

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**  
**IN THE ABUJA JUDICIAL DIVISION**  
**HOLDEN AT APO, ABUJA**  
**ON WEDNESDAY, THE 25<sup>TH</sup> DAY OF SEPTEMBER 2024**  
**BEFORE HIS LORDSHIP: HON JUSTICE ABUBAKAR HUSSAINI MUSA**  
**JUDGE**

FRANCIS GURUMLAT

CLAIMANT

AND

KYC INTER PROJECT LIMITED

DEFENDANT

**JUDGMENT**

By way of a Writ of Summons dated the 28<sup>th</sup> day of October, 2021 and filed on the same date, the Claimant brought this action against the Defendant seeking the following reliefs:-

- 1. An Order of this Honourable Court declaring the Defendant's letter dated 31<sup>st</sup> of August, 2020 to the Claimant intimating him of a relocation from Plot No. 220A, 5<sup>th</sup> Close, SabonLugbe, East Layout, Lugbe, Airport Road (Better described as KYC La Villa Diamante City Estate) Abuja to Section B of La Villa Diamante City Estate as void and of no effect.*

2. *An Order of this Honourable Court that the Claimant is still the valid allottee of Plot No. 220A, 5<sup>th</sup> Close, SabonLugbe East Layout, Lugbe, Airport Road (Better described as KYC La Villa Diamante City Estate).*
3. *An Order of this Honourable Court restraining the Defendant or their agents from disturbing or interfering with the possession of the Claimant on the premises known as Plot No. 220A, 5<sup>th</sup> Close, SabonLugbe East Layout, Lugbe, Airport Road (Better described as KYC La Villa Diamante City Estate) Abuja.*
4. *An Order of this Honourable Court directing the Defendant to pay the Claimant the sum of Fifty Million Naira (₦50,000,000.00) only for breach of contract.*
5. *An Order of Perpetual Injunction restraining the Defendants, agents, privies or any person acting on their behalf from further trespass on the property known as Plot No. 220A 5<sup>th</sup> Close, SabonLugbe East Layout, Lugbe, Airport Road (Better described as KYC La Villa Diamante City Estate, Abuja.*
6. *Cost of action in the sum of Five Hundred Thousand Naira ₦500,000.00 (Five Hundred Thousand Naira) only.*

The Honourable Chief Judge of this Court assigned this matter to this Honourable Court on the 18<sup>th</sup> of November, 2021. On the 12<sup>th</sup> of January,

2022, this suit came up for the first time in this Court with E. I. Esene Esq. announcing appearance for the Claimant. There was no appearance for the Defendant and she was not represented in Court by any of her officers. This Court had to adjourn the suit to the 9<sup>th</sup> of February, 2022 for hearing.

This suit came up on the 9<sup>th</sup> of February, 2022 and the 15<sup>th</sup> of March, 2022 but no progress was made because the Defendant was not in Court and the hearing notices for those dates could not be served because the Defendant had relocated to a new address. The Defendant, however, on the 29<sup>th</sup> of March, 2022 and on the 28<sup>th</sup> of April, 2022 was represented by Counsel, P. N. Dare Esq. and James Onoja Esq. respectively. Progress, again, was not made because the parties informed the Court, on the 29<sup>th</sup> of March, 2022, that they were trying to reach an amicable resolution of their dispute.

On the 28<sup>th</sup> of April, 2022, Counsel for the Claimant informed the Court that the attempt at settlement which was initiated by the Claimant was rebuffed by the Defendant as the officers and Counsel of the Defendant neither answered the Claimant's calls nor returned his calls. He further informed the Court that certain persons were already working on the plot in dispute. He consequently applied orally for an order of this court directing the parties to maintain status quo and a date for definite hearing. On his part, learned Counsel for the Defendant informed the Court that the failure of the Defendant to respond to

the Claimant's initiative for possible amicable resolution was as a result of the fact that his law firm was just briefed on the matter a day before that date. He added that the Defendant could not make its proposal because the Managing Director was out of jurisdiction. The Court, in its Ruling, granted the application by learned Counsel for the Claimant and adjourned the suit to the 28<sup>th</sup> of June, 2022.

The matter could not proceed because on the 28<sup>th</sup> of June, 2022 owing to the ill-health of the Claimant's Counsel who was not in Court. The suit was therefore adjourned to the 19<sup>th</sup> of October, 2022 for either report of settlement or hearing. On the 19<sup>th</sup> of October, 2022, the matter could not proceed because neither the Defendant nor her Counsel was in Court. The Court therefore adjourned the matter to the 9<sup>th</sup> and 10<sup>th</sup> of November, 2022 for hearing.

When the matter came up on the 9<sup>th</sup> of November, 2022, the Claimant was in Court and duly represented by his Counsel. The Defendant was neither in Court nor was she represented by her Counsel. The Court ordered the Claimant to open his case. Testifying as PW1, the Claimant was duly sworn and proceeded to adopt his Witness Statement on Oath as his evidence in the matter.

In his evidence before this Honourable Court as evinced in his Witness Statement on Oath, the PW1 narrated how he applied for a plot of land in the Defendant's estate *vide* an application form with application number KYC/LVD.19/0098-00220 and was duly allotted a plot of land *vide* a letter of offer and a power of attorney dated the 18<sup>th</sup> of February, 2019, adding that he was handed over the physical possession of the same property which had been built to the Damp Proof Concrete (DPC) level *vide* a letter dated the 18<sup>th</sup> of February, 2019 in accordance with the terms of the Memorandum of Understanding the parties executed.

