IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT MAITAMA

BEFORE HIS LORDSHIP : HON. JUSTICE Y. HALILU

COURT CLERKS : JANET O. ODAH & ORS

COURT NUMBER : HIGH COURT NO. 14

CASE NUMBER : SUIT NO: CV/1283/2017

DATE: : FRIDAY 28TH JUNE, 2024

BETWEEN:

MR. ABEL BEHORA ..... PLAINTIFF

AND

1. AVASTONE GLOBAL SERVICES LTD. DEFENDANTS

2. MR. PETER OKAFOR

JUDGMENT

Abel Behora took out a Writ of Summons against the Defendants i.e Avastone Global Services Limited and Mr. Peter Okafor in Suit No. CV/1263/2017 wherein he sought for the following reliefs:-

A. A Declaration that the Plaintiff is the beneficial owner of Plot 18, Cadastral B19 Katampe Extension, Abuja measuring 4,431.75sqm and had not transferred his interest to the Defendants vide the Real Estate Joint Venture Agreement dated 17th October, 2016.

B. A Declaration that the Defendants are in breach of Clauses 3, 8, 9 and 14 of the Real Estate Joint Venture Agreement dated 17th October, 2016 between the parties when the Defendant failed to make the Development Design available to the Plaintiff for his approval before the commencement of development on the plot. And to have also commenced development without having obtained the necessary development and building plans approval from the Department Development Control, AGIS and other regulatory authorities.

C. A Declaration that since the Defendants were in breach of the terms of the Real Estate Joint Venture Agreement of 17th October, 2016 the Plaintiff was justified in law when terminated the agreement vide his solicitors letter of 23rd February, 2017.

D. An Order of the Honourable Court directing the Defendant to remove whatever developments he had carried on the Plaintiff's plot by way of pegging, digging, demarcation, blinding, dumping of blocks, stones and sand which has changed the topography of the plot, be removed and restored to its original state prior to the signing of the Real Estate Joint Venture Agreement.

E. An Order of Court directing the Defendants to provide an account into which the sum of N15,000,000.00 (Fifteen Million Naira) only hitherto paid by the Defendants to the Plaintiff can be paid back into the contract having been terminated by the Defendants breach.

F. Special damages in the sum of $40,000.00 being the cost of the wrist watch stolen by the 2nd Defendant, Mr. Peter, Engr. Emmanuel Offor and other thugs on 24th February, 2017 when they attacked the Plaintiff on his plot.

G. A perpetual injunction restraining the Defendants by themselves or their Directors, Agents, Workmen, Privies, Staff, Engineers, Masons and Helpers from entering, trespassing into, developing, improving or otherwise disturbing the Plaintiff's quiet enjoyment and possession of Plot 18, Cadastral Zone B19, Katampe Extension, Abuja.

H. The sum of N100,000,000.00 (One Hundred Million Naira) only as general damages against the Defendant for breach of contract.

Upon service of the Writ of Summons on the Defendants, a Joint Statement of Defence dated 14th February, 2022 was filed on the 18th February, 2022 whereof Defendants counter-claimed against the Plaintiff as follows:-

1. A Declaration that the Joint Venture Agreement between the Plaintiff and Defendant can only be validly terminated in accordance with provisions of Clause 38 of the Joint Venture Agreement.

2. A Declaration that the Plaintiff breached the provision of Clause 19 of the Joint Venture Agreement between the Plaintiff and the Defendant when he constantly go to the

construction site in exclusive possession of the 1st Defendant to harass the 1st Defendant's construction workers.

3. A Declaration that the Plaintiff is bound by his offer to sell off Plot 18, Katampe Extension to 1st Defendant and that he is estopped from reneging on his Agreement to sell to the 1st Defendant at the sum of N72,000,000.00 (Seventy-Two Million Naira).

4. A Declaration that the 1st Defendant has equitable interest in Plot 18, Katampe Extension, Abuja having paid substantial part of the purchase price and having taken possession of same vide an agreement between it and the Plaintiff.

5. An Order of this Honourable Court directing the Plaintiff to take the sum of N12,000,000.00 (Twelve Million Naira) as the outstanding balance of the full purchase of Plot 18, Katampe Extension, Abuja.

6. An Order of this Honourable Court directing the Plaintiff to pay the sum of N100,000,000.00 (One Hundred Million Naira) to the 1st Defendant as damages for interfering with the possessory right of the 1st Defendant over Plot 18, Katampe Extension, Abuja.

Upon settlement of pleadings, Plaintiff and Defendants both called lone witness each and tendered documents in prove of their respective claims, Defence and Counter-claim.

Abel Behora who affirmed to tell the truth, gave evidence on the 9th day of November, 2021 as Plaintiff's sole witness. He tendered the following documents in evidence;

1. Statutory Offer of Right of Occupancy
2. Affidavit of Indemnity dated 28th October, 2016
3. Power of Attorney
4. Real Estate Joint Venture Agreement
5. Letter to the Defendants requesting copies of Development drawing and designs
6. Notice of Termination of Real Estate Joint Venture Agreement.
7. Four (4) photocopies showing a KIA Vehicle; a policeman, the building and certificate of compliance
8. First Information Report (FIR) from Upper Area Court Karimo
9. Receipts and Invoice issued by Vintage Watches

10. Acknowledgement receipt to show Defendants' counsel took the KIA Vehicle and PW1 eye glasses for repairs

11. Hand written receipts issued to the Defendants' counsel for the repairs carried out on the KIA Vehicle.

Documents were admitted and marked Exhibits "1", "2", "3", "4", "5", "6", "7", "8", "9", "10" and "11" respectively.

