

**IN THE HIGH COURT OF JUSTICE OF THE 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/2458/2021
DATE: 27/01/2025.**

BETWEEN:

MRS CHRISTIANA AVAAN.....CLAIMANT

AND

**1. EL-SALEM NIGERIA LIMITED
2. MR. BEN GBADE OJO }DEFENDANTS**

Appearance:

*Douglas Najime, Esq with G.T.Shatar, Esq for the Claimant.
Sharon Jibaniya, Esq holding the brief of B.O. Akinseye George
For the Defendants.*

JUDGMENT

The Claimant approached this Hon. Court and took out a writ of summons dated and filed on the 27th day of September 2021. The claimant seeks the following reliefs against the defendants:

- (a) A Declaration that the Claimant is entitled to the benefits of the contract for the sale of the 3 Bedroom Bungalow carcass and appurtenances known and described as Plot 019, B2 Road 2 Sam Nujoma Housing

Estate, Galadimawa, Abuja FCT, having met all the contractual requirements thereof.

- (b) **A Declaration** that the Assignment, Conveyance, sale, and or Transfer of the 3 Bedroom Bungalow carcass and appurtenances known and described as Plot 019, B2 Road 2 Sam Nujoma Housing Estate, Galadimawa, Abuja FCT to the claimant by the Defendants is valid, subsisting and binding having not been withdrawn, revoked or reversed.
- (c) **AN ORDER OF SPECIFIC PERFORMANCE** directing the Defendants to forthwith issue on to the Claimant her Allocation Letter and Final Allocation Letter with respect to the Claimant's 3 Bedroom Bungalow carcass and appurtenances known and described as Plot 019, B2 Road 2 Sam Nujoma Housing Estate, Galadimawa, Abuja FCT.
- (d) **AN ORDER OF SPECIFIC PERFORMANCE** directing the Defendants to forthwith release onto the Claimant relevant Title documents necessary for the processing of the claimant's Certificate of Occupancy over her 3 Bedroom Bungalow carcass and appurtenances known and described as Plot 019, B2 Road 2 Sam Nujoma Housing Estate, Galadimawa, Abuja FCT.
- (e) The sum of ~~₦~~**20,000,000.00 (Twenty Million Naira Only)** as General Damages against the Defendants for the trauma, psychological torture, and agony suffered by the Claimant as a result of the acts of the Defendants with respect to the Claimant's property known and described as Plot 019, B2 Road 2 Sam Nujoma Housing Estate, Galadimawa, Abuja FCT.

The sum of ~~₦~~**1,000,000.00 (One Million Naira Only)** being the cost of professional fees for the prosecution of this suit.

The defendants, in reaction to Claimant's Writ of Summons filed a Statement of Defence and a Counterclaim seeking the following reliefs:

- a. The sum of ~~₦~~**₦8,000,000.00 (Eight Million Naira Only)** for the full and final payment of the 3-bedroom bungalow at Dr. Sam Nujoma Estate.
- b. The sum of ~~₦~~**₦2,000,000.00 (Two Million Naira Only)** for Infrastructure fee at Dr. Sam Nujoma Estate.
- c. The sum of ~~₦~~**₦10,000,000.00 (Ten Million Naira Only)** being the sum spent by the Defendants in engaging solicitors to defend the suit of the Claimant.
- d. **10%** interest on the judgment sum from the date of judgment till the whole sum is fully paid.

At the close of exchange of pleadings, the suit proceeded into hearing. The case of the claimant is that she had over a series of transaction commencing from Pyakasa sought to acquire a Property from the 1st Defendant who is Real Estate Company. This transaction spanned over a period of years and at a point the Claimant opted out and demanded a refund of her deposit she made but characteristically of most Estate Companies the Defendants rather than refund the money paid by the Claimant they relocated the Claimant from Pyakasa to Galadimawa and having been offered different houses and later on sold to other Customers they finally settled on a Carcass far below what was previously offered and the said Carcass was in a sorry state and given the long and chequered history of the Parties herein concessions were made and payment of infrastructure was waived for the Claimant.

