

**THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY ABUJA
IN THE GWAGWALADA JUDICIAL DIVISION
HOLDEN AT COURT NO. 13, GWAGWALADA ABUJA
BEFORE HIS LORDSHIP: HON. JUSTICE A. S. ADEPOJU.
ON THE 14TH DAY OF MAY, 2024**

SUIT NO: FCT/HC/CV/2090/2013

BETWEEN:

BOOMET MEGA CONCEPT LTD

.....

CLAIMANT

AND

1. EMANUEL AUDU

(Trading under the name & style of fast line chambers)

}.....

DEFENDANTS

2. SUAVE PROPERTIES LIMITED

RULING

The 2nd Defendant filed a motion of Preliminary objection dated and filed on the 10/11/2023 seeking for an order dismissing this suit in entirety or the 2nd alternative strike out the 2nd Defendant/Applicant as a party in this suit.

The grounds for the preliminary objection are:

- 1) There is no privity of contract between the 2nd Defendant/Applicant and the Claimant/Respondent.
- 2) The Claimant/Respondent has no locus standi to sue the 2nd Defendant/Applicant.
- 3) An agent cannot delegate his power to another agent as enshrined in the doctrine of *Delegatus Non Potest Delegare*.

- 4) Sequel to the above, the honourable court lacks jurisdiction to entertain the subject of this suit being incompetent as it presently constituted.

In support of the preliminary objection is a 14 paragraph affidavit of one **Austine David Nwaora**, with documents attached marked as exhibit A-E respectively. Learned counsel for the 2nd Defendant in line with the rules of the court also filed a written submission. In response, the Claimant/Resonant filed an 8 paragraph counter-affidavit of one **Victoria Obichukwu**, the litigation secretary in the Law Firm of **O. J Chambers**. Similarly, the 1st Defendant also filed a 16 paragraph counter – affidavit deposed to by one **Emmanuel Audu Esq.** both counsel field their respective written addresses.

A summary of the events that culminated with the instant action .before the court and the preliminary objection was that the 2nd Defendant was alleged to have engaged the service of 1st Defendant to source for a property for him, and the 1st Defendant further delegated the instruction to the Claimant/Respondent to source for the said property. The claimant averred that the 1st Defendant through his letter dated 19th November, 2021 requested him on behalf of his client 2nd Defendant to find a residential land either in Guzape or Asokoro for outright purchase. The Plaintiff in reply to the request on demand stated that upon successful completion of the business 2nd Defendant shall pay him agency fees of 5% of the total purchase price through the 1st Defendant.

The 1st Defendant was said to have accepted the condition and consequently the Plaintiff showed the Defendant Plot 966 Guzape Abuja and Plot 2794 Asokoro Abuja. The plaintiff said he equally linked up the Defendant to the land owner through one Mr. Austin David the

Landlord's Agent. The plaintiff asserted further that the Defendant follow up the transaction and eventually bought Plot 2794 Asokoro Abuja for **₦230,000,000.00 (Two Hundred and Thirty Million Naira)** But refused to pay 5% of the purchase price to him notwithstanding all his efforts to get his entitlement This is the case of the Claimant's case and his eventual Preliminary Objection filed by the 2nd Defendant. I have gone through all the processes including the document attached thereto filed by the parties and the submission of their learned counsels. I agree with the submission of learned counsel for the 1st Defendant that issues raised by the 2nd Defendant in her preliminary objection cannot be dealt with at this preliminary stage but can only be established by calling evidence at the substantive trial. I endorsed his argument that the learned counsel to the 2nd Defendant cannot converse privity of contract at this stage when it is denied in the 2nd Defendants defence and/or counter claims that he neither engaged the 1st Defendant nor instructed the 1st Defendant to engage the claimant on its behalf.

That with this denial, the relationship of the 2nd and 1st Defendant as well as the claimant becomes a fundamental issue to be proved by calling of witnesses and tendering of documents at the substantive trials.

I hold therefore that the preliminary objection is premature and it is hereby struck out. The matter is hereby adjourned for hearing accordingly.

Matter is adjourned to 10/07/2024 for definite hearing.

Signed

Hon. Judge

14/05/2024