PW1 was cross-examined and discharged.

Plaintiff's counsel thereupon closed the case of the Plaintiff.

DW1, Raymond Bendoo, who affirmed to tell the truth, gave evidence on the 2nd March, 2023. He tendered the following documents in evidence, as follows:-

1. Print-out of Bank transaction from GTBank and Diamond Bank.

2. Computer print-out of statements of accounts of 1st Defendant.

3. Letter from ECOWAS Residents Association dated the 10th November, 2021.

4. Minutes of meeting of Amicable Resolution of case dated 17th February, 2021.

5. Draft, titled. "Final Terms of Settlement dated the 11th July, 2018.

The said documents were admitted as Exhibits "D1", "D2", "D3", "D4" and "D5" respectively.

DW1 was cross-examined and discharged accordingly.

At the close of the respective cases of parties, final written addresses were filed.

Learned counsel for the Defendants formulated five issues for determination in its final written address to wit:

a. ***Whether from the evidence before this Honourable Court, the Claimant is entitled to the declaratory relief that he is the beneficial owner of Plot 18 Cadastral Zone B19, Katampe Extension, Abuja.***

b. ***Whether this Honourable Court can rely on the contradictory evidence of the Claimant in determination of this case.***

c. ***Whether the Notice of Termination issued by the Claimant is in accordance with terms of the contract, he entered into with the Defendants.***

d. ***Whether the Claimant has waived the termination of the contract by entering into another agreement with Defendant to purchase Plot 18, Cadastral Zone B19 Katampe Extension, Abuja, the subject matter of the contract between the Claimant and the Defendant.***

e. ***Whether from evidence before this court the Defendants is liable to the claim of Claimant that his wrist watch worth $40,000 was stolen by the Defendants***

On issue One, ***Whether from the evidence before this Honourable Court, the Claimant is entitled to the declaratory relief that he is the beneficial owner of Plot 18 Cadastral Zone B19, Katampe Extension, Abuja.***

Arguing on the above, learned counsel submits that, it is trite law that a party seeking declaratory relief in his favour must succeed on the strength of his case and not the weakness of the Defendants' case. He cited ***AYANRU RTD. VS. MANDILAS LTD. (2007) 4 SCNJ 288.***

Learned counsel submits that it is settled law that one of the recognized method of proving tittle to land is by production of valid and authentic documents of title. The case of ***IDUNDUN VS. OKUMAGBA (1976) 9 – 10 NSCC (VOL. 10) 445; (1976) 9 -10 SC 227, (1976) 1 NMLR was cited.***

It is further the submission of the learned counsel that the Claimant tendered an affidavit and an unregistered power of attorney, it is needless to say that neither the affidavit nor an unregistered power of attorney can confer title on the Claimant and these documents can never be relied upon by the court in granting a claim for declaration of title to land. He added that the court in plethora of cases have pronounced on the status of an unregistered Power of Attorney in relation to declaration of title to land. ***ALHAJI A.B ABUBAKAR VS. ALHAJI ABUBAKA DANIYA WAZIRI & ORS. (2008) LPELR – 54 (SC).***

Learned counsel submits and placed reliance on the judicial authorities cited and that the Power of Attorney tendered in evidence by the Claimant and admitted in evidence as Exhibit 3 should be expunged from the record of this Honourable Court as it has no evidential values.

The court is urge to hold that in the absence of valid document of title in support of the Claimant's claim for declaration of title to Plot 18, Cadastral Zone B19, Katampe Extension, Abuja, the claim is bound to fail.

On Issue Two, ***Whether this Honourable Court can rely on the contradictory evidence of the Claimant in determination of this case.***

It is the submission of the learned counsel that when a party's evidence on a materials fact is contradictory, the court cannot rely on such evidence, the evidence of the Plaintiff in this case was contradictory and inconsistent. The case of ***DAREGO VS. A.G. LEVENTIS (NIG.) LTD. (2015) LPELR 25009 CA was cited.***

Learned counsel further argued and made references to certain paragraphs of the Claimant's witness statement on oath on particulars of material contradictions in evidence of the Claimants. He further submits that what amounts to contradiction in evidence was recently restated by the Supreme Court in the case of ***ZAKIRAI VS. MUHAMMAD (2017) LPELR 42349 (SC).***

Learned counsel urge this Honourable Court to discountenance the contradictory evidence of the Claimant as the court cannot

pick which the conflicting version of the Claimant's evidence to believe.