The PW1 averred that the Defendant, in a series of letters dated the 19<sup>th</sup> of February, 2019 and the 31<sup>st</sup> of August, 2020 informed him that he had been relocated to a different plot in Section B, La Villa Diamante City Estate, citing as reason the Claimant's slow pace in the development of the original plot allotted to him. He further claimed that he had made substantial development on the original plot, adding that there was no express term in the letters issued to him and in the Memorandum of Understanding that the parties executed that mandated the Claimant to develop the plot within a given time frame. It was his case that the actions of the Defendant amounted to breach of contract.

In the course of his evidence, the PW1 identified and tendered some documents in evidence. The documents were admitted and marked as exhibits. These are the Power of Attorney executed on the 18<sup>th</sup> of February, 2019 marked as **Exhibit A1-A6**, Memorandum of Understanding made between the parties marked as **Exhibit B1-B5**, Letter of Allocation of plot at KYC (La Villa Diamante) in favour of the Claimant dated 18<sup>th</sup> of February, 2019 marked as **Exhibit C1-C2**, handing over of completed Damp Proof Concrete (DPC) on Plot 220A at La Villa Diamante City SabonLugbe East Extension, Airport Road, Lugbe, Abuja in favour of the Claimant dated the 18<sup>th</sup> of February, 2019 marked as **Exhibit D1**, photocopies of cash receipt acknowledging receipt of ₦700,000.00 (Seven Hundred Thousand Naira only) as final payment on one plot of land in favour of the Claimant marked as **Exhibit E1**, photocopy of Notice of Relocation dated 31<sup>st</sup> of August, 2020 marked as **Exhibit F1**, reply to notice of relocation dated the 30<sup>th</sup> August, 2021 marked as dated 30<sup>th</sup> August, 2021 marked as **Exhibit G1-G2**, letter of allocation of Plot in favour of the Claimant dated 18<sup>th</sup> of February, 2019 marked as **Exhibit H1-H3** and photographs showing the Claimant's development of the plot marked as **Exhibit I1-I7**. It was at this point the PW1 closed his examination-in-chief. The matter was then adjourned to the 10<sup>th</sup> of January, 2023 for cross-examination.

On the 10<sup>th</sup> of January, 2023, the matter could not proceed because service of hearing notice was not effected on the Defendant. The Court therefore adjourned to the 1<sup>st</sup> of March, 2023 for cross-examination. When the matter came up on the 1<sup>st</sup> of March, 2023, learned Counsel for the Claimant moved a Motion *Ex Parte* wherein he sought an order of substituted service of the processes of the Court in respect of the matter on the Defendant by pasting same at Suite B201/A108 Garki Mall, Damaturu Crescent, off Kobo Street, Garki II, Abuja, being the last known address of the Defendant. The prayers contained in the Motion *Ex Parte* with Motion Number FCT/HC/GAR/M/337/2023 dated the 28<sup>th</sup> of February, 2023 and filed on the same date was granted as prayed. The Court thereafter adjourned the suit to the 4<sup>th</sup> of May, 2023 for hearing.

When the matter came up on the 4<sup>th</sup> of May, 2023, the Defendant was represented by James OnojaEsq.. He proceeded to cross-examine the PW1. In response to a question to that effect, the PW1 confirmed that the Defendant wrote him a letter notifying him of his relocation to another plot but he added that the Defendant did not give him any reason for the relocation. He insisted that he complied with all the conditions the Defendant gave him. He was shown **Exhibit H1-H2** and he confirmed that the Defendant was at liberty to relocate him to another plot should he fail to comply with any of the

conditions or, in the alternative, refund his money to him. In answer to that effect, he replied that he had completed the payment for the plot.

There was no re-examination. The Court therefore discharged the PW1 and adjourned to the 13<sup>th</sup> of July, 2023 for defence. The Court did not sit until the 24<sup>th</sup> of October, 2023. On that date, learned Counsel for the Defendant moved his Motion on Notice with Motion Number FCT/HC/NY/M/238/2023 seeking for an order of this Court extending the time within which the Defendant may file and serve her Memorandum of Appearance and Statement of Defence and an order deeming the already filed Memorandum of Appearance and Statement of Defence as having been duly filed and served. The Motion on Notice which was moved in terms was granted as *per* the prayers contained therein. The suit was then adjourned to the 6<sup>th</sup> of December, 2023. The matter came up on the 6<sup>th</sup> of December, 2023, the 27<sup>th</sup> of February, 2024 and the 27<sup>th</sup> of March, 2024. On those days, the Defendant was neither in Court nor was she represented by Counsel.

It is to be noted that this Court, on the 24<sup>th</sup> of October, 2023, had mistakenly adjourned the suit for adoption of Final Written Address instead of for defence. In fact, on the 6<sup>th</sup> of December, 2023, Counsel for the Claimant had adopted his Final Written Address and the Court had adjourned to the 27<sup>th</sup> of February, 2024 for Judgment. On the 27<sup>th</sup> of February, 2024, this Court

informed the parties that it discovered an error in its record regarding the proceedings and, therefore, set aside the proceedings of 6<sup>th</sup> of December, 2023 and 27<sup>th</sup> of February, 2024. It then proceeded to adjourned the case to the 27<sup>th</sup> of March, 2024 for defence. Hearing notices were served on the Defendant indicating that the matter would be coming up for defence and not for Judgment, upon the discovery of the error by the Court. As I noted earlier, the Defendant and her Counsel were not in Court on the 27<sup>th</sup> of March, 2024. On that date, the Court, upon application by learned Counsel for the Claimant, awarded a cost of ₦20,000.00 (Twenty Thousand Naira only) against the Defendant. It further adjourned the suit to the 8<sup>th</sup> of May, 2024 for defence.

