IN THE HIGH COURT OF THE FEDERALCAPITALTERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT JABI, ABUJA.

THIS THURSDAY THE 23RD DAY OF JANUARY, 2025.

BEFORE: HON. JUSTICE ABUBAKAR ADRIS KUTIGI - JUDGE

SUIT NO: CV/2746/2021

BETWEEN:

ALHAJI ABBA KAKA MUHAMMED …….. CLAIMANT

AND

1. **FORT-ROYAL HOMES LTD**
2. **DE-MELLO OIL & GAS NIG. LTD** **…… DEFENDANTS**
3. **MR. INNOCENT AGBO**

JUDGMENT

By a writ of summons and statement of claim dated 21st October, 2021 and filed same date at the Court's Registry, the claimant prayed for the following Reliefs:

a. **A declaration that the Claimant being a Resident and owner of that property situated and known as House No. 5 Hill Top Close, Fort Royal Estate, Kyami District, Airport Road, FCT-Abuja is entitled to be protected from any form of inhuman treatment and molestation of the 1st defendant, its agents, servants and or privies towards the claimant and his family.**

b. **A declaration that the 1st defendant and or its security personnel were wrong to have prevented the claimant from entering and taking possession of his property known as House No. 5 Hill Top Close, Fort-Royal Estate, which action caused damaged to the claimant's properties worth N300, 000.00 (Three Hundred Thousand Naira) due to the actions of the 1st defendant in preventing the claimant entering his house.**

c. A declaration that the 1st defendant has no right whatsoever by collecting money from the claimant without rendering services to that effect and failing to account for the monies collected from the claimant in particular and the residents in general for services not delivered.

d. A declaration that the 1st defendant was wrong to have collected the sum of N250, 000.00 (Two Hundred and Fifty Thousand) from the claimant for the connection of power and provision of metre to the claimant's house without same facilities being provided to the claimant and failing to refund the money to the claimant.

e. A declaration that the 1st defendant was wrong to have allowed naked wire to be left lying on the claimant's fence not minding the danger and safety of the claimant and his family that the naked wire may cause to them.

f. A declaration that the claimant is the owner of that carcass situated and known as House No. C35 Hebron Drive, Fort-Royal Estate that was allocated to 2nd defendant by the 1st defendant, who in turn transferred its interest to the claimant through a Sales Agreement duly executed by the parties.

g. A declaration that the 3rd defendant being the Managing Director of the 2nd defendant has the right to market House No. C35 Hebron Drive, Fort-Royal Estate for sale to the claimant.

h. A declaration that the claimant being the rightful owner and purchaser for value of that property situated and known as House No. C35 Hebron Drive, the 1st defendant was wrong to have stopped the claimant from completing the property he purchased for value from the 2nd defendant through the 3rd defendant.

i. An order of court directing the 1st defendant to account for the money had and received from the claimant for the provision of security and waste bin to the claimant without same been provided by the 1st defendant.

j. An order of court directing the 1st defendant to withdraw all its security personnel on that property situated and known as House 35 Hebron

Drive, Fort-Royal Estate, Kyami District, Airport Road, FCT Abuja allocated to 2nd defendant who has its interest to the claimant.

k. An order of court directing the 1st defendant to pay the sum of N300, 000.00 (Three Hundred Thousand Naira) to the claimant being the cost of damages caused to the claimant by the 1st defendant in trying to prevent the claimant from taking possession of his house.

l. An order of court directing the 1st defendant to refund the sum of N200, 000.00 (Two Hundred Thousand Naira) being the balance of the money paid by the claimant for the supply of power in the claimant's house.

m. An order of court directing the 1st defendant to pay the claimant the sum of N13, 564, 000 (Thirteen Million Five Hundred and Sixty-Four Thousand Naira) as special damages caused to the claimant as following:

i.	**House No. C35 Hebron Drive ……..**	**N10, 000, 000**
ii.	**400 bags of Cements bought at N2600 each ……**	**N1, 040, 000**
iii.	**4500 Blocks bought at N200 each ……**	**N900, 000**
iv.	**3 Security doors bought at N30, 000 each …….**	**N90, 000**
v.	**5 Aluminium Windows bought at N7, 000 ……...**	**N35, 000**
vi.	**Gravels, Sharp sand, Stone, Laterite etc ……**	**N379, 000**
vii.	**Iron Rod, Plank wood, Bamboo, Leather etc ……**	**N501, 000**
viii.	**Plumbing, Water for Work & Transport ……**	**N248, 000**
ix.	**Drilling of Doors and Windows & Casting ……**	**N335, 000**
	TOTAL	**N13, 564, 000**

n. An order of perpetual injunction restraining the 1st defendant by itself, servants, agents and or privies form denying the claimant's access to his property situated and known as House No. 35 Hebron Drive, Fort-Royal Estate, Kyami District, Airport Road, FCT-Abuja having purchased the

House for value from the 2nd defendant the allottee of the house without any encumbrance.

o. **General damages of N500, 000, 000 (Five Hundred Million Naira) against the defendants jointly and severally for depriving the claimant from developing the property he legally purchased from its rightful owner and allottee.**

On the Record, all the defendants were served with the originating court processes but they never appeared or filed any process all through the course of the proceedings despite the service of Hearing Notices at different times.