On issue Three, ***Whether the Notice of Termination issued by the Claimant is in accordance with terms of the contract, he entered into with the Defendants.***

Arguing on the above issue, learned counsel made reference to clause 38 of the Joint Venture Agreement and further argued that it is trite law that in interpretation of statues and documents, the golden rule is that words in a document should be given their ordinary and simple meaning. He cited the case of ***AL-RISSALAH PRINTING & PUBLISHING CO. LTD. & ORS. VS ELHOUSSEINI & ORS. (2007) LPELR – 8543 C.A***

Learned counsel further submits that this Honourable Court has a primary duty to enforce the contract between the Claimant and the Defendants in accordance with the terms and conditions of Exhibit "4".

The Court is urge to hold that Exhibit "6" is incompetent and cannot validly terminate the agreement between the Claimant and Defendants.

On issue four, ***Whether the Claimant has waived the termination of the contract by entering into another agreement with Defendant to purchase Plot 18, Cadastral Zone B19 Katampe Extension, Abuja, the subject matter of the contract between the Claimant and the Defendants.***

It is the submission of the learned counsel that assuming but not conceding that the Claimant's Notice of Termination is valid, the Claimant has waived the termination of the contract by subsequently agreeing to sell the subject matter of this case Plot 18 Katampe Extension to the Defendant for N72,000,000.00 (Seventy Two Million Naira). Learned counsel added that the Claimant had obviously waived the Notice of Termination by agreeing to collect N72,000,000.00 (Seventy Two Million Naira) as purchase price for the subject matter of this case, the Claimant cannot enforce the Notice of Termination. He cited ***BAKARI VS. OGUNDIPE (2021) 5 NWLR (Pt. 1768).***

On issue five, ***Whether from evidence before this court the Defendants is liable to the claim of Claimant that his wrist watch worth $40,000 was stolen by the Defendants.***

Learned counsel submits that the allegation of the Claimant that the Defendants stole his wrist watch worth $40,000 is an allegation of crime.

It is trite law that when an allegation of crime is made in a civil case, the burden of proving such allegation is beyond reasonable doubt. The case of ***OMOBORIOWO VS. AJASIN (1984) 1 SCNLR 108 was cited.***

Learned counsel further submits that it is trite law that any one accused of a crime is presumed innocent until the contrary is proved in court.

The law estops the Claimant from bringing any claim for damages for his purported stolen wristwatch against the Defendants in the light of the pending criminal action initiated by his complaint that the Defendant stole his wrist watch.

Learned counsel submits that the claim of the Defendants for special damages of $40,000 is an abuse of court process in the light of pending criminal case wherein he already claimed that the Defendants stole the same wrist watch.

Learned counsel in his argument refers the court to paragraph 10 to 11 of the Defendants' witness statement on oath.

The court is urge to dismiss the claims of the Claimant and grant the counter claim of the Defendants.

On their part, learned counsel for the Plaintiff filed their final written address wherein sole issue was formulated for determination to wit:

Whether the Claimant has proven his case on the preponderance of evidence as to been titled to the reliefs claimed against the Defendants.

It is the submission of the learned counsel that a civil case is decided on the preponderance of evidence and/or balance of probabilities. That the only way to arrive at a final decision is by determining on which side the weight of evidence tilts. Learned counsel further added that the court have been urged to deal with every civil matter before it on the balance of probability and/or one the preponderance of evidence and not proof beyond reasonable doubt. Section 135 of the Evidence Act. The case of ***ORJI VS. DORJI TEXTILE MILLS (NIG.) LTD. (2010) 5 WRN 32 at Page 68 Lines 40 – 45*** was cited.

Learned counsel submits that from the contents of Exhibit "4", a contract existed between the parties; the contract was validly entered into as there was mutuality of purpose and intention.

That five ingredients of a valid contract were present in the agreements, these ingredients of a valid contract are Offer, Acceptance, Consideration, Intention to create legal relationship and Capacity to contract. The burden that a contract exists is on the party alleging it. See the case of ***ORIENT BANK (NIG) PLC. VS. BILANTE INTERNATIONAL LTD. (1997) 8 NWLR (Pt. 515) 37*** was cited.

Learned counsel argued that the Defendants were clearly in breach of the explicit terms of Exhibit "4", they failed to give the development design/building plans to the Claimant contrary to clause 3 of the agreement, they failed to get the necessary preliminary approvals from the designated government agencies before the commencement of development/construction on the site, they were supposed to have waited for six (6) months before moving to the site.

Learned counsel further argued that the operational word used in clauses 3 and 7 is "shall", the context in which it was used connotes a command, it is mandatory not merely directory. Learned Counsel refer the court to clause 3 of Exhibit "4" and clause 7 of Exhibit "4" in support of his argument.

Learned counsel submits that when the Defendants failed to comply with the clear wordings of clauses 3 and 7 of Exhibit "4", they were in breach of the contract. That the Defendants were not at liberty to act outside the terms and conditions contained in their contract. The case of ***CONOIL VS. VITOL S.A (2018) 34 WRN 1 at 54 lines 25 – 30*** was cited.

Learned counsel submits further that Claimant after serving the processes of this court to the Defendants, Defendants approached the Claimant for an amicable resolution of the dispute by way of an out of court settlement, the terms of the proposed out of court settlement were never signed because the Defendants again failed to meet up with their obligations under the terms of settlement. Counsel further added that DW1 was very categorical and unequivocal when he repeatedly admitted that the sum of N28,000,000.00 (Twenty Eight Million Naira) was outstanding and remained unpaid to the Claimant as at the date he testified in court.