When this Court sat on the 8<sup>th</sup> of May, 2024, the Claimant was not in Court but his Counsel was in Court. The Defendant, on the other hand, was neither in Court nor represented by Counsel. Upon application by learned Counsel to that effect, this Court foreclosed the Defendant from defending the suit. The suit was therefore adjourned to the 9<sup>th</sup> of July, 2024 for adoption of Final Written Addresses. When this Court sat on the 9<sup>th</sup> of July, 2024, Counsel for the Claimant was in Court but the Defendant was neither in Court nor represented by Counsel. The Court therefore, upon application by learned Counsel who had admitted that they were unable to serve the Defendant with

the hearing notice against that date, adjourned the suit to the 17<sup>th</sup> of July, 2024 for adoption of Final Written Addresses.

When this Court reconvened on the 17<sup>th</sup> of July, 2024, Counsel for the Claimant was in Court but the Defendant and her Counsel were not in Court. Satisfied that the Defendant was duly served with the hearing notice against that date, the Court granted the Claimant's Counsel leave to proceed with the adoption of the Claimant's Final Written Address. Thereafter, the Court adjourned to the 25<sup>th</sup> of September, 2024 for Judgment.

In the Claimant's Final Written Address, learned Counsel for the Claimant formulated three issues for determination. These are: *“(1) Whether the Defendant is in breach of the contractual agreement with the Claimant; (2) Whether the Claimant is entitled to the reliefs sought before this Court; and (3) The effect of the Defendant resting her case on the evidence of the Claimant”*.

In his submissions on the first issue, learned Counsel submitted that parties were bound by the terms of their contract by virtue of the principle of sanctity of contract. He cited the cases of ***Golden Construction Co. Ltd v. StatecoNig Ltd (2014) 8 NWLR (Pt. 1408) 171 at 195, para E-G*** among other cases in this regard. Referring to the evidence before this Court,

particularly, **Exhibits D1, B1-B5, A1-A6, E1-E17** as well as the depositions in the Witness Statement on Oath, he insisted that the Claimant had fulfilled his part of the contract between him and the Defendant by paying for the property and developing the property right up to the decking level before the Defendant purported to re-allocate him to another plot. He insisted that the Defendant was in breach of the contract between her and the Claimant, adding that the actions of the Defendant was done in bad faith. Citing the case of **Larmie v. D.P.M & Services Ltd (2005) 18 NWLR (Pt. 958) 88 at 469, paras A-B**, he urged the Court to resolve the first issue in favour of the Claimant.

In his submissions on the second issue he formulated, learned Counsel argued that the Claimant was entitled to the reliefs he sought in the suit, considering that every breach of a contract is actionable *per se* and is remedied by the payment of damages by the party in breach as a means of compensating the affected party for the damages, loss or injury they might have suffered as a result of the breach. He relied on the cases of **Union Bank Plc v. Chimaeze (2014) 9 NWLR (Pt. 1411) 166 at 191-192, paras H-B** and **GE International Operations (Nig.) Ltd v. Q Oil and Gas Services Ltd (2016) 10 NWLR (Pt. 1520) 304 at 335, paras B-D** in support of his

submissions on this issue while urging the Court to resolve this same issue in favour of the Claimant.

Arguing his third issue, learned Counsel drew the attention of the Court to the fact that though the Defendant filed her Statement of Defence on the 11<sup>th</sup> of July, 2023 and which Statement of Defence was regularized on the 24<sup>th</sup> of October, 2023, she did not lead evidence in support of her defence. He further drew the attention of the Court to the fact that most of the facts adduced in the Claimant's Statement of Claim were admitted in the said Statement of Defence. He submitted that the Court was bound to act on the unchallenged evidence of a party. He relied on ***Zubairu v. State (2015) 16 NWLR (Pt. 1486) 504 at 527, para C, Ebeinwe v. State (2011) 7 NWLR (Pt. 1246) 402 at 416, para D and Monkomb v. Odili (2010) 2 NWLR (Pt. 1179) 419 at 442, paras D-E*** among other cases in that regard. In conclusion he urged this Court to act on the unchallenged evidence of the Claimant and to grant the reliefs sought.

I have reviewed the case of the Claimant and the evidence he has adduced in support of his claims. I have also considered the fact that the Defendant filed a Statement of Defence on the 11<sup>th</sup> of July, 2023 and which was regularized on the 24<sup>th</sup> day of October, 2023 pursuant to an application to that effect. I have perused my records and found that the Defendant did not lead any

evidence in support of her Statement of Defence though learned Counsel for the Defendant on the 4<sup>th</sup> of May, 2023 cross-examined the Claimant who had testified as PW1 on the 9<sup>th</sup> of November, 2022. In view of these therefore, two issues arise from this suit for this Court to determine. These are: “(1) **Whether the unchallenged evidence of the Claimant is not such that this Honourable Court can act on it; and (2) Whether the Claimant has not established his claims in this case as to be entitled to the reliefs he seeks in this suit**”.

I shall, naturally, begin with the resolution of Issue One, to wit: “**Whether the unchallenged evidence of the Claimant is not such that this Honourable Court can act on it.**”

Indeed, the law is settled that where a party to a suit has the opportunity to challenge the averments of the other party but failed to do so; or where they had the opportunity to challenge the suit of the other party, either by filing adverse processes in opposition or by way of cross-examination, that party is deemed to have admitted the case as set up by that other party. In **Lagos State University & Anor v. Taiwo Adegboyega Ganiyu (2022) LPELR-56873(CA) at 24-26, paras. D-A**, Obande Festus Ogbuinya, JCA (as he then was, now, JSC) explained the principle in this graphic and self-explanatory dictum:

***“It is imperative to observe, pronto, that the record, the bedrock of the appeal, revealed that the appellants were duly served with all the processes encompassed in the respondent's application. Curiously, the appellants, in their infinite wisdom, failed to file a counter-affidavit or any process to neutralise the critical averments in the application. Put simply, the appellants starved the lower Court of any evidence refuting the allegations levelled against them. In essence, the crucial averments in the respondent's affidavit were not controverted. In [the] eyes of the law, those pungent depositions remained unchallenged. The law grants the Court the unfettered liberty to act on unchallenged affidavit, see Olofu v. Itodo (2010) 18 NWLR (Pt. 1225) 545; Uzodinma v. Izunaso (No.2) (2011) 17 NWLR (Pt. 1275) 30; Eyiboh v. Abia (2012) 16 NWLR (Pt. 1325) 51; Tukur v. Uba (2013) 4 NWLR (Pt. 1343) 90; Inegbedion v. Selo-Ojemen (2013) 8 NWLR (Pt. 1356) 211; Danladi v. Dangiri (2015) 2 NWLR (Pt. 1442) 124; APC v. INEC (2015) 8 NWLR (Pt. 1462) 531; Ezechukwu v. Onwuka (2016) 5 NWLR (Pt. 1506) 539; Owuru v. Adigwu (2018) 1 NWLR (Pt. 1599) 1. The caustic effect of the appellants' costly neglect is plain. They failed to deflate the respondent's claim of ownership of the Toyota bus. In the mind of the law, in the absence of a counter-affidavit, the appellants admitted in toto all the respondent's assertions inclusive of***

***his ownership of the Toyota bus. What is admitted does not need further proof. In the presence of the undiluted admission, the lower Court paid due allegiance to the law when it granted the respondent's reliefs relating to the seized Toyota bus."***

Though the Defendant filed a Statement of Defence, she did not lead any evidence in support of the pleadings thereof. The Statement of Defence is therefore deemed abandoned. See the case of ***Yashe v. Umar (2003) 13 NWLR (Pt. 838) 465 C.A. at 483, paras D-F, Gagarau v. Pashiri (2006) 1 NWLR (Pt. 962) 521 C.A. at 540 at para H, Eya v. Olopade (2011) 11 NWLR (Pt. 1259) 505 at 529, para B; 534, paras C-D, In Aregbesola v. Oyinlola (2011) 9 NWLR (Pt. 1253) 458 C.A. at 598, paras C-E***, the Court of Appeal held that ***"A party that has abandoned his pleading cannot formulate issue for consideration. Such issue has nothing to hang on. Where a defendant abandons his pleadings, he is taken as having admitted the allegations against him in the statement of claim."*** In ***The Registered Trustees Spirit of Life Bible Church v. Nnikol Resource Ltd (2015) 14 NWLR (Pt. 1479) 391 C.A. at 400, paras G-H***, the Court held succinctly that ***"Where a party fails to support his pleadings with evidence, such pleading is deemed abandoned."*** This principle was restated with unequivocal emphasis in the case of ***Gbedu v. Itie (2020) 3***

***NWLR (Pt. 1710) 104 S.C. at 129, paras E-G*** where the apex Court iterated that ***“Cases are not decided on emotions, sentiments or some misguided consideration. Cases are won on pleaded facts supported by compelling evidence. A fact pleaded without evidence to support it goes to no issue. Such a pleading is abandoned.”***

The legal effect of an abandoned pleading is that the Statement of Claim of the Claimant is unchallenged and uncontroverted. Where the evidence of a party is unchallenged and uncontroverted, the legal implication is that the other party is deemed in law to have admitted the facts contained in the unchallenged and uncontroverted evidence. The principle that facts not controverted are deemed admitted has been codified in the Evidence Act, 2011 by virtue of section 123 thereof. The said section provides that,

***“No fact need be proved in any civil proceedings which the parties to the proceedings or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule of pleading in force at the time they are deemed to have admitted by their pleadings: Provided that the court may, in its discretion, require the facts admitted to be proved otherwise than by such admissions.”***

The rule of pleading in force in so far as this Court is concerned is the High Court of the Federal Territory, Abuja (Civil Procedure) Rules, 2018. Order 15 Rule 5(1) thereof provides thus:

***“Every allegation of fact in any pleadings if not specifically denied in the pleadings of the opposing party shall be taken as admitted except as against a person under legal disability.”***

However, the Courts have warned that though the Court is obligated to act on unchallenged evidence, this power to act on unchallenged evidence must not be exercised at large. In other words, and if I am to put it plainly, the unchallenged evidence the Court must act on must be cogent, credible, compelling and must not be patently inadmissible. In the case of ***Ogojeifo v. Ogojeifo (2006) LPELR-2308 (SC)***, the apex Court held that ***“...It is also the law that the unchallenged and uncontroverted facts deemed admitted in the affidavit must be capable of proving and supporting the case of the appellant as the applicant. In other words, the evidence contained in the unchallenged affidavit must be cogent and strong enough to sustain the case of the applicant.”*** This principle was further fleshed out in the case of ***Ramawa v. NACB Consultancy & Finance Co. Ltd. & Anor (2006) LPELR-7606(CA)*** where the Court of Appeal per Kekere-Ekun JCA (as he then was, now, Ag. CJN) followed this principle when it laid

down the conditions that must be fulfilled before the Court can act on unchallenged affidavit evidence thus:-

