

**IN THE HIGH COURT OF FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT MAITAMA – ABUJA
BEFORE HIS LORDSHIP: HON. JUSTICE .H. MU’AZU
SUIT NO: FCT/HC/CV/376/2024
DELIVERED ON THE 15/04/2025**

BETWEEN:

EMEKA JUDE MBONU.....CLAIMANT

AND

MOHAMMED OGOSHI ONAWO.....DEFENDANT

JUDGMENT

The Claimant via a Writ of Summons and Statement of Claims instituted this action against the Defendant seeking the following reliefs:

- (1) *A Declaration that the Claimant is and remains the bonafide owner of the property known as House 78 Lying being and situate at plot 4528 Victoria Gowon Crescent, Gwarinpa, Abuja, FCT.*
- (2) *A Declaration that the purported transaction between the Claimant and the Defendant as regards the attempted sale of the aforementioned property is inchoate, the offer of sale having been withdrawn by the Claimant.*
- (3) *An Order of perpetual injunction restraining the Defendant, his agents, donees, privies, servants howsoever from parading himself as the owner of the property known as House 78, lying, being and situate at plot 452B, Victoria Gowon Crescent, Gwarinpa, Abuja FCT.*

- (4) *An Order of the Hon. Court compelling the Defendant to return forthwith the original copy of the Letter of Allocation and other title documents of the property in his possession to the Claimant.*
- (5) *An Order of Perpetual Injunction restraining the Defendant, his agents, donees, privies, servants howsoever from parading himself as the owner of the property known as House 78, lying being and situate at plot **452B**, Victoria Gowon Crescent, Gwarinpa, Abuja FCT.*
- (6) *An Order of Perpetual Injunction restraining the Defendant, his agents, privies, donees, servant from disturbing or interfering with the ownership or possession of the Claimant as regards the aforementioned property.*
- (7) *The sum of Five Million Naira (~~₦~~**5,000,000**) as cost and fees for the institution and prosecution of this matter which would have been averted if not for the acts and action of the Defendant.*
- (8) *10% interest on the Judgment sum till final liquidation of same.*

In response to the Claimant's Statement of Claim, the Defendant filed a statement of Defence and a counter-claim on the 14/05/2024 and counter claim against the Claimant as follows:

- (1) *A Declaration that the counter-claimant is the bonafide owner of the property known as House 78, plot **452B** Victoria Gowon Crescent, Gwarinpa.*
- (2) *An Order of specific performance directing the Defendant to the counter-claim to sign the Deed of Assignment and Power of Attorney drawn up with regards to the property known as House 78, plot **452B**, Victoria Gowon Crescent, Gwarinpa.*
- (3) *An Order directing the Defendant to the counter-claim to give up immediate possession of the property known as*

House 78, plot 452B, Victoria Gowon Crescent Gwarinpa to the counter-claimant.

- (4) An Order directing the Defendant to the counter-claim to pay mesne profit from 20/09/2023 until vacant possession is delivered at the rate of ₦10,000,000.00 (Ten Million Naira) per annum.*
- (5) An Order directing the Defendant to the counter claim to pay the counter-claimant the sum of ₦50,000,000 (Fifty Million Naira) as general damages against the Defendant.*
- (6) An Order directing the Defendant to the counter-claim to pay the counter-claimant the sum of ₦15,000,000 (Fifteen Million Naira) as a cost of this action.*
- (7) Post Judgment interest at the rate of 10% from the date Judgment is delivered in this suit until the Judgment debt is paid.*

The trial commenced on the 25/09/2024, with the Claimant testified for himself as PW1.

The case of the Claimant as distilled from the witness statement on oath of PW1 is that the Defendant offered to purchase his property known as House 78, plot 452B, Victoria Gowon Crescent, Gwarinpa, Abuja FCT and the parties agree for the purchase price of (₦122,000,000.00) One Hundred and Twenty-Two Million Naira.

It is the case of the Claimant that the Defendant only paid Ninety-Eight Million Naira (₦98,000,000.00) into his Bank account and nothing more. And that he lost the money deposited by the Defendant to fraudster as the money was meant for the construction of a residential building for the Claimant and his family to the knowledge of the Defendant.

That following the aforementioned incidents he wrote to the Defendant through one of his Solicitors Felix Dumebi & Co. withdrawing the offer of sale of the property. But the Defendant through his Solicitors

Abimiku & Co recently wrote a letter to the Claimant requesting him to vacate the property.

The Claimant contends that the transaction between him and the Claimant is inchoate as he never executed any sale agreement, Power of Attorney or Deed of Assignment in respect of the property in issue. The Claimant tendered the following documents:

(1) Letter dated 6/9/2023 Exhibit P1

(2) Whatsapp chat between the Claimant and the Defendant Exhibit P2.