Learned counsel argued further that the statement of Defence and counter claim of the Defendants averred and rely on facts which transpired after the institution of this suit, is therefore contrary to the rules of pleadings for Defendants to plead and

rely on facts which occurred after filing of this suit as a defence to the suit. Such pleadings ought to be discountenanced. ***KOLAWALE VS. OLORI (2009) 11 WRN 27*** was cited.

Learned counsel submits that the documents relied upon by the Defendants which were admitted as Exhibits "D1" – "D5" are not admissible in law having been made during the pendency of this suit.

He cited section 83(3) of the Evidence Act 2011 and the case of ***OSENIYEKINI VS. OTERBADE (2014) LPELR 41101.***

Learned counsel further submits that Exhibit "D5" was not signed by any of the parties, it is worthless piece of document as a document that is not signed is not admissible in law. The case of ***OMEGA BANK NIG. PLC. VS. O.B.C. LTD. (2006) 4 WRN 1 at 42 lines 30 – 35*** was cited.

It is further the submission of the learned counsel that there was no objection by the Claimant's counsel to the admissibility of Exhibits "D1" – "D5" at the point when the documents were being tendered, it is because the documents were in themselves inadmissible in law, the issue of their admissibility can be challenged at this stage of address. He cited ***OMEGA BANK***

NIG. PLC. VS. O.B.C. LTD. (2006) 4 WRN 88 at 127 lines 20 -25.

Learned counsel further submits that the title of the Claimant of Plot 18, Cadastral Zone B19, Katampe Extension was never in doubt before and after signing of Exhibit, having confirmed the Claimant's title, the Defendants paid N15,000,000.00 (Fifteen Million Naira) to the Claimant in satisfaction of clauses 18 and 21 of Exhibit "4", the Defendants cannot now in their final address purport to challenge or question the title of the Claimant. Learned counsel added that party must be consistent in presenting his case, he cannot approbate and reprobate with respect to the same set of facts. See the case of ***DAPIALONG VS. DARIYE (2007) 8 NWLR (Pt. 1036) 239 at 290, Paragraph C-D.***

Counsel further submits on the above that a party cannot argue a case at the address stage different from the one he raised in the pleadings. ***SALIBA VS. YASSIN (2002) 13 WRN 59 at 77 lines 5 – 25.***

Learned counsel further argued on the Defendants' sought declaratory reliefs in their counter claim, they sought to pay the sum of N12,000,000.00 (Twelve Million Naira) as final payment to the Claimant, this claim is in contradiction of the admission by the

DW1 that what remains unpaid to the Claimant was N28,000,000.00 (Twenty Eight Million Naira) as at the date he was testifying as a witness. The Defendants are seeking for the equitable remedy of the court without going to the court with clean hand. See ***IFEKANDU VS. UZOEGWU (2009) 1 WRN 128, at 39 lines 25 – 30*** was cited.

It is the submission of the learned counsel that fact which has been admitted requires no further proof. It is trite that what has been admitted need no further proof. He cited section 123 of the Evidence Act.

On the whole, learned counsel submits that the Defendant's case and submissions are purely speculative and hypothetical, courts have been enjoined in a plethora of cases not to entertain issues or questions which are merely academic, speculative and hypothetical no matter how brilliant, beneficial, it may be to the public at large. The case of ***IVIENAGBOR VS. BAZUAYE (1999) 6 SCNJ 235 – 244*** was cited.

In conclusion, learned counsel submits that the Claimant had proved his case by credible evidence that the Defendants are in breach of Exhibit "4", the Claimant is ready to return whatever deposit the Defendants paid for the plot and for them to remove

the developments on the land. That there is no sale or transfer of title where the purchase price is not paid in full. See the case of ***OGUNDALU VS. MAC-JOB (2015) 8 NWLR (Pt. 1460) Page 96.***

Learned counsel further submits that the counter claim of the Defendants lacks merit and same ought to be dismissed with substantial cost. The court cannot act on instinct in the absence of credible evidence being placed before it. ***KATTO VS. CENTRAL BANK OF NIGERIA (1991) 12 SCNJ 1 at Page 15.***

In turn, the Defendants filed joint reply to the Claimant's final written address.

Learned counsel for the Defendants in his reply argued that the Claimant in his final address failed to show why these documents ought not to be admitted in evidence by this Honourable Court, the court is urge to discountenance the arguments of the Claimant in respect of these documents as they were righty admitted in evidence.

Learned counsel humbly submits that Exhibit "D4" is an exception to the rule that documents made during the pendency of a case is not admissible, this is because Exhibit "D4" is a document

executed by counsel to the Claimant and Defendants to settle this case out of court. It is therefore the settled position of the law that documents made during the pendency of case for the purpose of settlement is admissible in law as an exception to the provisions of section 83(3) of the Evidence Act 2011. He refers the court to the case of ***SADIQ VS. BALARABE (Page 19 – 20) Paragraph B (2020) LPELR – 52114 CA.***

Learned counsel added that the argument of the Claimant that Exhibit "D4" is not admissible is misconceived, the court is urge to discountenance the argument of Claimant.

