

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
HOLDEN AT JABI**

THIS MONDAY, THE 20TH DAY OF JANUARY, 2025

BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI – JUDGE

SUIT NO: CV/1675/2015

BETWEEN:

U.L.O CONSULTANTS LIMITED CLAIMANT

AND

1. HON. MINISTER OF THE F.C.T
2. FEDERAL CAPITAL DEVELOPMENT AUTHORITY

} **DEFENDANTS**

JUDGMENT

By a Further Amended Statement of Claim dated 7th December, 2021, the claimant prayed for the following Reliefs:

- 1. A Declaration by this Honourable Court that the 1st and 2nd Defendants are in breach of Clause 2 paragraph ix of the Development Lease Agreement between the Claimant and the Defendants by failing to timeously confer on the Claimant his Statutory Right of Occupancy on Plot 1953, Cadastral A02, Wuse District, Abuja within the time stipulated therein.**
- 2. A Declaration by this Honourable Court that the 1st and 2nd Defendants are in breach of Clause 2 paragraph ‘x’ of the Development Lease Agreement between the Claimant and the Defendants by failing to confer on the Claimant his Statutory Certificate of Occupancy on Plot**

1953, Cadastral A02, Wuse District, Abuja having paid all the applicable bills.

3. A Declaration by this Honourable Court that the 1st and 2nd Defendants are in breach of their duty as contained in Schedule 4 of the Development Lease Agreement between the Claimant and the Defendants by failing to ensure that the Claimant enjoys peaceable and quiet enjoyment on Plot 1953, Cadastral A02, Wuse District, Abuja.
4. An order of this Honourable Court directing the 1st and 2nd Defendants to carry out their obligation as contained in the contract described as “Development Lease Agreement between the Federal Capital Development Authority and U.L.O Consultants Limited, dated the 5th day of January, 2006 and registered as FC90 at page 90 in Vol. 18 MISC at the Land Registry of the Ministry of the Federal Capital Territory, Abuja.”
5. An Order of court mandating the 1st and 2nd Defendants to issue to the claimant the Certificate of Occupancy over all that parcel of land known and described as Plot 1953, Cadastral Zone A02, Wuse, Abuja, the subject matter of the Development Lease Agreement between the Federal Capital Development Authority and U.L.O. Consultants Limited, dated the 5th day of January, 2006 and registered as FC90 at page 90 in Vol. 18 MISC at the Land Registry of the Ministry of the Federal Capital Territory, Abuja.
6. The sum of N2, 000, 000, 000.00 (Two Billion Naira only) as General damages against the 1st and 2nd defendants for the delay in the issuance of the Certificate of Occupancy.
7. 10% interest on the judgment sum from the date of judgment until the payment by the Defendants to the Plaintiff.
8. Cost of the action.

OR ALTERNATIVELY

1. An Order that by virtue of the Valuation Report the Claimant is entitled to the sum of N2, 950, 000, 000.00 (Two Billion, Nine Hundred and Fifty Million Naira only) being the current market value of the fully

developed office complex known and described as U.L.O Plaza on the plot of land lying and situate at Plot 1953, Cadastral Zone A02, Wuse District, Abuja, the subject matter of the Development Lease Agreement between the Federal Capital Territory and U.L.O Consultants Limited, dated the 5th day of January, 2006 and registered as FC90 at page 90 in Vol. 18 MISC, at the Land Registry of the Ministry of the Federal Capital Territory, Abuja.

- 2. The sum of N809, 977.12 (Eight Hundred and Nine Thousand, Nine Hundred and Seventy Seven Naira, Twelve kobo only) being the amount paid to the defendants as building plan approval fee for Plot 1953, Wuse, Abuja.**
- 3. The sum of N21, 000.00 (Twenty One Thousand Naira only) being the amount paid to the Defendants as Land processing fee for Plot 1953, Wuse Abuja.**
- 4. The sum of N10, 000.00 (Ten Thousand Naira only) being the amount paid to the defendants as Land Recertification fee for Plot 1953, Wuse Abuja.**
- 5. The sum of N4, 000, 000, 000.00 (Four Billion Naira only) jointly and severally against the Defendants, as General Damages for breach of contract and for negligence.**
- 6. 10% interest on the judgment sum from the date of judgment until the payment by the Defendants to the claimant.**
- 7. Cost of this suit.**

The defendants filed an Amended joint statement of defence on 23rd March, 2018 and in response, the claimant filed an Amended Reply to the 1st and 2nd defendants joint Amended statement of defence on 10th October, 2019.

