estate under construction and located at paradise life camp II Dape District, Abuja (hereafter called the property)**

Para 3:

> **upon my enquiry I was informed of the price of the property I had indicated interest in acquiring as well as other terms and condition governing the sale of it to me**

Para 4:

> **Being satisfied with the price of the property as well as the terms and conditions with regards to its sale, on the 11th January, 2021 and 14th January, 2021, I paid the sum of #1,000,000 (One Million Naira) and #10,816,664.00 (Ten Million Eight Hundred and Sixteen thousand sixty-four Naira) respectively to the defendant being the fully purchase price of the property. The Guarantee Trust Bank transfer receipts are hereby enclosed and marked as exhibit A1 & 2.**

Para 5:

> **Having paid the purchase price of the property in full, a receipt for the property was issued was issued to the 2nd claimant are I by the defendant. The receipt dated 11th and 14th January, 2021 is hereby annexed and marked as exhibit B.**

Para 6:

Furthermore, an offer letter dated the 15th January,2021 containing the terms and condition governing the transaction was issued in my name and that of my wife the 2nd Claimant for a unit of 480 square meter serviced plot of land of paradise life camp II Dape District, Abuja by the Defendant. The offer letter dated the 15th day of January,2021 is hereby annexed and marked as exhibit E.

Para 7:

Sometimes in July, 2021, a plot of serviced land identified as Block Q plot 2, paradise life camp II Dape District, Abuja a 480 square meters was allocated to the 2nd claimant and I, letter of allocation dated the 5th January 2021 by the Defendant. The letter of allocation dated the 5th day of January, 2021 is hereby annexed and marked as exhibit D.

Para 8:

Subsequently, on the 1st of September, 2021, I received an email from the Defendant informing me that the plot of land was ready to be delivered to the 2ndClaimant and I, in the aforesaid mail, I was informed the handover of the property would be done upon the fulfillment of certain conditions which involve the payment of Development/Infrastructure fee. A copy email dated the 1st of September, 2021 is hereby annexed and marked as exhibit E.

Para 9:

That further to paragraph 8 above, on the 6th of December, 2021 representatives of the Defendant showed to me the allocated plot of land identified as Block Q plot 2, paradise life camp II, Dape District, Abuja and its boundaries which were delineated by beacon stones placed by the Defendant.

Para 10:

On the 22nd of October, 2022, I visited the plot of land (Block Q plot 2) and observed that all the beacon marking the boundaries of the

property had been removed. On the 24th of October, 2022 by email, I laid a formal complaint to the Defendant on the removal of the beacon stones and I was assured that It would be looked into. However, there was no further communication from the defendant despite the fact that a reminder was again sent by me on the 1st of November, 2022. Copies of the emails dated the 24th October, 2022 and 1st November, 2022 are hereby annexed and marked as exhibit F1 & 2.

Para 11:

On the 29th of November, 2022 pursuant to the mail received on the 1st of September, 2021 with regards to the payment of Development/infrastructure fee, I paid the sum of #2,880,000 (Two Million Eight Hundred and Eighty Thousand Naira) in respect of the 480 square meters of land allocated to us. The Guarantee Trust Bank transfer receipt is herewith enclosed and marked as exhibit G.

Para 12:

Upon payment of the new Development/infrastructure fee, the Defendant forwarded a letter dated the 29th November, 2022 and titled "Key collection invitation" inviting me to pick up documentation in respect of our land between Wednesday, November 30th and Friday 2nd December, 2022. The letter dated the 29th November,2022 is herewith annexed and marked as exhibit H.

Para 13:

Also accompanying the above mentioned invitation was an undated notice from the defendant titled, notice of unit Downgrade from a 480sqm serviced plot to a 383sqm serviced plot in the paradise life camp II which to my shock dismay was notifying me of the defendant's decision to unilaterally and unlawfully reduce the size of the land paid for by us by a whooping 975q. The notice of unit downgrade from a 480sqm serviced plot to a 383SQM serviced plot in the paradise life camp II is herewith annexed and marked as exhibit H.