In conclusion, the Court is urge to dismiss the case of the Claimant and grant the counter claim of the Defendants.

COURT:-

I have read the pleadings filed by parties, vis-à-vis the evidence (oral/documentary) led, on the one hand, and the legal argument filed, adopted and adumbrated by the respective counsel for the parties.

The issues which have already been captured in the preceding part of this Judgment as presented by both parties will not again be reproduced here, since it will make no difference. I however

wish to note that the lone issue formulated by the Plaintiff seems to be all encompassing and shall take care of all the five (5) issues formulated by the Defendants, and therefore is hereby adopted as that of Court for determination.

The issues are;

a. Whether from the evidence before this Honourable Court, the Claimant is entitled to the declaratory relief that he is the beneficial owner of Plot 18 Cadastral Zone B19, Katampe Extension, Abuja.

b. Whether this Honourable Court can rely on the contradictory evidence of the Claimant in determination of this case.

c. Whether the Notice of Termination issued by the Claimant is in accordance with terms of the contract, he entered into with the Defendants.

d. Whether the Claimant has waived the termination of the contract by entering into another agreement with Defendant to purchase Plot 18, Cadastral Zone B19 Katampe Extension, Abuja, the subject matter of the contract between the Claimant and the Defendant.

e. <u>Whether from evidence before this court the Defendants is liable to the claim of Claimant that his wrist watch worth $40,000 was stolen by the Defendants</u>

The essence of filing pleadings cannot be over emphasized. It is meant to settle issues to be tried and to prevent one party taking the other by surprise.

See ***COMPTROLLER GENERAL OF CUSTOMS & ORS VS. GUSAU (2017) LPELR – 42081 (SC).***

From the pleadings filed by both parties, the legal conundrum has been narrowed to Exhibit "4" which is titled;

"The Real Estate Joint Venture Agreement

BETWEEN

ABEL BEHORA (Land Owner)

AND

AVASTONE GLOBAL SERVICES LIMITED (Developer)."

The said document was tendered by the Plaintiff to show existence of contract for the Development of its property by the

1st Defendant, and that the agreed terms of the contract have been breached by the Defendants to which Plaintiff sought for the declaratory reliefs as reproduced in the earlier part of this Judgment.

Defendants on their part, denied a substantial part of the Plaintiff's claims and counter-claimed against the Plaintiff as stated in the preceding part of this Judgment.

It is instructive to note that the reliefs sought by the Plaintiff and Defendants in their counter claim are declaratory in nature.

I shall therefore pause at this point to state the law as it relates to declaratory reliefs.

Whoever desires any Judgment founded on declaratory reliefs must lead credible evidence as declaratory reliefs are not granted as a matter of course, absence of defence, admission or weak defence. The following cases are instructive on this point, as follows:-

SANI A. & ANOR VS. AKURE & ORS (2019) LPELR – 48756 (CA);

AJIBULU VS. AJAYI (2013) LPELR – 21860 (SC).

Plaintiff led evidence through PW1 to show his relationship with the subject matter i.e Plot 18 Cadastral Zone B19, Katampe Extension, Abuja, which he eventually got Avastone Global Services Limited (Developer) i.e the 1st Defendant to develop as agreed in the Real Estate Joint Venture Agreement with the Plaintiff as evidence by Exhibit "4".

It is the evidence of the Plaintiff that Exhibit "4" was signed after a legal search of the title documents of Plaintiff was duly carried out at the Abuja Geographic Information System, AGIS by the Defendants.

Plaintiff admitted collecting N15,000,000.00 (Fifteen Million Naira) as agreed under Clause 16 of Exhibit "4", as premium, but that Defendants failed to bring copies of the Development Design for his approval as contained in Clause 3 of Exhibit "4", failed also to bring letters/applications to him for his signature for drawings, building plan approvals to be given to enable commencement of construction on site, but despite above infractions, Defendants began excavating without approvals to build which got him uncomfortable and prompted him to get his lawyers to do a letter to the Defendants, and that Defendants refused and or ignored all his efforts to bring them to a round table discussion but

continued with development on site without any such approval to his knowledge which eventually got him to terminate Exhibit "4" i.e the Development Lease Agreement.

It is further the evidence of Plaintiff that when he visited the said land the next day in company of his brother and a Police Corporal whom he introduced as his friend, they were both beaten up by 2nd Defendant, Policemen, Engr. Emmanuel Offor and five (5) other thugs.

It is his evidence that the screen of his KIA vehicle was broken, his medicated glasses destroyed, Frank Muller Watch snatched and an envelope containing documents snatched, and that 2nd Defendant and his co-travelers later fled from the scene but that they held unto Engr. Emmanuel Offor and took him to Police State at Gwarimpa where he was charged to Court upon investigation with the 2nd Defendant and one other who is at large in Charge No. CR/306/2017.

It is his further evidence that the 2nd Defendant has been on the run.