It is important because of the age of the case to state that the matter suffered several avoidable disruptions which severally affected the natural flow of the case. At the inception of the case, counsel for the defendants, D. Elogun informed the court that after going through the originating court processes, he was of the opinion that it was a case that could be settled amicably out of court and he had written an internal memo to that effect and craved the indulgence of

court to allow them explore settlement out of court. Due to bureaucratic challenges particularly on the part of the defendants, the settlement dragged for years; indeed at a point the court was informed that parties were meeting and that substantial progress was being made in settling, but ultimately nothing came out of the settlement moves and accordingly after these faltering steps, but ultimately unsuccessful attempts at settlement, claimant elected or chose to proceed with hearing which defendants counsel did not object to but he still maintained his position that they had made substantial progress even though nothing concrete in terms of what was agreed as settlement terms was presented to court.

Now in proof of its case, the claimant called three (3) witnesses. **Livinus Nwadinigwe**, a legal practitioner testified as **PW1**. He deposed to a witness statement on oath which he adopted at the hearing and tendered in evidence the following documents to wit:

1. Certified True Copy (CTC) of Application for grant/re-grant of statutory right of occupancy acknowledgment dated 22nd November, 2005 was admitted as **Exhibit P1**.
2. Certified True Copy of letter of acceptance of grant of right of occupancy by claimant dated 19th December, 2005 was admitted as **Exhibit P2**.
3. Certified True Copy of Development Lease Agreement between the Federal Capital Development Authority and U.L.O. Consultants Ltd was admitted as **Exhibit P3**.
4. Certified True Copy of letter of approval of grant of Plot No. 1953 to the claimant by the Federal Capital Development Programme within the FCT dated 8th December, 2005 was admitted as **Exhibit P4**.
5. Certified True Copy of statutory bill for building plan approval, AGIS deposit slip and receipt of payment were admitted as **Exhibit P5 (1-3)**.
6. Certified True Copy of statutory right of occupancy to claimant of plot No. 1953 dated 9th February, 2007 was admitted as **Exhibit P6**.
7. Three (3) letters by the law firm of Ikotun, Temowa & Co. to the Director AGIS dated 11th April, 2008, 21st November, 2008 and 26th January, 2010 were admitted as **Exhibits P7 (1-3)**.

8. Certified True Copy of warrants for possession of premises dated 26th May, 2014 and 30th January, 2017 were admitted as **Exhibits P8 (1 and 2)**.
9. Copy of picture of a property in dispute together with the certificate of compliance were admitted as **Exhibits P9 (1) and (2)**.
10. Two (2) copies of tenancy agreement between Chief Uche Luke Okpuno (Director in claimant) and Federal Inland Revenue Service dated 5th May, 2012 and 13th September, 2013 were admitted as **Exhibits P10 1 and 2**.

PW1 was then cross-examined by counsel to the defendants.

Samuel M. Nwosu, a legal practitioner testified as **PW2**. He deposed to a witness deposition dated 7th December, 2021 which adopted at the hearing. Despite service of hearing notices at different times and the more than ample time given to the defendants to cross-examine PW2, their counsel did not appear in court and on application by claimant, the right of defendants to cross-examine PW2 was foreclosed.

Indeed on the record, at this point, again despite service of hearing notices and for reasons that are not clear, counsel for the defendant altogether stopped appearing for defendants.

Shola Akintayo Akinkumi, an Estate Surveyor appeared as **PW3** and the last witness for the claimant. He deposed to a witness statement dated 11th January, 2007 which he adopted at the hearing. He tendered a valuation report prepared by his firm, Shola, Akinwumi and Co. which was admitted as **Exhibit P11**. The matter was then adjourned to enable defendants exercise their right to cross-examine PW3. Again, despite service of hearing notice, the defendants did not appear or send any counsel to represent them and their right to cross-examine PW3 was similarly foreclosed. The claimant then closed its case.

The claimant in the interest of justice at this point prayed that the matter be adjourned to enable defendants lead evidence in support of their defence and that hearing notice be served. On the Record, they were again served with hearing notice but nobody appeared and their right to defend the action was foreclosed.

The court then ordered for the filing of final addresses. The claimant's address is dated 27th September, 2024 and filed same date at the Registry of Court. The

address was equally served on the defendants together with hearing notice but in line with their antecedents, the defendants did not file a response and did not appear in court on the date of the adoption.

In the address, three issues were raised as arising for determination to wit:

- 1. Whether the claimant has sufficiently proved her case to warrant the grant of the claims sought.**
- 2. Whether the defendants have any defence in law to this suit.**
- 3. Whether the claimant is entitled to 10% post-interest on the judgment sum from the date of judgment till the judgment is liquidated.**

Submissions were made on all the above issues which form part of the Records of Court and the case made out is that the claimant's case is largely uncontested and that it has established on a preponderance of evidence its entitlement to all the Reliefs claimed.

On the state of the pleadings and evidence led, the **issues** as formulated by claimant can however be accommodated under one broad sole issue as formulated hereunder:

Whether the claimant has successfully established its case on the balance of probability to entitle it to any or all of the Reliefs sought?