Para 14:

upon receipt of exhibit H, I immediately briefed my lawyer'sMessrs Charles and Louis LP, who wrote the defendant a letter dated 6th of December, 2022 complaining of the unlawful and unilateral reduction of the size of the plot of land. The letter dated the 6th December, 2022 is herewith annexed and marked as exhibit J.

Para 15:

In response to exhibit J the defendant responded by a letter dated the 9th of December, 2022 but received on the 13th December, 2022 pleading for 21days (Twenty-one) so as to fully respond to our complaint. The letter dated the 9th of December,2022 is herewith annexed and marked as exhibit K.

Para 16:

The Defendant again on the 16th of January, 2023 sent another letter dated the 9th of December, 2022 informing me that it was working assiduously to represent a suitable approval for land size and advised that I visit their office. The letter dated the 9th December, 2022 is herewith annexed and marked as exhibit L.

Para 17:

Not understanding what the import of exhibit L was, I visited the Defendants office on the 16th day of January, 2023 and met with its representatives and staff of its legal department but no credible explanation was given to me as to why my plot was reduced in size after having entered into a valid contract for it, except that I was told that the Defendant was in belief that I had accepted the reduction.

In compliance with the rules of the court he filed a written address of 10 pages, where in the written address formulated two issues for determination to wit:

i. **Whether the letter of allocation dated the 5th day of January, 2021 and the letter of offer dated the 15th of January, 2021 (exhibit C& D) and subsisting and remain binding on the claimant and Defendant.**

ii. **Whether or not the Defendant can unilaterally vary the terms of the contract agreement entered into with the claimant.**

On this we shall adopt the two issues so formulated as mine including the argument canvassed which I will summarize same in this judgment.

On issue one, as to whether the letter of allocation dated the 5th day of January, 2021 and the letter of offer dated the 15th of January, 2021 (exhibit C & D) are subsisting and remain binding on the claimant and defendants.

On this, it was argued by the claimant counsel that it is evident that exhibit C is the embodiment of all the terms and conditions governing the sale of the property, subject matter of this suit, which the Defendant had offered to the Claimant and they had in turn accepted as indicated by signature on exhibit C and D. the acceptance was subsequently followed by payment of purchase price of the property and the development/infrastructure fee as evidenced by exhibit A1, A2, B and G,as annexed to paragraph 4,, 5 and 11 respectively of the affidavit in support and thereby creating a binding contract between the Defendant and the Claimant. See BlanteInt' Ltd v N.D.I.C (2011)15 NWLR P,423 paras D-E wherein the supreme court held thus:

> **"In order for a contract to constitute a binding contract between the parties thereto, there must be a meeting of mind, often referred to as consensus ad-idem. The mutual consent relates to offer and acceptance. An offer is the expression by a party of readiness to contract on the terms specified by him where of accepted by the offeree given rise to a binding contract. The offer matures into a contract where the offeree signifies a clear and unequivocal intention to accept the offer."**

That upon payment of Development/Infrastructure fee by the Claimant, as evidenced by exhibit G, the Defendant forwarded a letter dated the 29th November, 2022 and titled "Key collection invitation (Exhibit H) inviting the claimants to pick up documentation in respect of their land between Wednesday November, 2022. On this submitted that the defendant in issuing exhibit H to the claimant is further proof that there was consensus ad idem between the parties thereby creating a subsisting and binding contract, between the claimant with the defendant.

Therefore, it is trite law trial acceptance of offer must be clear and definite for these to be a binding contract and from all the exhibits by the court, the claimants have shown unequivocally that they fulfilled all the necessary conditions placed on them by the Defendant in order to form a binding contract. On This he referred the court to the case of Best (Nig.) LTD v B.H (Nig.)LTD (2011) 5 NWLR (PT. 1239) 95.

In view of the following he submits that, by exhibit A1 and A2, B, C, D and G the claimant entered into a valid contractwith the defendant for the purchase of 480SQM of land in its property located at paradise life camp II Dape District, Abuja and submits further that the contract between the claimant and the defendant is still subsisting and binding on all the parties and therefore urged the court to resolve this issue in favor of the claimant and against the defendant and hold that exhibit C still subsists.