It is equally the evidence of Plaintiff that Afam Annie, Esq., Defendants' counsel who sought to intervene on the issue of attack on the person of the Plaintiff & Co., took Plaintiff's car for

repair, paid for the replacement of the broken eye glasses and similarly collected the purchase receipt for the missing unit watch.

It is Plaintiff's further evidence that both the wrist watch and the envelope containing documents which he served on the Defendants have not been returned to him.

Plaintiff similarly stated in his evidence that without his knowledge and or consent, Defendant went behind him and paid N1,000,000.00 (One Million Naira) as part payment for certificate of occupancy; that Defendants who were served the Notice of Termination of the Joint Venture contained in Exhibit "4", began building of structures day and night on the disputed plot of land.

Under cross-examination, PW1 confirmed the fact that Exhibit "4" i.e "Minutes of Meeting of Amicable Resolution" can only be terminated with both parties executing the terms of termination.

On their part, Defendants in their evidence stated that, while work was ongoing at the construction site, Plaintiff came with persons who introduced themselves as Policemen to attack construction workers and that when he was alerted, he came with policemen to apprehend the thugs brought by the Plaintiff, and that in the cause of the fracas, the windscreen of Plaintiff's car was damaged.

It is similarly the evidence of Defendants, that they offered to repair the damaged windscreen of Plaintiff and replace the missing items claimed by the Plaintiff save for the wrist watch which Plaintiff claimed was missing.

It is also evidence of the Defendants that N60,500,000.00 (Sixty Million, Five Hundred Thousand Naira) had been paid to the Plaintiff as part payment of the agreed sum of N72,000,000.00 (Seventy-Two Million Naira) being consideration for Plot 18, Katampe Extension Abuja, leaving unpaid balance of N12,000,000.00 (Twelve Million Naira).

It is equally the evidence of Defendants that though the unpaid balance of N12,000,000.00 (Twelve Million Naira) was not paid within the time agreed, that both parties further agreed vide Exhibit "D4" i.e Minutes of Meeting held on the 17th February, 2021 that Defendant shall pay N28,000,000.00 (Twenty Eight Million Naira) in full and final payment for the purchase of Plot 18 in issue.

It is the evidence of Defendants that Exhibit "4" was not terminated in accordance with the terms of the agreement and that no such Notice of Termination was ever served on them.

DW1 under cross-examination answered the following questions in affirmative when he was asked the following questions:-

"Qst…. It is not in doubt that the Defendants paid the sum of N60,500,000.00 (Sixty Million, Five Hundred Thousand Naira) to the Plaintiff?

Ans…. Yes.

Qst…. As at today, what is the balance you were meant to pay the Plaintiff?

Ans… N28,000,000.00 (Twenty-Eight Million Naira).

Qst… Have the Defendants paid the money to the Plaintiff as at today?

Ans… No.

Qst… The Joint Venture Agreement in evidence (Exhibit "4") is the agreement between the Defendants and Plaintiff?

Ans… Yes.

Qst… Is it true that the duration of the transaction was 18 months from Exhibit "4"?

Ans… ***Yes.***

Qst… ***From Exhibit "5" Plaintiff requested for your design so he can see?***

Ans:- ***Yes.***

Qst… ***Did you comply with Exhibit "5"?***

Ans… ***No.***

Qst… ***Is it also true that you were served Notice of Termination of the Joint Venture Agreement by the Plaintiff?***

Ans… ***Yes.***

Qst… ***Are you aware of the incident that saw the Plaintiff and his brothers beaten up at the site?***

Ans… ***Yes."***

From the available evidence, would it be proper to conclude that the said contract was performed in accordance with the terms of Exhibit "4" i.e the Joint Venture Agreement which Plaintiff insists has been breached?

I shall answer above question shortly… Both counsel have attached their respective documents tendered and admitted in evidence and have made heavy weather of same in their respective final written addresses.

Let me now deal with the documents tendered by the Plaintiff to show his interest on the land.

It is true, per adventure, that unregistered title document cannot be justifiably used to establish title same having not been registered.

The case of ***COMMISSIONER FOR LANDS & HOUSING VS. ATANDA (2006) LPELR – 6155 (CA)*** is instructive on this point.

The argument of learned counsel for Defendants on the mentioned Power of Attorney is indeed founded in law and is hereby upheld.

The contention by Plaintiff's counsel that the said argument is an afterthought is spurious and refused.

I am quick however, to mention the well-known position of the law that where a Purchaser of Land has paid the purchase price for the land to the Vendor, he acquires an equitable interest in

the Land and this is as good as a legal estate. The equitable interest so acquired can only be defeated by a Purchaser for value who had no interest of the existing equity.

See ***IYUA VS. PAUL & ANOR (2019) LPELR – 47266 (CA);***

GBADAMOSI & ORS VS. AKINLOYE & ORS (2013) LPELR – 20937 (SC).

Plaintiff has tendered affidavit to show that he purchased the subject matter from the initial Allottee for monetary consideration but could not find the original Allottee again.

Even though Plaintiff has not regenerated the instrument of transfer, he has the original title document in his possession.

He undertook to indemnify Abuja Geographical Information System (AGIS) and all other relevant authorities that in case of any claims on the right of occupancy over the subject matter, he should be held responsible.