The matter then proceeded to hearing. In proof of his case, the claimant called two (2) witnesses. **Abba Ismail Sani**, personal assistant of the claimant testified as PW1. He deposed to a witness statement on oath dated 21st October, 2021 which he adopted at the hearing and tendered in evidence the following documents:

1. Copies of two (2) letters by the law firm of S.A. Musa and Associates dated 13th August, 2018, 10th July, 2018 to Fort Royal Homes Ltd were admitted as **Exhibit P1a** and **b**.

2. Copy of letter by Fort Royal Homes to S.A. Musa and Associates dated 13th August, 2018 was admitted as **Exhibit P1c.**

3. Receipt payments issued by 1st defendant dated 10th May, 2012 and 26th August, 2021 in the sum of N4, 000, 000 and N3, 000, 000 was admitted as **Exhibits P2 a and b**.

4. UBA cheque issued to 1st defendant dated 20th June, 2013 was admitted as **Exhibit P3.**

5. Document made by 1st defendant tiled "Details of payment of claimant made in respect of 2 Bedroom detached Bungalow" was admitted as **Exhibit P4.**

6. Copies of the letter of allocation by Fort Royal (1st defendant) dated 13th April, 2017 and the sales agreement between Demallo Oil and Gas Nig. Ltd and the claimant were admitted as **Exhibits P5a and P5b.**

7. Three (3) copies of photographs were admitted as **Exhibits P6 (a-c).**

PW1 then prayed that the court grant all the Reliefs of claimant.

Ezekiel Dakol was called as the 2nd witness and testified as PW2. He deposed to a witness deposition dated 21st October, 2021 which he adopted at the hearing and tendered in evidence the following documents:

1. Receipt of payment for cement dated 10th February, 2018 was admitted as **Exhibit P7.**

2. Two (2) Quotations for (1) fencing and boys quarters security house work and (2) Quotation for 2 bedroom were admitted as **Exhibits P8 a and b**.

PW2 then urge the court to grant the Reliefs of claimant. The rights of defendants to cross-examine both PW1 and PW2 were on application by claimant's counsel foreclosed and with the evidence of **PW2,** the claimant closed his case.

Again, because of the failure of defendants to appear in court or file any process, their rights to defend the action was also an application by learned counsel to the claimant foreclosed and the court accordingly ordered for the filing of final addresses.

I only need add that from the Record, the defendants have had more than ample time to defend this action but they elected not to respond despite service of the originating court processes and hearing notices all through the course of this proceedings. Now I recognise that fair hearing is a fundamental element of any trial process and it has some key attributes; these include that the court shall hear both sides of the divide on all material issues and also give equal treatment, opportunity and consideration to parties. See **Usani V Duke (2004) 7 N.W.L.R (pt.871) 16; Eshenake V Gbinijie (2006) 1 N.W.L.R (pt.961) 228.**

It must however be noted that notwithstanding the primacy of the right of fair hearing in any well conducted proceedings, it is however a right that must be circumscribed within proper limits and not allowed to run wild. No party has till eternity to present or defend any action. See **London Borough of Hounslow V Twickenham Garden Dev. Ltd (1970) 3 All ER 326 at 343.**

The Defendants here have been given every opportunity to respond to the case made out by Plaintiff against them but they have exercised their right by not responding. Nobody begrudges this election. It is only apposite to reiterate that

nobody is under any obligation to respond to any court process once properly served, if he so chooses. I leave it at that.

In the final address of claimant, two issues were raised as arising for determination as follows:

1. **Whether the claimant has proved his case before this Honourable Court.**

2. **Whether or not the defendants are liable to the claims of the claimant before this Honourable Court.**

The above issues clearly amount to splitting of issues and can conveniently be subsumed under one issue of simply **whether having regards to the totality of the evidence before the court, the claimant has proved his case on the balance of probabilities to entitle him to all or any of the Reliefs sought?**

This issue has in substance accommodates the (2) issues raised by claimant and has captured fully the pith or crux of this dispute and it is accordingly on the basis of this issue as formulated by court that I would now proceed to consider the evidence and submissions of counsel in resolving the issue raised.

ISSUE 1

Whether having regards to the totality of the evidence before the court, the claimant has proved his case on the balance of probabilities to entitle him to all or any of the Reliefs sought?