It is pertinent to reiterate the position of the law that parties are bound by the terms of their agreement freely entered into and duly signedby them. See Dalek (Nig) LTD v Ompadec (2007) & NWLR (PT.1034)402 Lewes held in Nick Fishing LV LTD v Lavina Corporation (2008) 10 NWLR (PT.1114) 509 543 Para B-c per Niki Tobi JSC:

"it is trite law that parties to an agreement retain the commercial freedom to determine their own terms. No other person, not even the court can determine the terms of contract between the parties thereto. The duty of the court is to strictly interpret the terms of the agreement on it's clear wording"

The law is quite settled that parties are bound by the contract they voluntarily enter into and cannot go outside the terms and condition contained in the same contract. When parties enter into a contract, they should be careful about the terms they incorporate into the contract because the law will holdthem bound by those terms. No party will be allowed to read into the contract, terms on which there has been no agreement. Any of the parties who does so violates the terms of the contract: See Alhaji Abdullahi Baba V Nigeria Civil Aviation Training Center Zaria & Anor (1991) LPELR-692 (SC).

In the instant case, I will have to agree with the claimant that there was an agreement between the claimant and the Defendant in a transaction which was a

contract for the sale to the claimant land of a unit of 480 Square Meter Serviced plot of land of paradise Life Camp II Dape District Abuja which the Defendant was the seller and the claimant was the buyer referred to in Exhibit 1, A2, B, C, D and E.

Based on the foregoing I shall equally resolve issue one in favor of the claimant. I so hold.

On issue Two:

> **"Whether the Defendants can unilaterally vary the terms of the contract agreement entered into with the claimant".**

On this it is the submission of the claimant counsel that a variation of terms of a contract involves a definite alteration of contractual obligations by the mutual agreement of both parties, which connotes a mutual abandonment of the existing rejects of the parties under the agreement between them, and such an agreement for variation must itself possess the characteristics of a valid contract such as offer, acceptance and consideration.

That in the instant case the defendant without a notice to the claimant or without first seeking the consent of the claimant and acceptance, unilaterally varied the terms of the contract by entering upon the claimant's property known as Block Q plot of Paradise life camp II Dape District, Abuja which was allocated to them after having paid the necessary consideration as well as fees and removed the beacon stones which had earlier been placed to delineate the boundaries. Having done so, the Defendant then issued to the claimant Exhibit 1 which provides thus:

> **"This is to notify you of the downgrade from a 481sqm serviced plot to a 383sqm serviced plot in the paradise life camp II"**

That the clause as stated above was never discussed with the claimant and is at variance with exhibit C and D which are the embodiments of the total terms and conditions governing the sale of the property to the claimant and that exhibit 1 purports to exercise a whooping 975sqm of land from the claimant's property, an act which content is not only unilaterally but also unlawful. On this he referred this court to the case of United Bank Plc v Olatunji (2015) 5 NWLR (PT. 1452) at 243,

para D- the Court of appeal stated succinctly the principle guiding the variation of the terms of a contract when it held thus:

> **"Variation of contract is analogous to the entry by the parties into a new contract. It involves a definite alteration of contractual obligations by mutual agreement of both parties. The requirement of offer, acceptance and consideration are thus imposed, for a variation of contract to be upheld the following must be present:**

a. **There must be a valid and subsisting contra t between the parties**
b. **There must be some form of consensus between the parties as to the obligations which are to be altered and.**
c. **The parties must have acted in some way to their benefit or detriment in either agreeing to the variation or as a result of the variation.**

A mutual abandonment of the existing rights of the parties under a contract between them is sufficient consideration to support a variation of the contract. Also consideration will be said to have been provided where a party would derive a super added benefit from the contract by reason of the variation of a contract. Further, the fact that only one of the parties to a contract benefits from its variation is irrelevant. In the instant case, the doctrine of novation or variation of contract was inapplicable because the Respondent did not agree to the reduction of his legal fees by the appellant.