The issue has in the considered opinion of court brought out with sufficient clarity and focus, the pith of the contest which has been brought to court for adjudication.

Let me just quickly underscore the point that, the issue raised above by court is not raised as an alternative to the issues raised by claimant but the issues raised can and shall be cumulatively considered under the issue raised by court. See **Sanusi V Amoyegun (1992) 4 NWLR (pt.237) 527.**

It may also be apposite to situate the point that it is now a settled principle of general application that whatever course the pleadings take, an examination of them at the close of pleadings should show precisely what are the issues upon which parties must prepare and present their cases. At the conclusion of trial proper, the real issue(s) which the court would ultimately resolve manifest. Only an issue which is decisive in any case should be what is of concern to

parties. Any other issue outside the confines of these critical or fundamental questions affecting the rights of parties will only have peripheral significance, if any. In **Overseas Construction Ltd V. Creek Enterprises Ltd & Anor (1985)3 N.W.L.R (pt13)407 at 418**, the Supreme Court instructively stated as follows:

“By and Large, every disputed question of fact is an issue. But in every case there is always the crucial and central issue which if decided in favour of the plaintiff will itself give him the right to the relief he claims subject of course to some other considerations arising from other subsidiary issues. If however the main issue is decided in favour of the defendant, then the plaintiff’s case collapses and the defendant wins.”

It is therefore guided by the above wise exhortation that I would now proceed to determine the case based on the issue I have raised and to consider the evidence and submissions of counsel.

Before going into the substance, let me make some important prefatory remarks. The defendants may have filed a 10 paragraphs defence, but as stated already, nobody was presented to lead evidence in support of the defence or to adopt the witness deposition forming part of the defence.

I shall in the course of this judgment situate the positions projected on both sides of the aisle in their pleadings but it is important to state the position of the law at the onset that the averments in the defence do not constitute evidence, pleaded facts on which no evidence was adduced are deemed abandoned and remain only pleaded facts lacking any utility value. See **NIMV Ltd V FBN Plc (2009) 16 NWLR (pt.1167) 411 at 437 D-E**.

Secondly, 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.**

It is also apposite to underscore the point that nobody is under any obligation to respond to any court process, once properly served as required by the applicable Rules of Court.

Flowing from the above, I must make some comments at the onset on the approach adopted by the defendants to the case particularly their counsel which appears to me to border on utter indifference bearing in mind the nature and or character of the claims made. It is a matter of concern that counsel would be instructed to handle a case and then midway simply abandon same and there is no form of oversight from the defendants themselves on whether their instructions are been put into effect. It is disquieting that despite service of **hearing notices on defendants** at different times which they always acknowledge receipt of, the notices appear to have been treated with complete disdain.

The defendants, particularly there **legal department** must necessarily do some evaluation of the response mechanisms to court processes served on them and generally show some modicum of commitment and seriousness in cases involving the defendants. I say no more.

Now back to the substance. I had already above identified the single issue arising for determination. At the commencement of this judgment, I had situated the claims of claimants. The case of claimant is anchored or pivoted on a development lease agreement it claims it had with defendants under its accelerated development programme of the FCT. The claimant situates that it performed its own side of the agreement but that the defendants on the other hand has reneged on its commitments which provides the factual and legal basis for the Reliefs sought.

This case essentially is about determining the clear parameters of the development lease agreement and whether there was compliance or breach of the terms as the case may be.

It is to the pleadings and evidence that we must now beam a critical judicial search light as we resolve the contested assertions. In this case the claimant filed a 31 paragraphs further amended statement of claim. The evidence led by

the three witnesses were largely within the structure of the pleadings as formulated.

I shall in this case deliberately and in extenso refer to the pleadings of plaintiff in particular and parties generally as it has clearly streamlined precisely the issues in dispute. The **defence** of defendants which situates or concedes to the critical elements of the narrative/relationship and I will shortly refer to the averments will also be important here as it has similarly defined the issues in dispute and what are the contested assertions in this case.

As stated earlier, the defendants may have filed a 10 paragraphs statement of defence, but they chose not to lead any evidence in support. In law, the point must be underscored that it is settled principle 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**.

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.

The case of the claimant on the pleadings is fairly straight forward and as severally indicated, these facts were not challenged or impugned by the defendants. Infact the defendants admitted in fundamental aspects the facts situating the relationship of parties.

From the pleadings and evidence led including the admission of defendants in paragraph 3 of the defence, it is common ground that the claimant answered the call by the Federal Government of Nigeria through the defendants for the private sector to participate in a policy tagged accelerated development of the Federal Capital Territory which policy was to ensure that all undeveloped land in the territory lying abandoned should be expeditiously developed to give the

Federal Capital Territory a progressive and positive outlook. **Exhibit P4** is the approval by the defendants of the claimant's application to participate in the Accelerated Development Programme wherein conveyance of approval of grant of **Plot No. 1953** in Cadastral Zone A02 was made to claimant which claimant accepted vide **Exhibit P2**.