The Parties in that regard settled and agreed on a 3 Bedroom Bungalow Carcass with its appurtenances known and described as Plot 019, B2, Road 2 Sam Nujoma Housing Estate, Galadimawa Abuja FCT, the Claimant's payment earlier made was consolidated and having made the requested payment part

payment in furtherance to the agreed purchase price of **₦15,000,000 (Fifteen Million Naira Only)**. The Claimant at that point made further payment and raising the amount to **₦10,000,000 (Ten Million Naira Only)** with an outstanding balance of **₦5,000,000 (Five Million Naira Only)** which was to be spread over a period of 18 months to be paid in 3 installments from the date of allocation which was the 21st December 2018.

The Claimant at the Site (Plot 019, B2, Road 2 Sam Nujoma Housing Estate, Galadimawa Abuja FCT) conscripted the services of the Workmen of the 1st defendant who developed, roofed and finished the Carcass allocated to the Claimant and made it habitable and presentable state all to the knowledge of the Defendants herein.

The Claimant made a further payment of **₦12,000,000 (Twelve Million Naira Only)** while working on her Plot of land and upon the demand of the Defendants made a final payment of **₦3,000,000 (Three Million Naira Only)** and this was made by a Manager's Cheque thereby furnishing the entire consideration as per the Agreement of the Parties despite the non-issuance of the Allocation Letter.

That despite the fact that the Claimant has performed as per the terms of the Agreement the Defendants failed, refused, neglected and or omitted to issue the relevant documents rather they sought to set aside the Contract.

Whereas the Defendant denied the allegation made by the Claimant and stated that upon indication of interest, the Claimant was offered a 3-bedroom semi-detached bungalow at the price of **N10,000,000.00 (Ten Million Naira Only)**. The claimant accepted the offer and paid the sum of **N10,000 (Ten Thousand Naira Only)** for registration. The defendant's standard application form, provided to subscribers, includes a provision for a 3% consulting fee. This fee is applicable when subscribers engage the defendants' services to facilitate and document the mortgage process, as necessary.

That later, in 2016, she reconsidered and subscribed to the 1st defendant's housing plan for the Dr. Sam Nujoma Housing Estate in Galadimawa. The 1st defendant, offered a discount of **N5,000,000 (Five Million Naira)** on the condition that the claimant would make full payment immediately to secure the contract. However, the claimant failed to fulfill the agreed payment terms, but moved into and took possession of the property without meeting these obligations. The Defendant counter claim against the claimant as stated in the preceding part of this judgment.

The following documents were tendered in this case.

- a. **Application form (photocopy)**
- b. **Evidence of payment dated 2/12/2010**
- c. **Offer Letter**
- d. **El-Salem Application**
- e. **Acceptance Letter**
- f. **National Housing Fund Account passbook**
- g. **Claimant Solicitor's letter**
- h. **Letter of Refund. (The original is with the Defendant)**
- i. **Claimant's Letter for Variation (The original is with the Defendant)**
- j. **Evidence of Payment dated 21/12/2018**
- k. **Offer letter of 16/08/2016**
- l. **Pictures of Carcass as handed over**
- m. **Evidence of payment 16/08/2016**
- n. **Evidence of payment dated 10/11/2016**
- o. **Unsigned Letter of Allocation dated 9/03/2020**
- p. **Evidence of Payment for facility fees**
- q. **Demand Notice 4/08/2021**
- r. **Claimant's Solicitor's Letter 17/08/2021 with draft of the letter**
- s. **Claimant's final demand letter**
- t. **The 1st Defendant's 2 letters**

u. Receipt of payment of solicitor's fees

The Defendant tendered the following documents:

- a. Offer Letter 25/08/2010**
- b. Acceptance Letter 12/01/2011**
- c. Claimant's Letter 4/08/2016**
- d. Offer Letter 16/08/2016**
- e. Claimant Solicitor's Letter 17/08/2021**
- f. 1st Defendant's reply 3/09/2021 (Admitted Provisionally in evidence)**
- g. 1st Defendant's Letter of Demand 4/08/2024**
- h. 1st Defendant's Letter 6/09/2021**