***“There is a plethora of authorities in support of the general position of the law that evidence or averments in an affidavit that are not denied are deemed admitted and the court ought ordinarily to act on them. See: Ajomale v. Yaduat (No. 2) 1991 5 NWLR (PT. 191) 266; Honoka Sawmill (Nig.) Ltd v. Hoff (1994) 2 NWLR (Pt. 326) 252. There is however a proviso to this general rule. Unchallenged evidence, to be accepted and relied upon by the court, must be both credible and reliable. See Egbunike v. A.C.B. Ltd (1995) 2 SCNJ 58; (1995) 2 NWLR (Pt. 375) 34 at 55 E-F; IfeanyiChukwuOsondu Co. Ltd. v. Akhigbe (1999) 11 NWLR (Pt. 625) 1 at 19 F-G. In the case of: Neka B.B.B. Mfg. Co. Ltd. V. A.C.B. Ltd. (2004) 2 NWLR (Pt. 858) 521 at 550-551 E-A. His Lordship Pats-Acholonu, JSC (of blessed memory) had this to say: “An opposing party should not be expected to challenge evidence that is hollow, empty or bereft of any substance as that would to my mind amount to chasing a shadow. I am familiar with the case of Odulaja v. Haddad (1973) 1 ANLR 191 to the effect that an evidence not challenged by the party that***

*had the opportunity to do so should ordinarily be believed and accorded credibility. I believe that such holding rests on the premise that such evidence is capable of being believed if not challenged. In other words, when the evidence is weak in content as not to assist the court, or manifestly unreasonable or is devoid of any substance as not to help to resolve the matter in issue, it will be safe to ignore it as it does not attain the standard of credibility... It is also trite to say that the court is not in all circumstances bound to accept as true testimony an evidence that is uncontradicted where it is wilfully or corruptly false, incredible, improbable or sharply falls below the standard expected in a particular case.”*

This principle has been enunciated in a number of cases such as *COP v. Agholor (2014) LPELR-23212CA*, *Odiong v. Assistant Inspector-General of Police (2013) LPELR-20698(CA)*, *Statmak v. COP & Anor (2018) LPELR-46324(CA)* and *JMG Ltd v. Israel &Ors (2020) LPELR-50585(CA)* among others. In *Odiong v. Assistant Inspector-General of Police, supra*, the Court held that *“Although the facts deposed to by an applicant are not challenged by a respondent, the Court still has a duty to consider and weigh the affidavit evidence before it in order to ensure that they*

***can ground the Order sought by the applicant...***” I will highlight the dicta in three other cases before I bid farewell to this issue.

In ***Maidara v. Halilu (2000) 13 NWLR (Pt. 684) 257 C.A. at 268, paras F-G***, the Court held that ***“It is not always the case that when a party produces unchallenged and uncontroverted evidence he is entitled to judgment. This is because unchallenged and uncontroverted evidence is not synonymous with prove by credible evidence. The unchallenged and uncontroverted evidence might be worthless or might fall far short of tilting the imaginary scale in favour of a party tendering unchallenged and uncontroverted evidence.”***

In ***Lufthansa Airlines v. Odiese (2006) 7 NWLR (Pt. 978) 34 C.A. at 81-82, paras F-A***, it was stated that ***“The principle that unchallenged/uncontradicted evidence should be accepted by the court is not at large. Therefore, it is not in all cases that unchallenged evidence of a witness will be swallowed hook, line and sinker. The requirement is that for such evidence to be accepted and relied on by the court, it has to be in line with the pleadings, cogent and credible. Thus, where evidence is unchallenged, if it is at variance with the pleadings, and not credible, it cannot form the basis of any***

***decision that can be sustained. In fact, even in situations where evidence of special damages will rest on the ipse dixit of the plaintiff, where it is not credible though unchallenged, the fact that it was not challenged will not improve its quality. Such unchallenged ipse dixit evidence is not an automatic proof of special damages.”***

Finally, in ***Martchem Industries Nigeria Ltd. v. M.F. Kent West Africa Ltd. (2005) 10 NWLR (Pt. 934) 645 S.C. at 659, paras C-G***, the Court noted that

***“Even if the evidence in a case went in one direction in that it was unchallenged, the trial court is still expected to examine whether or not the unchallenged evidence was sufficient to establish the claims made by the party in whose favour the unchallenged evidence was given. It is not in every case in which the evidence called in support of the plaintiff is unchallenged, that judgment must be given in favour of the plaintiff. On the contrary, it is possible that evidence called in support of the plaintiff's case, even if unchallenged, may still be insufficient to sustain the plaintiff's claims in that it may be so weak and so discredited under cross-examination that it was unnecessary for the defendant to testify.”***

I have juxtaposed the evidence the Claimant has adduced in support of his claims side by side with the requirements of the Evidence Act, 2011 on

admissibility, relevancy and pleadings. All the documents tendered in Court are pleaded in the Statement of Claim. All the documents are relevant to the facts in issue in this suit. All the documents are patently admissible, having not been vitiated by any evidential disability. I have no hesitation, therefore, in resolving the first issue in this suit in favour of the Claimant and against the Defendant. The entire bundle of unchallenged evidence of the Claimant is such that this Court can safely and reliably act on. I so hold. Issue One is hereby resolved in favour of the Claimant.

I will now move to Issue Two. The second issue I have formulated is this: ***“Whether the Claimant has not established his claims in this case as to be entitled to the reliefs he seeks in this suit”***. As the case of the Claimant revolves around an alleged breach of contract, the *fontes et origo* in the determination of this issue is a brief elucidation of contract and what constitutes a valid contract. This is because there cannot be breach of a contract where no contract exists in the first place. See ***Best (Nig.) Ltd v. Blackwood Hodge Nig. Ltd & Anor (2011) LPELR-776(SC) at 42, para. D*** where the Court held per Adekeye, JSC that ***“For a claimant to succeed in an action for breach of contract, he must establish not only that there was a breach but also that there was in existence an enforceable contract which was breached.”***