It is again common ground that following the acceptance by defendants of claimant's application to participate in the programme, a **development lease agreement** was executed between the 2nd defendant and the claimant. The claimant tendered the **Certified True Copy** of this **development lease agreement** issued by the defendants which was admitted in evidence as **Exhibit P3**. Indeed as stated earlier, the **defendants** did not in any manner contest the trajectory of the situational facts forming the relationship of parties culminating in the execution of this development lease. In paragraph 6 of the defence, they pleaded thus:

“Defendants further aver that a Development Lease Agreement with terms and conditions prepared and executed between the 2nd defendant and the plaintiff”

There is thus no issue joined by defendants with respect to the existence of this lease agreement and its components or terms. An admission such as made here by defendants on the parameters of their relationship with claimant basically puts an end to proof. This is because by this admission, parties no more join issues on the matter. Since proof presupposes a dispute and since admission drowns the elements of dispute, proof becomes superfluous. See **Akaninwo & Ors V Nsirim & ors (2009) 9 NWLR (pt.1093) 439**.

Now in law agreements such as this voluntarily entered into by parties are binding on them and a court of law qua justice will not sanction an unwarranted departure from them unless they have been lawfully abrogated or discharged. Indeed there is no room for departure from what is stated therein. See **FGN V Zebra Energy Ltd (2002) 3 NWLR (pt.754) 471 at 491 E-F; Jeric (Nig.) Ltd V UBN Plc (2000) 15 NWLR (pt.691) 447 at 402-462 G-A; 466 C**.

Flowing from the above, where there is any dispute or disagreement between parties to a written agreement on any particular point, the authoritative and legal source of information for the purpose of resolving that disagreement or dispute is the written document, here the **Development Lease Agreement** itself. Since

it embodies the terms and basis for the mutual reciprocity of legal obligations between parties, extrinsic evidence is not admissible to add to, vary, subtract from or contradict the terms. The reason for the stringent position of Section 132(1) of the Evidence Act is to ensure that a party to a contract in writing does not change his position midstream in his underserved advantage and to the detriment of the unsuspecting adverse party. See **Larmie V DPM & Services Ltd (2005) 18 NWLR (pt.958) 88 at 469 A-B.**

Now as stated earlier, the case of the claimant is pivoted on this lease agreement which situates the terms of the relationship. The case of the claimant on the pleadings and unchallenged evidence is that it performed fully its commitments under the Agreement **Exhibit P3** particularly in respect of **clauses 2 (vii), (ix), (x), (xi), (xii) and (xiii)** of the agreement. That it mobilized to site commencing development of the subject matter plot 1953 in line with building plans which was submitted to defendants which they vetted, recommended for implementation and equally raised a bill for the building plans vide **Exhibit P5 (1)** which were paid by claimant vide **Exhibit P5 (2) and (3).**

The claimant developed the plot in line with the building plan and clearly reached various thresholds of developments as contained in **Exhibit P3** and on the evidence have long completed the development of the imposing ultra modern 4 storey complex as shown in **Exhibit P9**. The crux of the complaint of claimant at the risk of prolixity is that having kept fully to their own side of the bargain or agreement, the defendants have failed to honour or meet up with their commitments.

Now in law, a person seeking the enforcement of a contract must show that all conditions precedent thereto have been fulfilled and that he has performed his part or is ready and willing to perform all the terms which ought to have been performed by him. See **FGN V Zebra Energy Ltd (2002) 3 NWLR (pt.754) 471 at 491-492.**

Now in this case, the claimant both in the pleadings and evidence as already highlighted have projected the clear position that they have fulfilled all conditions precedent thereto or put another way all the requirements of the agreement and **Exhibit P9**, is a clear product of their fulfillment of the agreement.

The defendants on their pleadings or under cross-examination did not challenge, contest or impugn the narrative of the evidence of claimant on fulfillment and compliance with the terms of the agreement and that they met all the required threshold of **Exhibit P3**. The narrative or evidence must thus be accorded weight and probative value.

The position of the law that evidence that is neither challenged nor debunked remains good and credible evidence which should be relied upon by the trial judge which would in turn ascribed probative value to it. See **Ebeinwe V State (2011) 7 NWLR (pt.1246) 402 at 416 D**.

Indeed the law is certain that where evidence before a trial court is unchallenged or is not contradicted by any other admissible evidence, the trial court is duty bound to accept and act on that evidence even if it had been minimal and that it constitutes sufficient proof of a party's claim in proper cases. See **Adeleke V Iyanda (2001) 13 NWLR (pt.729) 1 at 22-23 AC; Kopek Construction Ltd V Ekisola (2010) 3 NWLR (pt.1182) 618 at 663 C-D**.