The Defendant called two subpoenaed witnesses and they tendered the following documents:

- (1) CTC of Account**
- (2) CTC of Account**

At the close of hearing, learned counsel for the Defendants in the Defendants' Final Written Address formulated two issues for determination to wit;

- (a) Whether from the evidence on record, the claimant has proved her case to entitle her to the reliefs claimed and**
- (b) Whether the defendants who have a counter-claim before this Hon. Court have proved the counter-claim to entitle it to judgment.**

Learned counsel argued the above issues succinctly in urging the court to dismiss this case.

On its part, learned counsel for the Claimant adopted the issues formulated by the Defendants' counsel and argued that the claimant has proven its case and therefore entitle to judgment.

On the part of court, it must be stated from the onset that, where there is a contract regulating any arrangement between the parties, the main duty of the court is to interpret the contract and to give effect to their wishes as expressed in the contract document. See **C.I.C LTD VS. SOLEL BONEH NIG. LTD (2007) EGSC (VOL. 67) 112.**

Before delving into the main issues, it is imperative to address issues of admissibility of some of the exhibits objected to during trial.

The 1st document objected to is Exhibit P16 which is unsigned letter of allocation. Indeed, it is a General principle of law that an unsigned document is a worthless document. See **GBADAMOSI & ANNOR VS. BIALA & ORS (2014) LPELR 24389 (CA).**

I must state here that the purport of the Claimant tendering Exhibit P16 (Allocation letter) is to corroborate the existence of a contract between the parties. Indeed, the parties before me are all in agreement that, there was a contract for the sale and purchase of the subject matter of this suit.

The parties having agreed on the existence of contract between them, it means that the document is relevant before the court, I shall therefore admit same but however, the weight to attached to the document is what I will determined during the substantive case.

Similarly, there was an objection to Exhibit P19 (Claimants solicitor letter) on the ground that the contents of the said letter is grossly erroneous and designed to mislead the court. That the bank draft was not attached to the letter and was never in the possession of the Defendant. I do not agree with the Defendants here. The Document is pleaded and relevant to the fact in issue. The Objection is overruled.

Finally, the Claimant earlier objected to admissibility of exhibit D6 but withdrew the objection in its Final written Address.

The parties herein are ad idem that the claimant and the defendants had a contract for the sale of the House the subject matter of this suit indeed, parties are bound by their Agreement.

I have gone through the case of the Claimant as presented by PW1 and the SW, with the documents tendered by both in this case, I have equally gone through the case of the Defendants and the documents thereto. I shall address the two issues formulated together to ascertain the right of parties where it exist.

There is no disputing the fact that the burden of proof in civil cases is on the party who alleges the affirmative and that party could be Claimant or the Defendant, depending on the state of pleadings. By section 133 of the evidence Act 2011, the burden of proof in Civil suit or proceedings lies on that person who would fail if no evidence at all was given on either side. While the first burden is on the party who alleges the affirmative in the pleadings, the 2nd burden that is, the evidential burden lies on the adverse party to prove the negative. See **OKAFOR VS. NATHANIEL (2024) LPELR 62459 (CA)**.

It is elementary law that when parties have entered into a contract or an agreement, they are bound by the provision of the Contract or Agreement. This is because a party cannot ordinary resile from a contract or agreement just because he later found that the conditions of the contract or agreement are not favourable to him. This is the whole essence of the doctrine of sanctity of contract or agreement. See **AG RIVERS STATE VS. A.G AKWA IBOM STATE & ANOR (2011) LPELR 633 (SC)**.

It must be reiterated here that a contract is an agreement giving rise to obligations which are enforced or recognized by law. The factor which distinguishes contractual obligation from the other legal obligations is that they are based on the agreement of the contracting parties. See **AG RIVERS STATE VS. A.G AKWA IBOM STATE & ANOR (Supra)**.