He then submitted that based on the ingredient of a valid variation of contract as enumerated in United Bank Plc v Olatunji (supra) it is clear that whereas there is a valid and subsisting contract between the claimants and the defendant, there was no consensus between the claimant and defendant with regards to varying of the form regarding the size of the lane from 480sqm to 383sqm, and that the claimant has not acted in anyway or form to suggest that they accepted that particular variation. Further submit that it is trite that an agreement, whereone is established to exist necessarily binds the parties thereto, so that whenever parties enter into an agreement in writing, they are bound by its terms and neither the parties nor the court is legally allowed to read into the agreement terms on which the parties did not agree.

Also in the case of BFI Group Corporation V Bureau Republic Enterprises (2012) 18 NWLR (PT. 1332) 209 at page 238-239 paragraph H-B, 244 paras E-F the supreme court held thus:

> **“The court must treat as sacrosanct the terms of an agreement freely entered into by the parties. This is because parties to a contract enjoy their freedom to contract on their own terms so long as same is lawful. The terms of a contract between parties are clothed with some degree of sanity and if any question should arise with regards to the contract, the forms in any document which constitute the contract are invariably the guide to its interpretation. When parties enter into a contract, they are bound by the terms of the contract as set out by them. It is not the business of the court to rewrite a contract for the parties. The court however, has a duty to construe the surrounding circumstances including written or oral statement so as to discover the intention of the parties.”**

Also the case of FCMB LTD v Ogbuefi (2021) 10 NWLR (PT.1783) 27 para L-E held thus:

> **“Parties are bound by the terms of their contract, if any dispute arises with respect to the contract, the terms in any document which constitutes the contract are invariably the guide to its interpretation. In this case, in order to determine the relationship between the parties, the trial court rightly had resort to exhibit B, the agreement between the parties, which eventually led the trial court to make a conclusion on what the relationship between the parties clearly is.”**

The claimant counsel then submits, that the Defendant be held bound by the terms as contained in exhibit B, C, D, G & H being the only terms surrounding the contract the claimant accepted expressly and by conduct.

Having said so, where a document is clear and unambiguous, the operative words in it should be given their ordinary grammatical meaning. Thus where the language, terms, intents and words of any part or section on a written contract,

document or enactment are clear and unambiguous, they must be given their ordinary meaning as such terms and words used best declare and present the intention of the parties, unless it would lead to absurdity or be in conflict with other provisions thereof. Therefore,exhibit B, C, D, H and G being an agreement voluntarily entered as parties, must necessarily be honored in good faith in the absence of fraud on mistake. This is because, this court does not engage itself in the act of writing and rewriting agreement for parties. The court will avoid being branded as meddlesome interloper. Where therefore, the words in an agreement are clear, precise and unambiguous this court shall without much ado will expound those words in their ordinary and natural sense in order to fire a true and genuine effect to the intention of the parties. Hence exhibit B,C, D. H and G stand the test of time in this court will not rewrite agreement for the parties or will it also allow itself to be used to give effect to none existing agreement between the parties. I so hold.

On the last claim that the court directs the Defendant to pay to the claimant the sum of #10,000,000.00 (Ten Million Naira) being exemplary damages for its unlawful oppressive and deceitful conduct displayed in the course of the transaction for the sale of a unit of 480sqm serviced plot of land of paradise life camp II Dape, District Abuja for the claimant

The law is clear on award of exemplary damages. Exemplary damage to be awarded, it need not be specifically claimed, but facts to justify it must be pleaded and proved. Thus once facts in the pleading and evidence thereon support the award of exemplary damages, the courts would award it since the adverse party is no way taken by surprise. See C.B.N v Okojie (2015) 14 NWLR (PT.1479) 231. Generally, damages mean the pecuniary compensation obtainable by a successful party in an action for a wrong which is either a tort or a breach of contract. See A.S.E.S.A vs Elwerem (2009)13 NWLR (Pt.1158)410 SC.

Therefore, for a party to be entitled to exemplary damages, it is his duty to prove that the action of the defendant like in this case is outrageously reprehensibly such damages are awarded when a defendant’s willful act was malicious/violent, aggressive, fraudulent, want or grossly reckless. These damages are awarded both as a punishment and to set a public example. They reward the plaintiff for the horrible nature of what he/she went through and suffered. See Elochin (Nig) LTD

VMbadiwe (1986)1 NWLR (Pt.14)47. And the case of Allied Bank of Nig LTD v Alubueze(1997)6 NWLR (Pt 509) 374.