It is equally to be noted that where evidence is also not challenged under cross-examination, the court is not only entitled to act on or accept such evidence, but it is in fact bound to do so, provided that such evidence by its very nature is not incredible. Thus where an adversary fails to cross-examine a witness or in this case, the key witnesses of claimant on matters relating to the fulfillment by claimant of the requirements of the lease agreement, the implication is that the defendants accepts the truth of the matter as led in evidence. See **Ofortete V State (2000) 12 NWLR (pt.681) 415 at 436 B-C**.

The bottom line here is that the court finds that the claimant on the pleadings and evidence has led credible evidence worthy of belief situating that it met its own side of the bargain under **Exhibit P3**.

Now if the defendants have not fulfilled their own side of the bargain within the context of **clause 2x, 2xi** and **schedule 4** of the agreement, we must now have recourse to the agreement to situate the obligations and then determine the veracity of the complaints of claimant in the light of the evidence led.

Now, **Clause 2(x), xi** and **Schedule** on lessors covenants of the agreement **Exhibit P3** provides as follows:

“Clause 2(x): Upon completion of the sub structure i.e. reaching the first floor slab of the building which must be completed within six (6) months from the date of signing this agreement, the Lessor will confer onto the Lessee an Offer of Statutory Right of Occupancy which will be confirmed upon payment of all bills and premium at the prevailing rate per square meter of the area.”

2xi: Upon completion of the third (3rd) floor of the building which must be completed within 12 months from the date of signing this agreement, the Lessor will confer onto the Lessee a Statutory Certificate of Occupancy, which will be confirmed upon payment of all bills applicable.

Shcedule 4: Lessors Covenant: Peaceable & Quiet Enjoyment during Tenure.”

The above terms are clear and unambiguous. In law where the words of a contract or agreement are clear, the operative words in it should be given their simple and ordinary grammatical meaning. As stated earlier, if parties enter into an agreement, they are bound by the terms. The court has no jurisdiction to legally or properly read into an agreement, the terms or which the parties have not agreed. See **Dalek Nig. Ltd V O.M.P.A.D.C (OMPADEC) (2007) 7 NWLR (pt.1033) 441 at A-B.**

Now **Clauses 2(x) and (xi)** are clear. It situates the issuance to claimant of a statutory right of occupancy and a statutory certificate of occupancy upon fulfillment of certain thresholds.

Now with respect to **clause 2x**, it would appear that the **defendants** on the basis of the pleadings of claimant has fulfilled this requirement.

In **paragraph 20** of the further amended statement of claim filed on 7th December, 2021, the **claimant** pleaded as follows:

“20. The Claimant avers that when construction reached the required stage under the terms and conditions of the Lease Agreement, and after joint inspection by the staff and agents of the 1st and 2nd Defendants, who were satisfied with the quality and level and progress of work, the defendants, subsequently granted the Claimant a Statutory Right of Occupancy over Plot No. 1953, vide the Letter of Offer of Statutory Right of Occupancy with file no. MISC. 81931 and dated the 9th day of February, 2007; which

the Claimant accepted. The said Statutory Right of Occupancy is hereby pleaded and will be relied upon at the hearing of the suit. The Defendants are hereby put on notice to produce a file copy or a certified true copy of the Statutory Right of Occupancy.”

The above is clear and self explanatory. The claimant here admits that after the construction had reached a certain stage and after a joint inspection with defendants and that been satisfied with the quality of work, they granted claimant a **statutory right of occupancy over plot 1953**.

As a logical corollary, the claimant admits here that the defendant have complied with **clause 2x** and there really won't be any basis, factual or legal to fashion a complaint on lack of compliance with **clause 2x** of **Exhibit P3**. In law admission of the nature made in **paragraph 20** is the best evidence, as no man or organization ordinarily tells lies to incriminate itself. See **Din V African Newspapers of Nigeria Ltd (1990) 3 NWLR (pt.139) 392; Darlington V FRN (2018) 11 NWLR (pt.1629) 152**.

Indeed admission of this nature in the pleadings of claimant must be accepted without further proof. See **Oceanic Bank Int'l Plc V CSS Ltd (2012) 9 NWLR (pt.1305) 397**.

To further accentuate that the **defendant** indeed complied with **clause 2x**, the claimant in paragraph 23 of the claim, averred that in 2010, it notified defendants about the fact that the **statutory right of occupancy** was missing and applied for a certified true copy and in **paragraph 24**, it averred that it was informed that the file copy of the document was missing. That despite several demands, the defendants did not deem it necessary to issue them with a Certified True Copy (C.T.C) of the statutory right of occupancy.

Now for me, from a **trajectory of this narrative**, the complaint of claimant cannot be that of non-compliance with **clause 2x**. If they admitted that they were given a copy and they lost what they were given, then there was compliance with **clause 2x**.