At the commencement of this judgment, I had stated the claims of the claimant. From the rather voluminous pleadings filed, the case of claimant would appear to be predicated on two (2) grounds: (1) the alleged violation of rights he considers availing to him from his ownership and residence of House No. 5 Hill Top Close, at Fort Royal Estate and (2) title or ownership of a certain House No. 35 Hebron Drive which he claimed he purchased.

The issues arising from this case are essentially whether these rights associated with his residency were violated and whether he has established ownership of the said House No. 35.

It is to the pleadings and evidence that one must now beam a critical judicial search light as we resolve the issue or question raised. In this case, a rather

verbose and unwieldy 49 paragraphs statement of claim was filed which did not project clarity in the complaints projected.

The point must thus be made that the primary function of pleadings is to define and delimit with clarity and precision the real matters in controversy between the parties upon which they can prepare and present their respective cases. It makes for economy and ease of discernment of the case made out. See **Kyari V Alkali (2001) 11 NWLR (pt.724) 412 at 435-434 H-A**.

Where a pleading is unnecessarily lengthy and verbose, it creates the unnecessary challenge of situating the real case been made out and defeats the essential elements of accuracy and sufficiency which a pleading must project and this in return creates ambiguity making it difficult for the adversary to know precisely the issues he is facing and this then impacts the fair determination by the court of the case/dispute. The pleadings in this case could and should have been better prepared and or formulated. I leave it at that.

Now as alluded to already, the defendants did not file or adduce evidence in opposition.

In law it is now accepted principle of general application that in such circumstances, the defendants are assumed to have accepted the evidence adduced by plaintiff and the trial court is entitled or is at liberty to act on the plaintiffs' unchallenged evidence. See **Tanarewa (Nig.) Ltd. vs. Arzai (2005) 4 NWLR (pt. 919) 593) at 636 C – F; Omoregbe vs. Lawani (1980) 3 – 7 SC 108 and Agagu vs. Dawodu (1990) 7 NWLR (pt. 160) 56.**

Notwithstanding the above general principle, the court is however still under a duty to examine the established facts of the case and then see whether it entitles the claimant to the relief(s) he seeks. I find support for this in the case **of Nnamdi Azikiwe University vs. Nwafor (1999) 1 NWLR (pt. 585) 116 at 140-141** where the Court of Appeal per Salami JCA expounded the point thus:

"The plaintiff in a case is to succeed on the strength of his own case and not on the weaknesses of the case of defendant or failure or default to call or produce evidence … the mere fact that a case is not defended does not entitle the trial court to over look the need to ascertain whether the facts adduced before it establish or prove the claim or not. In this vein, a trial court is at no time relieved of the burden of ensuring that the evidence

adduced in support of a case sustains it irrespective of the posture of the defendant…"

A logical corollary that follows the above instructive dictum is the attitude of court to the issue of burden of proof where it is not satisfactorily discharged by the party upon which the burden lies. The Supreme Court in **Duru vs. Nwosu (1989) 4 NWLR (pt. 113) 24** stated thus:

"… a trial judge ought always to start by considering the evidence led by the plaintiff to see whether he had led evidence on the material issue he needs to prove. If he has not so led evidence or if the evidence led by him is so patently unsatisfactory then he had not made out what is usually referred to as a *prima-facie* case, in which case the trial judge does not have to consider the case of the defendant at all."

Before going into the merits, let me state some relevant principles that will guide our evaluation of the evidence. It is settled principle of general application that 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. See **Section 131(1) Evidence Act.** By the provision of **Section 132 Evidence Act**, the burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side, regard being had to any presumption that may arise on the pleadings.

It is equally important to state that in law, it is one thing to aver a material fact in issue in one's pleadings and quite a different thing to establish such a fact by evidence. Thus where a material fact is pleaded and is either denied or disputed by the other party, the onus of proof clearly rests on he who asserts such a fact to establish same by evidence. This is because it is now elementary principle of law that averments in pleadings do not constitute evidence and must therefore be proved or established by credible evidence unless the same is expressly admitted. See **Tsokwa Oil Marketing co. ltd. V. Bon Ltd. (2002) 11 N.W.L.R (pt 77) 163 at 198 A; Ajuwon V. Akanni (1993) 9 N.W.L.R (pt 316)182 AT 200.**

I must also add here that under our civil jurisprudence, the burden of proof has two connotations.

1. The burden of proof as a matter of law and pleading that is the burden of establishing a case by preponderance of evidence or beyond reasonable doubt as the case may be;

2. The burden of proof in the sense of adducing evidence.

The first burden is fixed at the beginning of the trial on the state of the pleadings and remains unchanged and never shifting. Here when all evidence is in and the party who has this burden has not discharged it, the decision goes against him.