As a matter of elementary law, a valid contract is said to have come into existence when there is an offer from the offeror, when the offer has been accepted by the offeree, when the parties have furnished consideration, when the parties have evinced an intention to create a legal relationship by virtue of the contract, that is, there must be evidence that the parties intend to contract which in legal parlance is known as the existence of a consensus *ad idem*, consideration must also pass mutually between the parties and where the parties are possessed of the requisite legal capacity to contract. See ***Eweje v. O.M. Oil Ind. Ltd. (2021) 4 NWLR (Pt. 1765) 117 S.C. at 134, paras A-D; Akinola v. Lafarge Africa Plc (2022) 12 NWLR (Pt. 1844) 379 S.C. at 400 – 401, paras G – A; Eyiboh v. Mujaddadi (2022) 7 NWLR (Pt. 1830) 381 S.C. at 412, paras. B-D; 449-450, paras. C-B; 459-460, paras. F-B.***

In ***Akinola v. Lafarge Africa Plc (2022) 12 NWLR (Pt. 1844) 379 S.C. at 400 – 401, paras G – A***, the Court held that “***The basic constituents of any contract are offer and acceptance.***” See also ***Syndicated Investment Holdings Limited v. Nitel Trustees Ltd. & Another (2015) 16 NWLR (Pt. 1486) 454 C.A at 476-477, paras. F-A*** decided by the Court of Appeal. When this case came to the Supreme Court on appeal, the Supreme Court in the case of ***Nitel Trustees Ltd. v. Syndicated Inv. Holdings Ltd. (2023) 5***

*NWLR (Pt. 1876) 93 S.C. at 119, paras. A-D; 127-128, paras. D-A*, became effusive when it held that

***“In determining whether all the elements of a valid contract have been established, the court must look at the pleadings and the entire evidence led by both parties. Where the transaction or the contract is reduced into writing, the court must look into the document to discover whether there was a definite offer and an unqualified acceptance and the consideration for the contract and whether the parties were ad idem on the contract. Where a contract involves several documents, all the documents including letters relating to the contract and the conduct of the parties must be considered together to arrive at a just decision.”***

With these in mind, I shall return to the evidence before me. In paragraphs 3, 4, 5 and 6 of the Claimant’s Witness Statement on Oath, the Claimant, as PW1 testified that he applied for a plot of land in the Defendant’s estate and was allotted a lot known as Plot 220A 5<sup>th</sup> Close, SabonLugbe East Layout, Lugbe, Airport Road, Abuja inside the Defendant’s estate known as KYC La Villa Diamante City Estate. Pursuant to this application, the Claimant and the Defendant executed a series of documents to evidence this consensus *ad idem*. Those documents were tendered in evidence and this Court admitted

them in evidence. These documents are a letter dated the 18<sup>th</sup> of February, 2019 and marked **Exhibit H1-H3**. It is titled “PLOT ALLOCATION/OFFER LETTER FOR “KYC LA VILLA DIAMANTE CITY” SABON LUGBE EAST LAYOUT, LUGBE, AIRPORT ROAD, ABUJA”. Under this letter, the Claimant was required to execute a power of attorney in respect of the land and to pick up the development levy letter before he would be allowed to commence work on the plot of land. Further to these, the letter required him to pay the sum of ~~₦~~₦3,000,000.00 (Three Million Naira only) for the development of all required infrastructures within the estate. After the payment had been made and other conditions stipulated in the letter satisfied, the Claimant, according to **Exhibit H1-H3**, would commence development of the plot “immediately as failure to do so within 60 days of this offer/allocation will attract re-allocation to a new plot or revocation and all initial payments refunded at a later date”. He was also required to pay the 5% VAT of the above sum of ~~₦~~₦3,000,000.00 (Three Million Naira only) into the Defendant’s Zenith Bank and the sum of ~~₦~~₦20,000.00 (Twenty Thousand Naira only) as fee for stamping of the legal instruments.

Did the Claimant comply with these terms? There is evidence that the Claimant paid the ~~₦~~₦3,000,000.00 (Three Million Naira only) designated as the payment “for the development of all required infrastructures within the estate,

exclusive of 5% VAT”. **Exhibit D** is a letter from the Defendant to the Claimant dated the 18<sup>th</sup> of February, 2019. It is titled “HANDING OVER OF COMPLETED DAMP PROOF CONCRETE (DPC) ON PLOT 220A AT LA VILLA DIAMANTE CITY SABON LUGBE EAST EXTENSION, AIRPORT ROAD, LUGBE, ABUJA”. The second paragraph thereof stated that “We expect that you immediately commence the block work to take the building from the ground level to the decking level”. It is instructive to note that no time limit was provided within which to achieve this. **Exhibit B1-B5** is the Memorandum of Understanding between the Defendant and the Claimant duly executed. Nowhere is any period of time stated therein within which the Claimant was required to complete the building on the plot.

**Exhibit E** is a cash receipt from the Defendant for the sum of ₦700,000.00 (Seven Hundred Thousand Naira only). The purpose for the payment is stated as “FINAL PAYMENT FOR DPC ON (1) PLOT OF LAND AT LA VILLA DIAMANTE CITY, LUGBE, ABUJA”. It was dated the 21<sup>st</sup> of February, 2019. By designating the purpose for the payment as “final payment for DPC on (1) plot of land at La Villa Diamante City, Lugbe, Abuja” section 67(e) of the Evidence Act, 2011 become relevant. The provisions states that “***when a document creating an obligation is in the hands of the obligor, the obligation has been discharged***”. In other words, the Claimanthas

discharged his financial obligations to the Defendant in respect of the allotted plot of land.

**Exhibit A1-A6** is the power of attorney the Defendant donated to the Claimant in respect of the plot. Again, no time limit was stipulated for the completion of the building on the plot. **Exhibit I1-I7** are photographs that showed that the Claimant had actually developed the property right up to the first floor slab, also known as first decking. I find therefore that a valid contract exists between the Claimant and the Defendant. I so hold.