To address the issues raised by the parties, I have carefully perused the documents before the Court. It is clear from the contents of Exhibits P19, (**letter of Demand**) P20 (**Claimant's response to the Demand letter**) P21 (**Claimant's final demand dated 30/08/2021 for issuance of Final allocation papers**) P22 (1st Defendant's letter of 3rd September 2021 in response to Exhibit P21, that the parties have agreed on the sale of the subject property for a consideration of N15, 000,000 only. This fact is not in dispute.

A letter of offer or Allocation was never issued to the Claimant in respect of the property. It is the Claim of the 1st Defendant that the Final allocation was only to be given upon completion of payment for the property that is **N15 Million** and Infrastructure fee of **N1.5 Million** which they alleged the Claimant has failed to do. On their part, Claimant alleges that even where it is agreed that **N15 Million** be paid before the allocation letter is given; the Claimant has by Exhibit P20 of 17/08/2021 enclosed a Bank Draft for the payment of the balance of **N3 Million** as complete payment and ought to be issued the allocation letter. However, it is the assertion of the Defendants that Exhibit P20 did not come with any Bank Draft as mentioned in it and same fact was communicated to the Claimant in Exhibit D8 (**1st Defendants letter of 6/09/2021**) D8 is the Defendants' letter of Final Demand. It is pertinent to note that parties in this Suit have had a history of entering into contracts which have failed for non performance. Where, both parties have laid the blame of the other party.

This brings me to the question of whether there exist Agreement between the parties?

This must be answered in the affirmative. Although there is no formal offer and acceptance, it is clear that they have agreed on the sale of the house/Bungalow at the rate of **N15 Million**. The Defendant has accepted some payments on the property from the Claimant and it clear that parties intend to be bound by the agreement. See NIMANTEKS ASSOCIATES LTD & ANOR V. MARCO CONSTRUCTION COY LTD & 9 ORS (1991) 2 NWLR (PART 174) PAGE 411 AT 427 PARAGRAPH C – D.

Is the Claimant entitle to the Allocation letter before full payment?

Exhibit P16 is a letter of Allocation/purchase of the subject property dated 9/09/2020 in favour of the Claimant. It is the contention of the Claimant that it proves that she was entitled to the letter but same was not issued to her because the signatories were absent. As contended earlier, the Defendants maintained that the letter was only to be issued at the completion of payment.

But, why was it made and dated. It certainly does not bind parties having not been signed. By Exhibit P19, the Defendants demand letter, it is clear that the Claimant was owing the Defendants the delayed discounted balance of **N3 Million** to complete the transaction on the property. And in its response the Claimant acknowledges same.

What is not clear however is which of the full payment and Allocation comes first. In the absence of clarity I must resolve in favour of the Defendants. The Claimant has not proved on the preponderance of evidence that the final allocation was due to it before final payment.

Has the Claimant paid fully the consideration for the property?

The Claimant has tendered the Bank draft through the subpoenaed witness and the Defendants have tendered the statement of account of the 1st Defendants from two banks Exhibits SW1 and SW2.

On the balance of probabilities, I believe the Claimant that a draft was raised as tendered by GTB. I also believe that it was enclosed in exhibit P20 but rejected by the Defendants as the sum of ~~₦4.5 Million~~ inclusive of the infrastructure fee was the balance. In view of my findings above I hold that, the figure of the balance at the 17/08/2021 when Exhibit P20 was served on the Defendants is **₦3 Million** outstanding for the property not ~~₦8 Million~~ the Defendants are claiming.

The Claimant has not proved that the infrastructure fee was included in the purchase price. And having not paid the ~~₦1.5 Million~~, the opportunity to pay discounted the fee is lost.

On the whole, it is my judgment that the case of the Claimant fails for failure to prove payment of the full balance owed. Same is dismissed. The Counter Claim of the Defendants partly succeeds.

Judgment is entered for the Defendants in these terms:

1. 1st reliefs is granted in the sum of ~~₦3 Million~~ as balance for the property.
2. The sum of ~~₦2 Million~~ for infrastructure fee.
3. **10%** post judgment interest.

Parties shall bear their respective cost.

SIGNED
HON. JUDGE
27/01/2025