The burden of proof in the second sense may shift accordingly as one scale of evidence or the other preponderates. The onus in this sense rests upon the party who would fail if no evidence at all or no more evidence, as the case may be were given on the other side. This is what is called the evidential burden of proof.

In succinct terms, it is only where a party or plaintiff adduces credible evidence in proof of his case which ought reasonably to satisfy a court that the fact sought to be proved is established that the burden now shifts to or lies on the adversary or the other party against whom judgment would be given if no more evidence was adduced. See **Section 133(2) of the Evidence Act.**

Since aspects of the dispute involves ownership of a property or title to land, it may be apposite to situate the **five independent** ways of proving title to land as expounded by the Supreme Court in **Idundun V Okumagba (1976) 9 – 10 SC 221** as follows:

1. Title may be established by traditional evidence. This usually involves tracing the claimant's title to the original settler on the land in dispute.

2. A claimant may prove ownership of the land in dispute by production of documents of title. A right of occupancy evidenced by a certificate of occupancy affords a good example.

3. Title may be proved by acts of ownership extending over a sufficient length of time, numerous and positive enough to warrant an inference that the claimant is the true owner of the disputed land. Such acts include farming on the whole or part of the land in dispute or selling, leasing and renting out a portion or all of the land in dispute.

4. A claimant may rely on acts of long possession and enjoyment of land as raising a presumption of ownership (in his or her favour) under **Section 146 of the Evidence Act**. This presumption is rebuttable by contrary evidence,

such as evidence of a more traditional history or title documents that clearly fix ownership in the defendant.

5. A claimant may prove title to a disputed land by showing that he or she is in undisturbed or undisputed possession of an adjacent or connected land and the circumstances render it probable that as owner of such contiguous land he or she is also the owner of the land in dispute. This fifth method, like the fourth, is also premised on **Section 146 of the Evidence Act**.

See **Thompson V Arowolo (2003) 4 SC (pt.2) 108 at 155-156; Ngene V Igbo (2000) 4 NWLR (pt.651) 131.** These methods of proof operate both cumulatively and alternatively such that a party seeking a declaration of title to land is not bound to plead and prove more than one root of title to succeed but he is eminently entitled to rely on more than one root of title. See **Ezukwu V Ukachukwu (2004) 17 NWLR (pt.902) 227 at 252.**

It is also important to note at the onset that some of the critical reliefs sought by plaintiff are **Declaratory Reliefs**. This being so, it is critical to state that declarations in law are in the nature of special claims or reliefs to which the ordinary rules of pleadings particularly on admissions have no application. It is therefore incumbent on the party claiming the declaration to satisfy the court by credible evidence that he is entitled to the declaration. See **Vincent Bello V. Magnus Eweka (1981) 1 SC 101 at 182; Sorungbe V. Omotunwase (1988)3 N.S.C.C (vol.10)252 at 262.** The point is that it would be futile when a declaratory relief is sought to seek refuge on the stance or position of parties in their pleadings. The court must be put in a commanding position by credible and convincing evidence at the hearing of the claimants' entitlement to the declaratory relief(s).

The above principles indentified in some detail provides broad legal and factual template as I now resolve the extant dispute.

I start with the litany of complaints made by the claimant vide paragraphs 1-24 of the claim associated with his residency and ownership of **House No. 5 Hill Top Close at Fort Royal Estate**, Kyami District, Airport Road, Abuja hereunder referred as (House No. 5). The varied complaints here is that he is entitled to certain obligations or commitments due from the 1st defendant which they have failed to live up to.

Now for me, a starting point is to situate precisely the relationship of parties and if there is any template to determine the basis of the commitments demanded by claimant or put another way is there anything that projects the basis for the mutual reciprocity of legal obligations between parties?

Now in paragraphs 1 and 2 of the claim, the claimant pleaded thus:

"1. **The claimant is a resident of House No. 5 Hill Top Close at Fort-Royal Estate, Kyami District, Airport Road, FCT-Abuja within the jurisdiction of the Honourable Court.**

2. **The 1st Defendant is an Estate Developer and the developers of Fort-Royal Estate, Kyami District, Airport road, FCT-Abuja within the jurisdiction of the Court."**

In paragraphs 5 and 6, the claimant pleaded that he developed interested in buying the said House No 5 and that after some challenges as he was not allowed to access the property by some security men, he was able to pay for the house and by the year 2016, he was in full occupation as captured in his **paragraph 7** thus:

"The claimant avers that having paid the purchase price of House No. 5 Hill Top in the sum of N25, 000,000.00 (Twenty-Five Million Naira) to the 1st defendant, finally entered into the said house in the year 2016 as an occupant and resident of the Estate."

Now on the basis of the unchallenged averments and the evidence led particularly vide **Exhibits P2a and b, P3, P4**, the receipts and evidence of payment for the property, there appears to be no real dispute that the claimant is a resident and occupant of this said House No. 5.