Now, it is important to bear in mind that the contract between the parties in respect of the plot of land was reduced to writing, with the agreed terms clearly delineated. Both parties executed the documents personally in the case of the Claimant and through their representatives in the case of the Defendant. Parties, therefore, are bound by the terms they willingly entered into.

In *Fidelity Bank Plc v. M. C. Ind. Ltd. (2022) 7 NWLR (Pt. 1829) 351 S.C. at 373, paras F-G*, the Court held that “***When parties enter into a contract, they are bound by the terms set out therein. It is not the business of the court to re-write a contract for the parties.***” In *Akinola v. Lafarge Africa Plc (2022), supra*, the Court held further that “***When a contract is contained in a written agreement, it is that document that determines the intention and terms of the parties to it. It is the terms in that document by which***

***the parties will be bound and none of the parties to the contract will be allowed to introduce or read into it a term or terms not contemplated by and agreed to by them.***

This doctrine is known as the doctrine of sanctity of contract. In Latin, it is expressed as *“Pacta conventa quae neque contra leges neque dolomalo in itasunt omnimodo obsevaservandasunt”*. This means “contractual agreements which have neither been fraudulently nor illegally entered into by parties, must in all respects be observed or enforced.” See ***Dragetanos Const. (Nig.) Ltd. v. Fab Madis Ventures Ltd & Anor (2011) 16 NWLR (Pt. 1273) 308 at 353, paras C-D***. By virtue of this doctrine, the parties are precluded from re-writing the terms of the contract without the consent of the other party especially, when performance of the contract has been executed and consideration furnished. The Court, too, by virtue of this doctrine, is precluded from re-writing the terms of the contract for the parties. See ***Access Bank Plc v. N.S.I.T.F. (2022) 16 NWLR (Pt. 1855) 143 S.C. at 173, paras A-B*** where the Court held that ***“Where the terms of a contract are clearly expressed in a written document or documents, the court cannot go outside those terms to ascertain the intention of the parties. The judgment of the court cannot be based on speculation.”***

What the Defendant seeks to do by virtue of **Exhibit F1** is to change the rules of the game in the middle of the game. This is unacceptable and goes against the spirit of section 128 (1) of the Evidence Act, 2011. This subsection provides that ***“When any judgment of any court or any other judicial or official proceedings, or any contract, or any grant or other disposition of property has been reduced to the form of a document or series of documents, no evidence may be given of such judgment or proceedings or of the terms of such contract, grant or disposition of property except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under this Act; nor may the contents of any such document be contradicted, altered, added to or varied by oral evidence...”***

Now the provisos that follow this subsection in paragraphs (a), (b), (c), (d) and (e) do not apply to the contract between the parties herein. Ditto for the provisions of subsections (2) and (3) of the sections. By virtue of section 131(1) of the Evidence Act, 2011, ***“Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.”*** The Defendant did not lead any evidence to show that an oral agreement existed between the Claimant and the Defendant in respect of the property in question whose

effect is to modify the terms of **Exhibits H1-H3, D, A1-A6, and B1-B5**. The cross-examination of the PW1 by learned Counsel for the Defendant did not elicit any adverse or damaging evidence that supports the actions of the Defendant and impeaches the case of the Claimant. Since there is no evidence that the Claimant was in breach of any express or implied terms in the contract, I find that the Claimant has fulfilled the terms of the contract between him and there is no basis in law and equity for the purported re-allocation. I so hold.

It is instructive to note that by virtue of **Exhibit C1-C2**, the Defendant originally allocated the Claimant to Plot 25B but relocated him to Plot 220A the subject of this dispute. By purporting to revoke his allocation of Plot 220A via **Exhibit F1**. The Claimant, by virtue of **Exhibit G1-G2**, roundly rejected this second re-allocation. Though the parties were in consensus *ad idem* in respect of the first relocation, by virtue of **Exhibit G1-G2**, there is the absence of consensus *ad idem* in respect of the second relocation. Since a party to a contract cannot unilaterally modify the terms of a contract, the purported re-allocation of the Claimant to another plot is a nullity. I so hold.

Having found that the Claimant was not in breach of any term of the contract between him and the Defendant, there is no better way to describe the actions of the Defendant other than as a breach of the contract. The term

'breach of contract' was defined in **Are v. Owoeye (2014) LPELR-41096 (CA) at 19, paras. C-E** as a "**...failure, without legal excuse, to perform any promise which forms the whole or part of a contract. It is also unequivocal, distinct and absolute refusal to perform an agreement.**" In **G.N. Nwaolisah v. Paschal Nwabufoh (2011) LPELR-2115(SC)** the Court shed some form of effulgence on the notion of breach of contract. Speaking through Adekeye, JSC **at 36-37, paras. E-A** it explained that "**A contract can be discharged by breach. A breach of contract means that the party in breach has acted contrary to the terms of the contract either by non-performance or by performing the contract not in accordance with its terms or by a wrongful repudiation of the contract...**" see also **Nationele Computer Services Ltd v. Oyo State Government & Ors (2019) LPELR-48077(CA) at 16, paras. C-D** per Ojo, JCA.