If however they lost what was given in compliance with **clause 2x**, and they applied for a CTC and they were not given, that is a different complaint that cannot be situated within the confines of **clause 2x**.

The **clause 2x** did not say that after the claimant has been issued the offer of statutory right of occupancy and it loses same, that it should be given a CTC of the offer of statutory right of occupancy. As alluded to earlier, I am not sure the remit of **clause 2x** can be expanded, altered or its tenor altered to suit a particular purpose. See **Section 128 (1) of the Evidence Act**.

If the statutory right is lost, then it is incumbent on the claimant to make necessary application as done vide **Exhibit P7 (2)**, make necessary payments for a CTC (and there is no such evidence before the court) before the C.T.C is now issued.

The issuance of this CTC is however clearly not a function of clause 2x of **Exhibit P3** but follows the normal processes for issuance of Certified True Copies of documents as may be regulated by the office of defendants in charge of issuance of such processes.

What is however strange in this case is that the claimant however by **Exhibit P6** tendered a **C.T.C of the offer of statutory right of occupancy dated 9th February, 2007**. The certification by the Deeds Registry of defendants was done on 14th March, 2016. I really cannot fathom the problem here. Clause 2x was does complied with.

I now deal with **clause 2xi** dealing with the issuance of a certificate of occupancy.

The claimant on the pleadings and evidence stated that they have not been issued a **Certificate of Occupancy** despite having completed each threshold within the time stipulated and despite demands made vide **Exhibits P7 (1-3)**.

As stated earlier and at the risk of sounding prolix, there is nothing from the defendants challenging fulfillment of these thresholds of the agreement or that the claimant did not fulfill its own side of the bargain.

There is really on the evidence no explanation as to why the defendants have refused to fulfill their own side of the bargain and why they have refused to issue the **certificate of occupancy** in compliance with the clear mandate and or within the clear remit of **clause 2(xi)**.

What I found perplexing and again difficult to fathom here is that the defendants issued a **certified true copy of the offer of statutory right of**

occupancy signed by the minister and dated as far back as 9th February, 2007 but have refused or are unable to issue and release the certificate of occupancy.

It is indeed even curious and worrisome that demands have been made vide **Exhibits P7 (1)** dated 11th April, 2008 and **Exhibit P7(2)** dated 21st November, 2008 and received by defendants on 24th November, 2008 for the issuance and release of the Certificate of Occupancy to the claimant.

These letters on the evidence were not **responded to at all** more than **17 years** after they were written and receipt acknowledged. It is clear to me therefore and I have no difficulty in holding that on the pleadings and evidence, the defendants have refused to meet up with the mandate of their obligations under the agreement vide **clause 2(xi)** whereas the claimant on its part and pursuance to the agreement constructed the Ultra Modern 4 Storey Building Complex vide **Exhibit P9** as stipulated in **Exhibit P3** and the building plan. The pictorial representation of the complex was again not denied or challenged and it speaks eloquently, in my considered opinion, to the fact that claimant kept to its side of the bargain.

It therefore appears to me that the defendants have here by their conduct evinced an intention not to perform its own side of agreement or put another way, it has by its actions expressly declared it will not perform its obligations under **Exhibit P3** clause 2xi in clear essential and material respects. It is really incomprehensible and there is no justifiable reason(s) why the C/O or this document of title has not yet been given to claimant. Agreements will be useless if parties chose or elect to willy-nilly refuse to meet up with its commitments which it freely entered into.

I therefore, again find and hold that the defendants have manifested by their unacceptable actions that they do not intend to be bound by the said clause 2(xi) of **Exhibit P3** and even if they are to be bound, they are determined to do so only in a manner inconsistent with their obligations; that cannot be right or fair.

It is only appropriate, fair and right that the defendants do the needful and issue the claimant the **C/O of Plot 1953 under clause 2(xi)** without any further delay. It is not only a legal but moral imperative in the circumstances.

Now on the issue of complaint of violation by defendants of the clause or schedule relating to “**peaceable and quiet possession**” of the land, I have read the pleadings of claimant particularly the Reply to the defendants joint defence. The claimant elaborately pleaded actions taken by a **third party** in evicting tenants of claimant from the property which caused it to lose millions that would have accrued to it.

The claimant tendered C.T.C of a warrant of possession vide **Exhibit P8 (1 and 2)** involving **Bil Construction Nig. Ltd (judgment creditor)** and **Gazi Construction Co. Ltd (judgment debtor)**. The claimant also tendered two tenancy agreements between **Chief Uche Luke Okpuno V Federal Inland Revenue Service** in respect of property located at Ulo Plaza (1st and 3rd floor) at No. 34 Sokode Crescent Wuse Zone 5, Abuja.