Beyond these receipts payments, nothing was really furnished by **claimant** situating clearly the terms of the agreement he had with the 1st defendant and particularly the conditions forming the fulcrum of his relationship with 1st defendant in there Estate, the Fort Royal Estate.

No letter of allocation to this **House No. 5** was tendered which might have given some indication as to what parties agreed to and what the Claimant may be entitled to in the estate or the House No. 5 in particular.

It may be relevant to here note that with respect to the related issue of ownership of **House No. 35** which I will shortly deal with, the claimant tendered the letter of allocation by 1st defendant of **House NO. C35** to 2nd defendant which was admitted as **Exhibit P5a**.

In this letter it was indicated clearly that after payment of the purchase price, the 2nd defendant was expected **"to sign a formal terms and conditions of the Estate."**

Now in this particular situation, the claimant for a property issued by the same Estate Developer did not tender the "formal terms and conditions of the Estate" governing his own house.

If the claimant had this document, it would clearly have situated the terms of the relationship which will now be binding and where there is a disagreement, on any point, the authoritative and legal source of information for the purpose or resolving the disagreement or dispute will be the document containing these terms. See **Larmie V DPM and Services Ltd (2005) 18 NWLR (pt.958) 88.**

The court do not make it a habit of making contracts for parties. Indeed the court is loathe to do so. See **Standard (Nig.) Eng' Co. Ltd V NBCI (2006) AFWLR (pt.316) 255.**

Now in this case, no parameter was supplied; indeed nothing was proffered in evidence to support or situate the complaints and commitments claimed by claimant in relation to **House 5** and the court has no business to engage in speculation or engaged in an idle exercise of guess work as to what parties may have agreed to or not.

I will deal specifically with the complaints. In paragraph 6, claimant, averred that after paying the purchase price for the property, House 5, he was prevented by security men from entering the property and that the security men caused him damage of **N300, 000** to his person and properties. Here no evidence of any kind was supplied to support that "security men" caused claimant any damage. Who were this security men? and what is there link if any with 1st defendant? what was the nature of the damage caused and what is the factual basis for the N300, 000 damages allegedly occasioned? Unfortunately both on the pleadings and evidence, no answers were given to these questions and the court will not speculate.

Also in **paragraphs 8-24**, the claimant made varied complaints including that he made payment for connection of power to his house and purchase of meter which was not effected; that he was subjected to undue extortion relative to payment of power; naked wire was left lying on his fence; failure to fix security light; that charges of electricity bills by AEDC was on the high side because of connivance of the management with staff of AEDC; supply of water is low in the Estate; failure to allow claimant drill a borehole and when he was allowed to drill one, he was forced to change the location at considerable expense; inhuman treatment, molestation; and poor services at the Estate despite payment of service charges.

As stated earlier, courts do not decide cases on the basis of bare assertions devoid of credible evidence. Also as stated earlier these complaints fundamentally are the pivot for the **declaratory reliefs** sought which have to be established creditably by evidence.

In this case, these averments in the pleadings were not supported by any iota of evidence. Nothing for example was put forward situating the agreement parties had with respect to the **construction** of a bore hole in the Estate. Indeed the only documents that have anything to do with borehole drilling are **Exhibits P1b** written by Claimant to 1st Defendant (intimating them that he wants to drill his personal borehole) and **P1c**, the reply by Defendants.

Now on **Exhibits P1c**, the reply by 1st defendant to claimant, they stated thus:

"Fourthly, concerning the drilling of personal borehole, a non-negotiable fee of Two Hundred and Fifty Thousand has to be paid to Dynaprise Integrated Services. Professionals in charge of environmental impact analysis will be invited for proper supervision of the drilling and impact on the environment, the standard diameter is reached as required and no destruction of any underground cables and adjoining property"

Now there is nothing in evidence to support that the above fee was paid to Dynaprise Integrated Services by claimant and whether professionals carried out any environmental impact analysis and assessment. There is really nothing to situate that claimant started drilling his personal borehole and that he was forced to stop. If the water level in the estate is low as alleged, nothing was furnished by any expert who may have carried out a geographical survey to support this assertion. If any bore hole was constructed, who constructed it and

what was involved in the construction? The claimant was silent on these critical aspects of his case which requires credible evidence to enable the court decide on the complaints raised.

Also, if electricity bills are high due to connivance by the management and staff of AEDC, this clearly is an imputation of criminality which has to be established doubt beyond reasonable within the remit or **Section 135 of the Evidence Act** but no an iota of evidence was supplied to support or situate this allegation.

This same holding applies to the claim of extortion over fixing of power and meter in the premises. Nobody was called from the relevant power authority, AEDC or indeed anybody to situate this complaint of extortion relative to payment of power.