Where there is a breach of contract, and the Claimant has established that they suffered some damages as a result of the breach, the Court has a duty to award damages to compensate the Claimant for the wrongful acts of the Defendant that constitute the breach. See **Nationele Computer Services Ltd v. Oyo State Government & Ors (2019) supra at 16-17, paras. F-A** where the Court held that "**The consequence of a breach of contract is award of**

***damages. Damages for breach of contract are compensation to the Plaintiff for the damage, loss or injury suffered through that damage.”***

This Court has the duty to evaluate all the evidence before it, including the evidence elicited during cross-examination. Thus, it is that though the Defendant abandoned her Statement of Defence, this Court can infer from the questions learned Counsel for the Defendant put to the Claimant during cross-examination that the Claimant was not in breach of the terms of the contract. The attempt by learned Counsel for the Defendant to pin the Claimant during cross-examination to a liability arising from an alleged breach that was not contemplated by the parties in the documents that evidenced the contract between the Claimant and the Defendant, that is to say, by inferring that the Claimant was relocated to another plot owing to his slow pace of development when such was never captured in all the documents as a term in the contract must fail. The necessary and logical corollary, too, is that the Defendant was in breach of the terms of the contract when it purported to issue **Exhibit F1**.

The trend of property and estate development companies re-allocating their subscribers to less fanciful locations in their estates ostensibly on the ground of slow pace of development but, actually as a result of greed has to be checked. In ***Makvid Tech. Serv. Ltd. v. Macgable Global Serv. Ltd. (2024) 3***

**NWLR (Pt. 1926) 477 C.A. at 513, paras. A-C**the Court warned that “**Where parties have entered into a contract or an agreement, they are bound by the provisions of the contract or agreement. A party cannot ordinarily resile from a contract or agreement just because he later found that the conditions of the contract or agreement are not favourable to him. That is the whole essence of the doctrine of sanctity of contract or agreement.**”This Court is under a legal obligation to interpret the terms of contract strictly against the parties who seek to exploit the weakness or the disadvantaged position of the other party and to enforce the necessary sanctions. It is in cases like this that the *contra proferentem* rule of interpretation is applied. See **Delmas v.Sunny Ositez Int’l Ltd (2019) 9 NWLR (Pt. 1677) 305 SC at 323, para. B; 324, paras. D-E; 329, paras. B-C** where the Court held that “**Where there is an ambiguity in a contract, the court can apply the contra proferentem rule of construction to construe the document against the party relying on the document...**”

I have no hesitation in arriving at the ineluctable conclusion that the Claimant to recover damages against the Defendant. He is also entitled to an order of perpetual injunction against the Defendant as there is need for the Court, having established the proprietary rights of the Claimant over the property known and described as Plot No. 220A, 5<sup>th</sup> Close, SabonLugbe, East Layout,

Lugbe, Airport Road (Better described as KYC La Villa Diamante City Estate) Abuja, to preserve the right so found for all time. I so hold. See ***Ho v. Abubakar (2013) 12 NWLR (Pt. 1261) 323 CA at 343, paras G-H*** where the Court of Appeal held that “***Where a person’s legal right has been infringed or invaded and there is a continual invasion or threat of continuance of such an invasion and the legal rights of the parties have been determined in a final judgment, the successful party is entitled to a perpetual or permanent injunction.***” See also ***Munias (Nig.) Ltd. v. Ashafa (2011) 6 NWLR (Pt. 1242) 85 CA at 108, paras. A-C.***

The Claimant has established his case against the Defendant. He is therefore entitled to all the reliefs he seeks against the Defendant. Judgment is hereby entered in favour of the Claimant and against the Defendant as follows:-

- 1. THAT the Defendant’s letter dated 31<sup>st</sup> of August, 2020 to the Claimant notifying him that he has been relocated from Plot No. 220A, 5<sup>th</sup> Close, SabonLugbe, East Layout, Lugbe, Airport Road (Better described as KYC La Villa Diamante City Estate) Abuja to Section B of La Villa Diamante City Estate is hereby declared null, void and of no effect whatsoever.**

- 2. THAT the Claimant is still the valid allottee of Plot No. 220A, 5<sup>th</sup> Close, SabonLugbe East Layout, Lugbe, Airport Road (Better described as KYC La Villa Diamante City Estate).**
- 3. THAT AN ORDER OF PERPETUAL INJUNCTION of this Honourable Court is hereby made restraining the Defendant or her agents from disturbing or interfering with the Claimant's possession and ownership of the property known as Plot No. 220A, 5<sup>th</sup> Close, SabonLugbe East Layout, Lugbe, Airport Road (Better described as KYC La Villa Diamante City Estate) Abuja.**
- 4. THAT AN ORDER OF PERPETUAL INJUNCTION of this Honourable Court is hereby made restraining the Defendant, her agents, privies or any person acting on her behalf from further trespass on the property known as Plot No. 220A 5<sup>th</sup> Close, SabonLugbe East Layout, Lugbe, Airport Road (Better described as KYC La Villa Diamante City Estate, Abuja.**
- 5. THAT AN ORDER of this Honourable Court is hereby made directing the Defendant to pay the Claimant the sum of ThreeMillion Naira (₦3,000,000.00) as damages for breach of contract between the Claimant and the Defendant.**

6. THAT AN ORDER of this Honourable Court is hereby made directing the Defendant to pay the Claimant the sum of Four Hundred Thousand Naira 400,000.00 (Five Hundred Thousand Naira) only as cost of this action.

7. THAT AN ORDER of this Honourable Court is hereby made mandating the Defendant to pay the sum of N20,000.00 (Twenty Thousand Naira only) being the cost this Honourable Court awarded against the Defendant on the 27<sup>th</sup> of March, 2024 and which cost has remained unpaid till date.

This is the Judgment of this Honourable Court delivered today, the 25<sup>th</sup> day of September, 2024.

**HON. JUSTICE A. H. MUSA**  
**JUDGE**  
**25/09/2024**

**APPEARANCES:**

**For the Claimant:**

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**IjeomaMadu, Esq.**

**For the Defendant:**

**P. N. Dare, Esq.**  
**James Onoja, Esq.**