The claimant also pleaded that after the execution carried out on 12th November, 2014, by this **third party**, it applied to a court of coordinate jurisdiction presided by my respected retired brother **Justice S.E. Aladetoyibo** who ordered claimant to take back possession. The claimant again pleaded that despite this order, the same third party again apparently on the strength of another warrant of possession forcefully threw the tenants out again and they went back to the same court coram Justice Aladetoyinbo who in his judgment delivered on 13th June, 2017 vide **paragraph 8** of the **Reply** determined according to claimant “**the issues of revocation of title, the regularity or otherwise of the right of occupancy issued by the 1st and 2nd defendants to the claimant and also the status of the structure erected on the disputed plot 1953.**” The said **judgment was pleaded** and that it will be relied on at trial.

The claimant did not however tender the **judgment** in evidence even if in the Reply, they quoted copiously from it.

In the absence of this **judgment** been tendered, it exposes or situates a grave limitation, as the court in the circumstances cannot carry out any meaningful enquiry on the contested assertions made relating to the issues addressed by the judgment, particularly who carried out the eviction of claimants tenants.

The law is settled that where a document is pleaded but it is not tendered, the implication is that the aspect of the pleadings is deemed abandoned. Indeed the failure to even tender this **judgment** by claimant allows for the presumption to

be made under **Section 167 (d) of the Evidence Act** that if it had been tendered, it would not have been favourable to the cause of claimant.

The bottom line is that on the evidence before court, there is nothing to situate or show how the defendants prevented claimant from enjoying peaceful and quiet possession of **plot 153**. The failure to issue the C/O to claimant without more cannot by any stretch of the imagination confer legitimacy on a third party to claim ownership of the plot in the light of the issuance of the statutory right of occupancy dated 9th February, 2007 to claimant by defendants as stated in paragraph 20 of the claim.

There is also no evidence to situate that the defendants for example issued a concurrent right of occupancy to any other party or body or that they were parties that initiated the proceedings subject of the warrant of possessions or that they had any hand in it and the court cannot speculate.

Again on the face of warrants, there is no where the name of **defendants** features on it and there is no evidence that the names on it have any nexus with defendants or that as stated earlier they initiated it.

It is also to be noted that this court is not sitting as an **appeal court** and is also not exercising any **supervisory jurisdiction** and is therefore in no position to determine the legality or otherwise of the warrants of possession and the proceedings which gave life to it which on the evidence was even set aside by a court of coordinate jurisdiction as stated earlier.

On the whole, there is here no legally admissible evidence that claimant was denied peaceable and quiet enjoyment of **plot 1953** by defendants at any time.

The claimant equally claim **N2, 000, 000, 000** (Two Billion naira) as General damages against the defendants for the delay in the issuance of the certificate of occupancy.

Now General damages flow naturally from the wrongful act of defendant complained of. To succeed the claimant is not required to strictly prove general damages as in the case of special damages. See **O.M.T Co. Ltd V Imafedun (2012) 4 NWLR (pt.1290) 332; SPDC (Nig.) Ltd V Tiebo vii (2005) 9 NWLR (pt.931) 439.**

In awarding general damages, the court would simply be guided by the opinion and judgment of a reasonable man. General damages flow naturally from defendants act. Its quantum therefore need not be pleaded or prayed as it is generally presumed by law. See **Taylor V Ogheneovo (2012) 13 NWLR (pt.1316) 46; Garba V Kur (2003) 11 NWLR (pt. 831) 280.**

On the evidence, there is no doubt that the defendants have clearly as found not fulfilled their commitments under the lease agreement, particularly clause 2xi and thus in breach. The claimant should on the principles be entitled to some measure of damages but I cannot situate the legal and or factual basis to situate the claim of “**N2, 000, 000, 000 (Two Billion Naira only) as General damages** against 1st and 2nd defendants for the delay in issuance of the certificate of occupancy” claimed under Relief 6. It seems to me overly ambitious.

On the evidence, the claimant has since been given the **Right of Occupancy** (which it lost) and it has been in possession having developed the complex vide **Exhibit P9**. In the absence of any evidence that the defendants have done anything concrete or taken any action that is adverse to the claimant’s proprietary interest in and over Plot 1953, the humongous amount claimed will in the circumstances not be availing. The point to underscore is that general damages are not awarded as a matter of course, but on sound and solid legal principles and not on speculations or sentiments and neither is it awarded as a largesse or out of sympathy borne out extraneous considerations but rather on legal evidence of probative value adduced for the establishment of an actionable wrong or injury. See **Adekunle V. Rockview Hotels Ltd (2004)1 NWLR (pt.853)161 at 166.**

If the claimant wanted more damages, they should claim it under special damages which they should properly plead and prove in accordance with established legal threshold. They did not. I leave it at that.

On the whole, I award the nominal sum of **N3, 000, 000** naira in the circumstances. It appears to me a fair recompense.