The complaint of naked wire on his fence was similarly not established at all. There was no evidence of any kind for example, a photograph to situate this complaint and no one was brought forward who may have dealt with the situation or effected repairs.

Again if the claimant was harassed or molested, who harassed and molested him? The person has no name or face or is it a ghost?

The point to underscore is that **averments** in pleadings, are not evidence and proves nothing unless admitted. See **Union Bank Plc V Astra Builders (W/A) Ltd (2010) 5 NWLR (pt.1186) 1 at 27.**

Indeed, averments in pleadings have been described as mere paper tigers and it will be wrong for any court to treat averment in pleadings without evidence as evidence of matters averred therein. See **Omo-Agege V Oghojafor (2011) NWLR (pt.1234) 341 at 353 G-H.**

The claimant may have elaborately pleaded these varied complaints associated with his residency of House 5 but in the absence of evidence, substantiating the averments, they are deemed as abandoned. See **Aregbeso V Oyiniola (2011) 9 NWLR (pt.1253) 458 at 594 A-B.**

Before rounding up on the issue of services, it is relevant to refer or call attention to the letter by 1st defendant vide **Exhibit P1c** tendered by claimant which they wrote in response to the letter of claimant's counsel vide **Exhibit**

P1b wherein claimant complained of poor services in the estate and that he wants to drill his own borehole.

In the letter or **Exhibit P1c**, the 1st defendant stated thus:

"… firstly, Fort Royal Homes are the developers of the Estate but facility managers are Dynaprise Integrated Services. They are a renowned Facility Management organization with an office in the Administrative block within the Estate. They provide of all Facility Services/maintenance required for the comfort of residents, ie- provision of water, lights, security, cleaning and maintenance of drainage system. They also have well trained and responsive personnel for immediate 'turnaround time' service delivery.

Secondly, a statutory annual service fee per home in tune of One Hundred Thousand (N100, 000 per annum) is expected to be paid promptly to their office as it forms a part of the running cost for various services as stated above.

Thirdly, no resident is exempted from these fees as every resident is a beneficiary of all the services general and maintenance of facilities.

Fourthly, concerning the drilling of personal bore holes, a non-negotiable fee of Two Hundred and Fifty Thousand has to be paid to Dynaprise Integrated Services. Professionals in charge of environmental impact analysis will be invited for proper supervision of the drilling and impact on the environment, the standard diameter is reached as required and no destruction of any underground cables and adjoining property.

Fifthly, the management and staff of both the Facility Managers (Dynaprise Integrated Services) and Fort Royal homes in general are currently on top of the recent water situation. It was caused by the epileptic supply of electricity from AEDC due to the absolute damage of some of their major transformers."

The above is clear. It would appear that there is a different organization or body responsible for these varied **services** claimant complained of in the estate as situated above.

This **body** or **facility managers, "Dynaprise Integrated Services"** was not mentioned in the pleadings or evidence at all and the relationship it has with 1st defendant was not streamlined or indicated. Are they one and the same with 1st defendant or are they independent? Are they principal and agent? etc Answers were not supplied to these questions and the court would again not speculate, but if a body is identified as responsible for provision of certain services and payments are made to them, then any failure or complaint relating to poor services must necessarily involve them to enable them respond to the allegations made. This was not done here.

The failure to involve these Facility Managers in this case has again served to negatively undermine the case of claimant on poor provision of services at the Estate.

On the whole as I have demonstrated, the case of claimant on the **varied complaints** made were not established at all with credible evidence.

This then now leads me to the question of ownership of **House 35C**.

Now in **paragraphs 25-32** and **39**, the case made out by claimant with respect to House No. 35 is that he was offered the house by one **Chijoke Okeke**; that he did his due diligence and found that the property was allocated to 2nd defendant and he met 3rd defendant who is the alter ego of 2nd defendant. That he made payments for the property and was given a **letter of allocation** by 2nd defendant issued to it and they executed a sales agreement vide **Exhibits P5a** and **5b**. The claimant averred that to his surprise, the 1st defendant denied him access to the site and told him that he did not own the said property or House C35 and that all efforts to now reach 2nd and 3rd defendants to clarify the issue proved abortive.

Now I had earlier in this judgment situated the ways to prove ownership of or title to land.

Now in this case, all that the claimant tendered in proof of ownership of this disputed property is the letter of allocation given to 2nd defendant by 1st defendant and the sales agreement he had with 2nd defendant.

It must be noted, that the 1st defendant is the developer of this **Estate** and thus for anybody to claim ownership of any plot in the estate, they must derive valid

title from them. Interestingly, it is apposite to note that the allocation of **House No. 5** to claimant was from the 1st defendant.

Now the allocation or root of title relied on by claimant from 2nd defendant vide **Exhibit P5a** provides thus:

"13th April, 2017

DE-MELLO OIL & GAS NIG. LTD
No. 9, Kennedy Udeh Road,
Maitama Ext.,
Anuja.