And during cross examination of PW1 two documents were tendered through him to wit:

(1) Lease Agreement between HIS Ltd & the Claimant Exhibit D1

(2) Acknowledgment Receipt signed by the Claimant as Exhibit D2.

At the completion of cross-examination, PW1 was discharged. On the 13/11/2024, the Defendant opened his case and testified as DW1, the sole witness.

The case of the Defendant/Counter-claimant is that the Claimant offered to sell his property, the subject matter, to the Defendant and after negotiations, the parties agreed on the sum of **₦122,000,000** (One Hundred and Twenty-Two Million Naira) as the purchase price.

The purchase price of **₦12,000,000** (Twelve Million Naira) and **₦10,000,000** (Ten Million Naira) included the sum of **₦10,000,000** which the Claimant owed Federal Housing Authority and **₦12,000,000** being the rent for the remaining terms of the lease between the Claimant and HIS Nigeria Ltd for a communication mast on the property. And these sums were to be deducted from the purchase price leaving a balance of **₦100,000,000** (One Hundred Million Naira) to be paid by the Defendant to the Claimant.

The Defendant avers that before the money was to be paid, the claimant agreed that the sum of **₦2,000,000** (Two Million Naira) be deducted

from the purchase price leaving a balance of **₦100,000.00** (One Hundred Million Naira) only.

That on the 21/06/2023 the Defendant paid the sum of **₦98,000,000.00** (Ninety-Eight Million Naira) to the Claimant and receipt was issued acknowledged the money as full and final payment of the money.

DW1 was cross-examined by learned Counsel for the Claimant and accordingly discharged. Parties closed their respective cases to pave way for filing and adoption of final written addresses.

Learned Counsel for the Defendant formulated two issues for determination to wit;

- (1) Whether the Claimant has proved his case and is entitled to the reliefs sought in the statement of claimant.**
- (2) Whether the Defendant has proved his counter-claim and is entitled to the reliefs sought?**

Learned Counsel argued the above issues citing relevant case laws and statutes in urging the Court to dismiss the claims of the Claimant and grant the counter claim of the Defendant.

On his part, learned Counsel for the Claimant formulated three (3) issues for determination to wit:

- (1) Whether the possession of purchase receipt and letter of allocation without more is enough to vest legal title of the property in dispute in the Defendant.**
- (2) Whether the claims/reliefs sought in the Defendants counter claim are sustainable law.**
- (3) Whether the Claimant is entitled to the reliefs sought in this matter.**

Learned Counsel submitted that, the Claimant by evidence has established his case and therefore entitle to Judgment.

I have considered the evidence (oral and documentary) adduced by both the Claimant and the Defendant/Counter Claimant, and the legal arguments contained in their respective final written addresses.

It is elementary law that where parties have entered into a contract or an agreement, they are bound by the provisions of the contract/agreement. This is because a party cannot ordinarily resile from a contract agreement just because he later discovered that the contract or agreement is not favourable to him.

This is the whole essence of the sanctity of contract or agreement. The Court is bound to construe the terms of the contract or agreement and the terms only in the event of an action arising there from. ***MINAS HOLDINGS LTD VS. ASSET MANAGEMENT CORPORATION OF NIG. (2015) LPELR – 24650.***

From the ensuring legal submission on the part of the claimant on one hand and the evidence of plaintiff on the other hand, I shall attempt to unravel the mystery of the alleged contract or an inchoate contract between the parties shortly in view of the fact that the entire argument seem to have been narrowed to House 78, situate at Plot **452B**, Victoria Gowon Crescent, Gwarinpa, Abuja FCT.

Whereas the Claimant seeks declaratory reliefs against the Defendant that the purported sale between the party is inchoate and therefore, he remains the bonafide owner of the property, the Defendant contends that the contract between the parties was concluded and therefore the Defendant is the new owner of the property.

It must be born in mind that reliefs 1, 2 and 3 claims by the Claimant are declaratory in nature thereby predicating the success of other reliefs on it. it has been held in a plethora of judicial authorities that a party seeking for a declaratory relief as in the instant case must succeed on the strength of his case and not on the weakness of the Defendant's case. A party seeking for declaratory reliefs would not be entitled to Judgment even on admission.

It is the duty of the party seeking a declaratory relief to prove the existence or non-existence of what he asserts by relevant credible evidence. ***NGENE VS. IGBO (2000) 4 NWLR (PT. 651) 131 AT 142.***

It is instructive to state here that parties are ad idem that there was an agreement to sell the property for the sum of **₦122,000,000.00**. Parties are also in agreement that the sum of **₦98,000,000** was paid by the Defendant to the Claimant.