I also reckon that claimant is entitled to cost of this action. It is a cliché that costs follow the event. **Order 56 Rule 3 of the Rules of Court** provides for the principles to be observed in fixing costs. I am compelled to take into consideration the imperative of indemnifying claimant. For the avoidable expenses to which it has been subjected to in addition to offering some

compensation for the time and effort expended in prosecuting this proceedings, which would have been unnecessary if the defendants have simply lived up to their commitments under clause 2xi of the Development Lease Agreement.

The above findings provides broad factual and legal basis to determine whether the Relief sought by claimant are availing.

Now with respect to **Reliefs (1) and (2)**, it would appear that there is a typographical error in the framing of the Reliefs. The two clauses in **Exhibit P3** on which the case was built relating to failure to issue a Right of Occupancy and certificate of occupancy are **clauses 2(x) and (xi) of Exhibit P3**. I accordingly take in that **Relief (1)** dealing with failure to confer a statutory right of occupancy is predicated on **clause 2x** while **Relief 2** dealing with failure to confer claimant with a certificate of occupancy is predicated on **clause 2(xi)**. The justice of the case and on the basis of the facts pleaded and evidence led demands or dictates that the **Reliefs** be treated to reflect what was really contested before the court.

Now on the basis of these corrections, **Relief (1)** praying that the defendants breached the provision of clause 2x by failing to timeously confer on claimant its statutory right of occupancy on plot 1953 is not availing and must fail. The defendant on the evidence duely complied with the said clause as admitted by claimant.

Relief (2) seeking for a declaration that the defendants are in breach of clause 2xi of the agreement by failing to confer on claimant its statutory certificate of occupancy as demonstrated at length succeeds and is availing.

Relief (3) fails for lack of proper pleadings to situate the evidence led as demonstrated.

Relief (4) is vague and unclear. The clear complaint of claimant on the obligations of defendants have been dealt with sufficiently by the other **Reliefs** sought. No other obligations were defined by claimant as breached by defendants on the pleadings beyond those already covered by **Reliefs (1) – (3)**. **Relief (4)** is not availing.

With the success of **Relief (2)**, **Relief (5)** also succeeds. The defendants must comply with clause 2(xi) of **Exhibit P3**. They are bound by the terms of the development lease agreement.

Relief (6) also succeeds as demonstrated. I award the sum of N3, 000, 000 (Three Million naira) as general damages for the avoidable delay in issuing the **certificate of occupancy**.

The claim of 10% interest under **Relief (7)** is discretionary within the confines of **Order 39 Rule 4 of the Rules of Court**. In the circumstances of the case, and with the award of general damages which I consider as sufficient recompense in the circumstances, the said relief is not availing.

With the grant of these **substantive reliefs** in the main claim, the court in law cannot proceed to grant the claims made in the **alternative**. In law, it is settled principle of general application that where a claim is in the alternative, the court will first of all consider whether the principal or main claim ought to have succeeded. It is only after the court has found that it could not for any reason grant the principal main claim that it would consider the alternative claim. See **Olorunfemi V Saka (1994) 2 NWLR (pt.324) 23 at 39 C-D; Newbreed Organisation Ltd V Erhomosele (2006) 5 NWLR (pt.974) 499 at 544 D-C**.

The **alternative reliefs** sought by claimant have been overtaken by the grant of the Reliefs sought in the main claim.

On the whole and for the avoidance of doubt, the sole question raised by court is answered substantially in the affirmative and in favour of claimant against defendants, and judgment will be and is hereby entered in the following terms:

- 1. IT IS HEREBY DECLARED that the DEFENDANTS are in breach of Clause 2(xi) of the Development Lease Agreement between the claimant and the defendants by failing to issue and confer on the claimants a statutory certificate of occupancy on Plot 1953, Cadastral A02 Wuse District Abuja.**
- 2. The defendants are Ordered to forthwith issue and confer to the claimants, the certificate of occupancy over the parcel of land known and described as plot 1953, Cadastral Zone A02, Wuse, Abuja, the subject matter of the Development Lease Agreement between the Federal Capital Development Authority and U.L.O. Consultants Limited, dated the 5th day of January, 2006 and registered as FC90 at page 90 in Vol. 18 MISC at the Land Registry of the Ministry of the Federal Capital Territory, Abuja.**

3. The sum of N3, 000, 000 (Three Million Naira only) is awarded as general damages in favour of claimant payable by defendants.
4. Reliefs 1, 3, 4 and 7 are refused.
5. Pursuant to Order 56 Rules 3 of the High Court of Federal Capital Territory (Civil Procedure) Rules 2018, I assess costs of this suit at N500, 000.00 (Five Hundred Thousand Naira) in favour of claimant against the defendants.

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Hon. Justice A.I. Kutigi

Appearances:

1. *Kehinde Daramola, Esq., for the Claimant.*
2. *J.D. Elogun, Esq., with Abdulkareem Usman Esq., for the defendants.*