The deposition made by the Plaintiff who is in possession of the original Title document to the subject matter, makes his interest very inherent hence equitable.

The law even supports the interest of a Trespasser who does not have any such Title to show other than the fact that he is in possession, not to talk of an equitable interest. Such a Trespasser can maintain an action in trespass against other persons.

See ***ADETONO & ANOR VS. ZENITH INT'L BANK PLC. (2011) LPELR (SC).***

The argument of learned counsel for the Defendants which is hinged on the said title document cannot be the basis for them to shirk from their obligation as contained in Exhibit "4" i.e the Agreement.

I note the fact that before such transactions are eventually consummated, legal search of the status of land ought to be carried-out to ascertain the root of title.

Defendants who have appended signature to Exhibit "4" i.e Real Estate Joint Agreement and who have paid the sum of N60,500,000.00 (Sixty Million, Five Hundred Thousand Naira) to the Plaintiff as consideration for the land (hereinafter referred to as Plot No. 18 Cadastral B19, Katampe Extension, Abuja) only made a nonsense of their argument that Plaintiff is not the owner of the said land… why then did Defendants pay the said amount

of money as consideration for land they were sure never belonged to the Plaintiff?

This is laughable and preposterous.

Defendants who have failed to respect their obligation in Exhibit "4" are behaving like the drowning fishermen, looking to hold unto anything that is on their way to avoid being drowned, in vain.

The evidence of DW1 has clearly exposed the weakness contained in the Defence of the Defendants, DW1 having admitted in express terms the fact that they are in breach of the contract. This is so because DW1 admitted the fact that Defendants did not keep to the terms of the contract.

The argument of learned counsel for the Defendants, that by the existence of Exhibit "D4", the terms contained in Exhibit "4" have been overtaken and that Plaintiff cannot rely on the term contained in the Joint Venture Agreement.

The issue is, both Exhibits "4" and "D4" were breached and that was confirmed by DW1 under cross-examination.

Plaintiff therefore is not under any obligation to be bound by Exhibit "D4" which was principally aimed at reconciling the

breached part of Exhibit "4" which by this Judgment remains the contract document between the parties.

Supreme Court in the case of ***SEISMOGRAPH SERVICES NIG. LTD. VS. EYUAFE 9 – 10 (1976) LPELR 3026 (SC)*** defined admission against interest to mean a statement, oral or written made by a party to a civil proceeding and which statement is adverse to his case is admissible in the proceedings as evidence against him of the truth of the facts asserted in the statement.

Admission against interest was also held by Supreme Court to be the best evidence. See ***ONYENGE VS. EBERE (2004)13 NWLR Part 889 Pages 1 – 39 Paragraphs F – G.***

Time is of the essence where same is agreed upon in a contract document.

In Order to determine whether time is of the essence in a contract or not, the nature of the transaction will be the main consideration and that fact as to time must be stated in firm term and unequivocally.

See ***WARNER & WARNER INT'L ASSOCIATES (NIG.) LTD. VS. F.H.A (1993) 6 NWLR (Pt. 298) 148.***

It is established from the content of Exhibit "4" and the answer by DW1 under cross-examination that the duration of the transaction was 18 months.

The said agreement was executed on the 17th October, 2016 and by Notice vide Exhibit "6" terminated on the 23rd February, 2017 for the reason of breaches.

The amazing aspect of this case, is that there are documents exchanged between the disputing parties and the fact that the gamut of the misunderstanding is centered on the said Joint Venture Agreement, makes the issue narrow, as the best form of evidence is documentary evidence.

See the case of ***GBILERE & ANOR VS. ADDINGI & ORS (2012) LPELR – 14281 (CA).***

As can be gleaned from the claims and counter-claim of the parties, the issue in dispute is with relation to that **Real Estate Joint Venture Agreement** which is in evidence as Exhibit "4".

Needless to say, that both parties are in agreement on the existence of a contract agreement to build houses on the agreed terms contained therein in Exhibit "4" aforementioned.

It is instructive at this juncture to state the law relating to contract and its efficacy.

It is elementary law that where parties have entered into a contract or an agreement, they are bound by the provision of the contract or agreement. This is because a party cannot resile from a contract or agreement just because he later found out that the conditions of the contract or agreement are not favourable to him. This is the whole essence of Sanctity of Contract or Agreement.

See ***A.G. RIVERS STATE VS. A.G. AKWA-IBOM STATE & ANOR (2011) LPELR – 633 (SC).***

Defendants who have failed to comply with the terms of Exhibit "4" which was the Precursor to the termination of the said contract, cannot now turn around to rely on the terms contained in Exhibit "D4" which was aimed at settling the dispute in Exhibit "4" which they both breached, as the basis for insisting on the fact that the said Exhibit "D4" be given credence over Exhibit "4". This line of argument is most compulsive and hallucinating.

Defendants, clearly, are in breach of the contract entered-into with the Plaintiff as per Clauses 3, 8, 9 and 14 of the Joint

Venture Agreement dated 17th October, 2016, Plaintiff was therefore in law justified to have terminated the Agreement.