Dear Sir,

LETTER OF ALLOCATION

ALLOCATION OF 2 BEDROOM SEMI-DETACHED BUNGALOW (CARCASS) AT FORT ROYAL HOMES KYAMI, FCT. HOUSE NO C35

Further to your application for the allocation of a 2 Bedroom Semi-Detached Bungalow (Carcass) 28th March, 2017 @ Fort Royal Homes House Kyami, Abuja FCT.

We hereby notify you that your application has been approved, we therefore allocate to you House C35, Hebron Drive @ Fort Royal Homes Kyami, Abuja FCT.

The purchase sum of the said allocation is N15, 000, 000 (Fifteen Million Naira only) and you are required to meet the following conditions.

		N
1.	**House Purchase Sum**	**15, 000, 000.00**
2.	**Legal fees 2.5%**	**375, 000.00**
3.	**Administrative fee of 5%**	**750, 000.00**
	TOTAL	**16, 125, 000.00**

You are required to sign a formal terms and conditions of the Estate.

Please accept our congratulations."

The above letter and the terms are self explanatory. The letter may have been described as a letter of allocation but regardless of how it was marked, a court must inquire in to the nature of the document by looking at its content to discover what it is meant to achieve.

On that basis, it is clear that the above **Exhibit P5a** did not **effect a transfer of interest or right** in the property but only situates an offer of the property to the 2nd defendant De-Mello Oil and Gas Nig. Ltd on terms as delineated therein. These include payment of House purchase sum, legal fees, administrative fee bringing the total amount on the property to **N16, 125, 000.00**. The 2nd defendant was then expected to sign a formal terms and conditions of the Estate.

In this case, there is nothing on the evidence situating that the 2nd defendant **paid** for this property and signed a formal terms and conditions of the Estate. There is equally no evidence that the 2nd defendant was in possession, as the property on the pleadings and even **Exhibit P5a** was described as a "**carcass**".

On the pleadings and evidence, there is nothing to situate acceptance of this offer. An offer in law must be accepted in order to crystallize into a contract. An offer is a definite indication by one person to another that he is willing to conclude a **contract** on terms as proposed which when accepted will create a binding legal obligation. See **Bilante Int'l Ltd V NDIC (2011) 15 NWLR (pt.1270) 401 SC; Omega Bank (Nig.) Plc V OBC Ltd (2005) 8 NWLR (pt.928) 547.**

It is equally to be noted that when an offer as in **Exhibit P5a** is subject to a condition or conditions, the formation of the contract is postponed until the happening of the event on which the offer is conditioned. It is clear therefore that unless the **conditions** in **Exhibit P5a** were met, 2nd defendant cannot really lay claim to ownership of the said House 35C. See **Bilante Int'l Ltd V NDIC (supra).**

The point to underscore is that the required mode of acceptance as requested by an offeror must be complied with by the offeree. In other words, where an offeror has prescribed a method, as situated in **Exhibit P5a,** by which an acceptance of the offer as to be made, the offeree must adopt that method as any other method will render the purported acceptance ineffective. See also **Bilante Int'l Ltd V NDIC (supra).**

It is logical to hold that if 2nd defendant did not pay for the premises by fulfilling the terms of the consideration and also did not execute a formal terms and conditions of the sale, it cannot claim **ownership** of the said property and cannot logically alienate or transfer same to claimant or a third party.

Again it is noteworthy that the claimant in respect of his own **House 5** clearly had receipts of payments for his own property from 1st defendant and was given possession. It thus beggars belief that he could have engaged to buy a house said to have been sold by the same vendors without situating receipts of payment and/or a sale agreement emanating from them.

From the pleadings and evidence, claimant said he carried out "**due diligence**" of the said "**carcass**" situated and known as House No. C35 before buying vide paragraph 26 but he did not streamline the nature of the "due diligence" carried out and where.

If the 2nd defendant met the requirements of the sale of the property to them by 1st defendant, where then is the evidence to support such position? Absolutely nothing was proffered.

Flowing from this position, it is clear that the sales agreement issued by 2nd defendant to claimant vide **Exhibit P5b** wherein he sought to sell the said **House No. C35** to claimant clearly has no **legal value** in the circumstances and cannot support or situate sale or transfer of interest. The onus was clearly on claimant as a starting point to prove that the 2nd defendant indeed owns the property in view of the contested challenge by 1st defendant saying it does not own the property. In law the onus is on whom claims ownership of land to establish same in view of the principle of *nemo dat quod non habet* where a person can only convey to another what he has. See **Elewa V Guffanti (Nig.) Plc (2017) 2 NWLR (pt.1549) 233.**

The principle of *nemo dat quod non habet* postulates that when a grantor had no title to the land he purports to convey to another, the purported conveyance is not valid and is incapable of conveying any legal title over the land or property in question. See **Elewa V Guffanti (supra); Odunsi V Boulos (1959) SCNLR 591; Coker V Animashaun (1960) LLR 71.**

As a logical corollary, since 2nd defendant has not established ownership of the property or House 35, the purported unregistered conveyance or sales

agreement **Exhibit P5b** clearly lacks legal validity and is incapable of conveying any legal title to the property to claimant.