The Claimant however, maintains that he never executed any Sales Agreement, Power of Attorney or Deed of Assignment in respect of the property with the Defendant. And that the transaction between him and the Defendant in respect of the property is inchoate, and he is ready and willing to refund the money deposited by the Defendant in respect of the property. The Claimant relies on the Supreme Court decision in ***BPS CONSTRUCTION AND ENGINEERING CO. LTD VS. FEDERAL CAPITAL DEVELOPMENT AUTHORITIES (2017) 10 NWLR (PT. 1572) PG. 1 AT 38 PARA B – D*** where the court held that where a contract is made subject to the fulfillment of certain terms and conditions, the contract is inchoate and not binding until those terms and conditions are fulfilled.

The question that begs for an answer at this point is, what are the terms and condition that the Defendant failed to comply with that made the contract inchoate?

It is an elementary principle of law that the standard of proof in a civil matter is proof on preponderance of evidence and balance of probabilities. The burden is not static but shifts from side to side like a pendulum. See ***AWOLESI & ORS. VS. SOLARIN & ORS. (2024) LPELR 62037 (CA)***.

The Claimant maintained in his witness statement on oath that, the Defendant only paid him the sum of N98,000,000 only through his account and that there was no instrument of transfer in form of Power of Attorney, Sale Agreement or Deed of Assignment executed between him and the Defendant and that based on that, the transaction is inchoate.

In response to the allegation of the Claimant the Defendant stated that the transaction between the parties was duly concluded. when the

Defendant Counsel confronted PW1 (the Claimant) with Lease Agreement between the Claimant and HIS Ltd and the Claimant admitted that he leased the property in dispute to HIS Ltd for 10 years. The said lease agreement was tendered in evidence through PW1 as Exhibit **D1**.

The said Exhibit **D1** I must say corroborates the Defendant's statement of defence and counter-claim that there is pending lease between the Claimant and IHS Ltd for 10 years. For a rent of **₦2,000,000** per annum and as at the 21st of June, 2023 when the Defendant paid the sum of **₦98,000,000.00** (Ninety-Eight Million Naira) to the Claimant, there were six years left on the lease, which the Defendant paid **₦12,000,000** to the HIS Ltd.

Similarly, PW1 was shown receipt of payment and PW1 admitted that he signed the receipt and same was witnessed by his wife. The said receipt was tendered through PW1 as Exhibit **D2**.

I only need to add here that the importance of documentary evidence in judicial proceedings cannot be over-emphasised; as documentary evidence is regarded as best evidence. It is also settled that documentary evidence could be used to resolve an issue or conflicting evidence, it could be used as a hanger from which to test the veracity of the oral testimonies. See *BALE VS. CHAIRMAN OF EFCC (2021) LPELR 56469 (CA)*.

I have seen Exhibit D2 in evidence, for avoidance of doubt, the said Exhibit D2 is hereby reproduced:

Acknowledgment of Payment Receipt

“In consideration of the sale of my property known and situate at No. 78 on plot 452B at Victoria Gowon Crescent (formally 24 Crescent) Gwarinpa, Abuja to Senator Mohammed Ogoshi Onawo, I hereby acknowledge the receipt of the sum of **₦122,000,000.00 (One Hundred and Twenty-Two Million Naira) comprising of **₦98,000,000** (Ninety Eight Million Naira)**

direct payment, ₦12,000,000 (Twelve Million Naira) being residue of lease proceeds and ₦10,000,000 (Ten Million Naira) liability to Federal Housing Authority (FHA) from the said Sen. Mohammed Ogoshi Onawo of National Assembly Complex, Abuja, as full and final payment for the said property.

Subject to the terms of the Sales Agreement and Deed of Assignment, the parties thereto, have mutually agreed that the seller, Pastor Emeka Jude Mbonu will temporarily stay in the property for three (3) months effective from 21/06/2023 to 20/9/2023.”

The said acknowledgement of payment receipt was duly signed by the Claimant, Pastor Emeka Jude Mbonu and witnessed to by Mbonu Yetunde.

Indeed, Exhibit D2 reproduced above is an admission by the Claimant that the purchase price for the property was **₦122,000,000**, **₦12,000,000** and **₦10,000,000** were deducted from the purchase price thereby bringing the amount to be paid by the Defendant to the Claimant for the property to **₦98,000,000** which was duly paid.

It is trite law, that there are five important elements of a valid contract and they are:

(1) Offer (2) Acceptance (3) Consideration (4) Intention to create legal relationship and (5) capacity to contract

It is also trite that all the five elements listed above must co-exist for there to be a valid contract. See ***SALLAU VS. MINISTER FCT & ORS. (2023) LPELR 60657 (CA)***.

From Exhibits D2 earlier reproduced, it is obvious that, there was offer, acceptance, consideration, intention to create legal relationship and the parties have capacity to contract. What this means therefore, is that, there exist a valid contract between the parties.