In the consideration of remedies for breach of contract, the option open to a party to a valid contract is an action for damages in breach of the contract.

See ***NWAOLISAH VS. NWABUFOH (2011) LPELR – 2115 (SC).***

It is very clear from the available evidence that Plaintiff has been able to establish his entitlement to the reliefs sought as contained on the face of the Writ and Statement of Claims as the adduced evidence before the Court.

Reliefs **A, B, C, D** and **F** are **hereby granted**.

A. A Declaration that the Plaintiff is the beneficial owner of Plot 18, Cadastral B19 Katampe Extension, Abuja measuring 4,431.75sqm and had not transferred his interest to the Defendants vide the Real Estate Joint Venture Agreement dated 17th October, 2016.

B. A Declaration that the Defendants are in breach of Clauses 3, 8, 9 and 14 of the Real Estate Joint Venture Agreement dated 17th October, 2016 between the parties when the

Defendant failed to make the Development Design available to the Plaintiff for his approval before the commencement of development on the plot. And to have also commenced development without having obtained the necessary development and building plans approval from the Department Development Control, AGIS and other regulatory authorities.

C. *A Declaration that since the Defendants were in breach of the terms of the Real Estate Joint Venture Agreement of 17th October, 2016 the Plaintiff was justified in law when terminated the agreement vide his solicitors letter of 23rd February, 2017.*

D. *An Order of the Honourable Court directing the Defendant to remove whatever developments he had carried on the Plaintiff's plot by way of pegging, digging, demarcation, blinding, dumping of blocks, stones and sand which has changed the topography of the plot, be removed and restored to its original state prior to the signing of the Real Estate Joint Venture Agreement; and*

F. *Special damages in the sum of $40,000.00 being the cost of the wrist watch stolen by the 2nd Defendant, Mr. Peter, Engr.*

Emmanuel Offor and other thugs on 24th February, 2017 when they attacked the Plaintiff on his plot.

On relief **"E"** i.e seeking an Order to pay back the premium of N15,000,000.00 (Fifteen Million Naira) paid by the Defendants in view of the termination of the contract, I am minded to say that Plaintiff by his admission stated that the sum of N60,500,000.00 (Sixty Million, Five Hundred Thousand Naira) was paid to him. It is the said sum of N60,500,000.00 (Sixty Million, Five Hundred Thousand Naira) that shall be paid back to the Defendants for the failed and self-induced termination of the contract.

Next reliefs are those of Special Damages, General Damages and Perpetual Injunction.

What constitutes Special Damages is not a matter of conjunctive, assessment or estimation by the Court and can therefore not be considered in the context of Nominal Award.

Therefore, evidence must be led to establish the monetary value of the wrist watch which Plaintiff alleged was stolen.

It is in evidence that Plaintiff and his people were attacked when they visited the construction site.

It is also in evidence which has been admitted and therefore need no further prove that Plaintiff's KIA car windscreen was broken, his medicated glasses damaged and wrist watch stolen.

It is in evidence that Defendants' lawyer Barr. Afam Annie replaced the damaged windscreen and also replaced the medicated glasses but could not replace the wrist watch valued for $40,000 (Forty Thousand United States Dollars). This is contained in Exhibit "10".

I have seen Exhibit "9" i.e the payment receipt and invoice for Frank Muller Master gauge ish-white gold with diamond bezel gents watch.

This is enough evidence to grant the said relief. It is hereby granted.

On General Damages, **I hereby assess same at N10,000,000.00 (Ten Million Naira).**

Next is Perpetual Injunction…

This is a remedy granted upon final determination of the rights of the parties and it is intended to prevent permanent infringement of those rights and obviate the necessity of bringing action after action in respect of every infringement.

See ***GOLDMARK (NIG) LTD. & ORS. VS. IBAFON CO. LTD. & ORS (2012) LPELR 9349 (SC).***

This relief succeeds and is **hereby granted.**

Next to be considered is the Defendants' Counter-claim.

A Counter-claim is though forged together with the case of the Plaintiff, is indeed a distinct suit which must be separately determined.

DW1 who was fielded as a lone witness by the Defendants has admitted the fact that Defendants are in breach of the terms of the contract and the fact that Defendants and his people beat-up Plaintiff and his people when they visited the construction site.

The argument of Defendants that Plaintiff visited the construction site against the term of the contract cannot hold water, Defendants having breached the term of the contract which led to the valid termination of same.

Defendants can therefore not benefit from their wrong. See ***FCMB LTD. VS. VALUELINE INVESTMENT (2020) LPELR – 49875 (SC)***.

Plaintiff can therefore not be bound by any such sale of the said Plot 18 Katampe Extension to the 1st Defendant, 1st Defendant's contention that it has equitable interest is non-starter

On the whole, the Defendants having not placed any credible evidence before the Court, are bound to fail. Counter-claim fails and is hereby **dismissed.**

Justice Y. Halilu
Hon. Judge
28th June, 2024

APPEARANCES

A. Agbonlahor, Esq. with T.C. Okoye, Esq. – for the Claimant.

Emmanuel Adedeji, Esq. with Elliot Okosun, Esq. with Theodora N., Esq. for the Defendants.