On the pleadings and evidence of claimant vide paragraph 32, it would appear that the 2nd and 3rd defendants knew or realized that they infact do not own the said property which explains why when 1st defendant denied claimant access to the said property and told him he does not own the property, they refused to appear to claim ownership of the said property.

The disposition and altitude of 2nd and 3rd defendants and their lawyer in refusing to come forward to clarify the sale they made to claimant clearly speaks volumes and projects that they simply took claimant "for a ride" as is said in popular parlance. Indeed it won't be farfetched to say that if they knew the property belongs to them and not 1st defendant, then they would have gladly come forward to state their own position in relation to the property.

One the whole, I find that the 2nd and 3rd defendants do not own the property known as House No. 35 and thus could not have validly alienated or sold same to claimant.

By the same token, once a party is shown to be the owner of a property or piece of land, he is in exclusive possession or has a right to such possession and anyone on the land without his permission is a trespasser, *ab initio*. See **Onagoruwa V Akinremi (2001) 13 NWLR (pt.729) 38 at 59 E-F.**

A trespasser in law can maintain an action in trespass against the whole world but the owner. If a trespasser sues one who has better title than himself, he cannot succeed. See **Kyari V Alkali (2001) 11 NWLR (pt.724) 412 at 446.**

The above broad findings provides both factual and legal template to now determine whether the Reliefs sought by claimant are availing.

Relief (a) fails for complete want of evidence. No inhuman treatment or molestation against claimant and his family by 1st defendant and his servants was creditably established by evidence. **Relief (b)** also fails as demonstrated for lack of credible evidence. Nobody was identified in evidence as the security personnel and the nexus with 1st defendant as having prevented claimant from taking possession of House No. 5 and no damages worth N300, 000 was pleaded or streamlined and most importantly, no credible evidence was led in proof of these damages.

On the pleadings and evidence, with the failure of **Relief (b), Relief (k)** for the refund of the N300, 000 based on **Relief (b)** must fail.

Relief (c) apart from been vague equally fails for lack of evidence. As stated and demonstrated, nothing was identified as situating the obligations and commitments of parties and how they were breached and the court cannot speculate. As also demonstrated, the body vide **Exhibit P1c** responsible for the provision of these services was not joined to this case and for reasons demonstrated, this was also fatal.

Reliefs (d) and (l) equally fails for want of evidence. Again nothing was presented situating that any sums were received for connection of power and provisions of meter and the court again cannot speculate. If no such evidence exists, there will be no basis to ask for a refund under Relief (l).

Relief (e) equally fails for lack of evidence. There was absolutely no evidence that any naked wire was left lying on claimant's fence and who put it or left it there.

Reliefs (f), (g), (h), (j) and (n) relating to **House No. 35** must fail for reasons already demonstrated at length. There is absolutely no evidence that there was a valid transfer of the said property to 2nd and 3rd defendants by 1st defendant and they in turn cannot transfer or alienate to claimant what they don't have and he cannot exercise any right of ownership in the circumstances. The claim for injunction under **Relief (n)** is wholly unavailing.

Relief (i) fails for want of evidence. There is nothing to situate that any moneys were received for provision of security and waste bin and that they were not supplied.

Relief (m) claiming certain sums for itemized goods and services said to have been done at House No. 35 clearly for reasons demonstrated must equally fail. So long as claimant was not able to establish ownership or a better right of possession to the property above that of 1st defendant, then all these actions undertaken on the said property by claimant all constitutes acts of trespass and he cannot succeed.

With the failure of all substantive Reliefs, the **Relief (o)** for general damages fails.

As I round up, I must again make the point that pleadings however strong and convincing the averments may be, without evidence in proof thereof, go to no issue. Through pleadings, people know exactly the points which are in dispute with the other. Evidence must then be led to prove the facts relied on by the party to sustain the allegations raised in the pleadings. Where this is not done as in this case, the case stands undermined.

The whole trial process is evidence driven. Where credible evidence is not led in proof of the assertion(s) made, that amounts to a failure of proof.

On the whole, the sole issue raised is answered in the negative. The claimant has not on a preponderance of evidence established that he is entitled to all or any of the Reliefs claimed. All the reliefs claimed are not availing.

The case of claimant thus fails and is dismissed.

……

Hon. Justice A.I. Kutigi

<u>Appearances:</u>

1. A. B. Suleiman, Esq. for the Claimant.