I must also state here that, for a purchaser to acquire legal title in a property, there must be evidence of payment of the purchase price,

acknowledgment of same and execution of a Deed of Conveyance. However, in the case under consideration, the Claimant stated that, there was no execution of Deed of Assignment or Power of Attorney over the said property and therefore the contract is inchoate.

I disagreed completely with the assertion of the Claimant on the ground that because Deed of Assignment was not executed, the transaction is inchoate.

It is the law that where the buyer has fully paid for a property but a formal Deed has not been executed, equity recognizes the buyer as the beneficial owner of the property. In such a situation, equity steps in to create an implied trust in favour of the purchaser and the beneficial/equitable interest in the property is transferred to the Purchaser. See *TURAKI VS. MAJOR OIL (NIG LTD) (2024) 6 NWLR (PT. 1933) 75 AT 115 PARA B.*

It is also in evidence by virtue of paragraph 23 of the witness statement on oath of DW1, he stated that he handed over a formal Deed of Assignment and Power of Attorney to the Claimant for execution but the Claimant refused to sign them.

Where evidence is given by a party, and such evidence is not contradicted by the other party who has the opportunity to do so, the Court is bound to act on same. See *M.D.C.N VS. SYSTEM INFORMATIX (1998) 12 NWLR (PT. 577) 258 AT 268.*

Indeed, the Claimant did not deny the evidence that, he handed over the original lease agreement between him and HIS Nigeria Ltd, the original Deed of Assignment between Mr. Adejoko Aruna and the Claimant, and the original title documents of the property to the Defendant and therefore the Court must take same as true.

It is trite that a contract becomes legally binding and enforceable after an offer has been accepted and consideration has been furnished at that point, the contract is concluded and the offer cannot be withdrawn. See *Okoli Vs. Minister FCT (2022) LPELR 580321 (CA).*

From the above, it is unconscionable for the Claimant to hold on to the property for his own benefit after receiving full and final payment from the Defendant as consideration for the sale of the property. Indeed, equity imposes a constructive trust so that the Claimant holds the property as a trustee for the benefit of the Defendant. See ***KWARA POLY M.C.S LTD VS. ABDULLAHI (2024) 5 NWLR (PT. 1932) 483 AT 503 PARA G – H.***

The Claimant in this case continue to whip up sentiment to the effect that he and his entire family resides in the subject matter of litigation and that he lost the money deposited by the Defendant to fraudsters and the money was meant for the construction of a residential building for the Claimant and his family to the full knowledge of the Defendant.

It is trite law that a Court must always remain steadfast on the pleading of the parties and on the evidence led at trial in reaching its decision and must not allow itself to be led by sentiments. The Supreme Court has stated over and over that the Court is for espousing the law and not a place for sentiments and that sentiments command no place in Judicial adjudication. See ***PLATEAU CINEMA LTD VS. ALHAJI HARUNA DANJA & SONS LTD & ORS. (2014) LPELR 24006 (CA).***

From the evidence before me, it is my Judgment that the Claimant has woefully failed to establish his case before the Court. Accordingly, same is hereby dismissed.

Having dismissed the Claimant's case, I shall now consider the counter claim of the Defendant.

From the evidence before the Court both oral and documentary, it is not in dispute that the Defendant/Counter claimant is entitle to the reliefs sought. Accordingly, it is hereby entered for the Defendant/Counter claimant against the Claimant/Defendant to the counter claim as follows:

- (1) **A Declaration is hereby made** that the counter claimant is the bonafide owner of the property known as House **78**, Plot **452B** Victoria Gowon Crescent, Gwarinpa, Abuja, FCT.

- (2) An Order of specific performance is **hereby granted** directing the Defendant to the counter claim to sign the Deed of Assignment and Power of Attorney drawn up with regards to the property known as House **78**, plot **452B** Victoria Gowon Crescent Gwarinpa, Abuja.
- (3) The Defendant to the counter-claim is **hereby ordered to** give up immediate possession of the property known as House **78**, plot **452 B**, Victoria Gowon Crescent, Gwarinpa, Abuja to the counter claimant.
- (4) The Defendant to the counter claim is **hereby ordered to** pay mesne profit from 20/09/2023 until vacant possession is delivered at the rate of **₦2,000,000** (Two Million Naira) per annum to the counter claimant.
- (5) An Order directing the Defendant to the counter claim to pay the counter-claimant the sum of **₦20,000,000** (Twenty Million Naira) as general damages against the Defendant, the Claimant's case being most unmeritorious and frivolous.
- (6) The sum of **₦5,000,000** is hereby awarded as cost of filing and prosecuting this case by the Defendant/Counter Claimant.
- (7) 10% post Judgment interest in here awarded from today until the Judgment sum is liquidated.

SIGNED:
HON. JUDGE
15/04/2025.

APPEARANCE:

G.O. Odey, Esq, for the Claimant

O.S. Kehinde, Esq with K. E. Cyril –Ita, Esq, for the Defendant