On this it is the submission of the learned claimant counsel where he stated that the claimant have not asked for damages for the defendants breach of contract in their relief sought from this court. The reason as he stated is not farfetched, this being a contract for the sale of land, damages would not be adequate compensation for the claimants with respect to the defendant's breach of his contract, hence the relief for specific performance sought by the claimant on this cited the case of Oshafunmi&anor v Adepoju&anor (2014) LPELR-23073 (CA) (PP 57-59 paras A) the Court of Appeal held as follows:

> **"Counsel again, obviously overlooked the recognized principle in property law that while damages meant be adequate remedy for a breach of contract.**

In the book spry on Equitable Remedies 2nd Ed, the learned authors stated of pages 58-59 thus;

> **"whether remedies at law are adequate is determined upon principles whether realty or personality such as a chattle is involved. But land is properly which has a fixed location, and special value, and ordinarily damages are not regarded as an adequate substitute for right either to acquire or dispose of an interest in it. Even indeed if the purchase intends to purchase the land in question merely in order to be able to sell it later of a proper, damages will not be regarded as adequate remedy for him.**

This principle has been accepted by our courts and they have consistently held that in a case involving sale of land, damages cannot adequately compensate a party for breach of a contract for sale of an interest in a particular piece of land or in a particular house. See Haji V Page (2003)8 NWLR (Pt 823)583. Also in the case of Ezenwa v Oko (2008)3 NWLR (Pt. 1075)610 of 628 the Supreme Court Per Onnoshen JSC slated thus:

"…where there is a subsisting contract or agreement for sale or lease of land, the court being also a court of equity, is always inclined to grant specific performance because the land being sold or leased may have a peculiar value or significance to the purchaser or lease, particularly where it is a choice. Land on a busy commercial center of the town, thus where there is an existing valid agreement in relation to sale of property coupled with facts and circumstance in which the court can exercise its discretionary powers, in equity to no specific performance of same, particularly where the agreement is ex facie not illegal or does not offend public policy, the court will enforce same by an order of specific performance. See Shlaeri v Yusuf (2009)6 NWLR (Pt 1137)207.

Also the case of Olowa v Building stock LTD (2018)1 NWLR (Pt.1601)409 paras D-F the Apex court also held as follows with regard specific performance in land transaction;

"Although an order of specific performance will not be readily granted where a remedy in damages is adequate, the general principles governing its grant in present times in cases of a contract for sale of land is that the law takes the view that damages cannot adequately compensate a party for breach of a contract for the sale of an interest in a particular house. However, ordinary specific performance is available even though the buyer has bought for resale. The vendor too can get a specific performance."

He finally submits and urge this court to determine all the questions raised in the originating summons in favor of the claimant and consequently grant all the reliefs sought by them.

As I said in the early part of this judgment, the Defendant though properly served the originating processes the said which was acknowledged shows to do nothing. They stayed away from the defense of this suit. They did not enter appearance nor filed their statement of defense, the law is settled that where a defendant fails to

enter appearance and did not file any statement of defense, any allegation of facts contained in the statement of claim must be taken as established even without further proof. See Alimi VBashorun (1979)1 FWLR 226. In fulfillment of the requirement of the law, the plaintiff who presented his case in proof of his claim and the evidence led has not been contested, challenged or uncontroverted and manifestly credible, a reasonable court or tribunal is at liberty to accept it and indeed act on it.

In view of the foregoing, I am therefore prepared to accept the unchallenged evidence of the claimant on the evidence and the exhibit submitted in support were not questioned, contested or challenge. There is nothing placed before this court to deprive the plaintiff of the grant of the Declaration sought in its claim.

In the final analysis, it is the judgment of this court that the plaintiff has proved its case, I therefore grant the following reliefs accordingly, I grant 1, 2, 3, 4, 5 &6 while relief 7, I award the sum of #2,500.000.00 (Two Million Five Hundred Thousand Naira) only against the Defendant.

This is my Judgment.

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HON. JUSTICE A. Y. SHAFA

APPEARANCE:

1. Isaac Stephen for the Claimant.
2. T. Azoom for the Defendant.