

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT MAITAMA-ABUJA
ON 29TH OCTOBER, 2021
BEFORE HIS LORDSHIP HON. JUSTICE CHIZOBA N. OJI
PRESIDING JUDGE
SUIT NO: FCT/HC/CV/1905/09

BETWEEN:

ADEBAYO ADEWUMI

.....

PLAINTIFF

AND

1. KAYODE AJULO

}
}

2. BOSEDE BETTY

DEFENDANTS

APPEARANCES:

IFECHI ALEKE ESQ. FOR THE 1ST DEFENDANT

SOJI TOKI ESQ WITH ADESOJI ADEBOLA ESQ FOR THE 2ND DEFENDANT

JUDGMENT

The Plaintiff commenced this suit via a writ of summons and statement of claim filed on 29th July 2009 against the 1st Defendant only, claiming the following reliefs:-

“a) A declaration that the Defendant is not privy to the contract of the proposed sale of the Plaintiff’s house to Bosede Betty, and cannot suffer any liability nor gain any advantage therefrom.

b) A declaration that the consideration on the part of the Plaintiff is executed consideration, and executory on the part of Bosede Betty.

c) A declaration that no property has passed from the Plaintiff to Bosede Betty as the said Bosede Betty has not paid fully for the property.

d) A declaration that the act of the Defendant in arresting, and detaining the Plaintiff in order to transfer the Plaintiff’s interest in the said property to him which situate at BLK 1 FLAT 8 ZALANGA CLOSE AREA 7 is illegal, null and void and an infringement to (sic) his fundamental right to freedom of movement protected under the constitution of the Federal Republic of Nigeria.

e) An order of this Honourable Court setting aside the two documents VIZ (i) Memorandum of Understanding and (ii) Power of Attorney as the endorsements thereon were obtained fraudulently by act of arrest, detention and threats by the Defendant using the coercive power of the Maitama Police Command.

f) An order of this Honourable Court directing the Defendant to give up his possession of the two bedroom flat which situate at BLK 1 FLATS 8 ZALANGA CLOSE AREA 7 GARKI, Abuja.

g) An order of this Honourable Court directing the Defendant to account for all the money he has collected from BLK 1, FLATS 8 ZALANGA CLOSE AREA 7, GARKI, ABUJA starting from the 10th day of June, 2006, until possession is delivered to the Defendant.

h) An order of perpetual Injunction restraining the Defendant, and or his privies or any person acting through him from arresting and or detaining the Plaintiff using the Nigerian Police.

i) The sum of Ten Million Naira being both special and general damages for the torts of false imprisonment, illegal trespass and mischief.”

Upon being served, the 1st Defendant filed a notice of preliminary objection urging the court to dismiss/strike out the suit for want of jurisdiction.

The court in its ruling on 23rd April 2010 overruled the objection and ordered the joinder of the 2nd Defendant, Bosede Betty.

Consequently the Plaintiff filed and served an Amended Statement of Claim on 26th January, 2011.

The said process was signed by an unknown individual “for” Agbo Francis (Esq.) counsel to the Plaintiff and contains similar reliefs with the originating statement of claim. The process was struck out on 7th November 2016 for being incompetent.

The 1st Defendant filed a statement of defence on 8th April 2011.

The 2nd Defendant filed her statement of defence and counterclaim on 17th February, 2011.

In her amended counterclaim filed on 1st April 2011 but deemed duly filed and served on 12th April 2011, she counterclaimed against the Plaintiff for:

“a) A DECLARATION that she is the owner in equity of all that 2 Bedroom Flat 8 Zalanga Close, Area 7, Garki Abuja.

b) A DECLARATION that the Memorandum of Understanding dated 9th day of June 2006 and Power of Attorney dated 9th June 2006 both executed by and between the Plaintiff and the 2nd Defendant are real, genuine and duly executed.

c) An order directing the Plaintiff to execute in favour of the 2nd Defendant any other document necessary to enable the 2nd Defendant perfect her title to the property known as Block 1, Flat 8, Zalanga Close, Area 7, Garki, Abuja.

d) An Order of perpetual injunction restraining the Plaintiff from further parading or holding out himself as the owner of all that 2 bedroom flat known as Block 1, Flat 8, Zalanga Close, Area 7, Garki, Abuja.

e) An Order of perpetual injunction restraining the Plaintiff, whether by himself or through his agents, servants, privies, etc from further disturbing and or threatening the 2nd Defendant’s peaceable enjoyment of the property known as Block 1, Flat 8, Zalanga Close, Area 7, Garki Abuja.

f) A sum of N300,000.00 for the use and occupation of the 2 bedroom flat at Block 1, Flat 8, Zalanga Close, Area 7, Garki Abuja from 1st March 2006 to 31st May 2006 with interest on the said sum at the rate of 21% per annum from 31st May 2006 till judgment and thereafter at the rate of 10% per annum until total liquidation.

g) (Paragraph G was withdrawn by Mr Soji Toki on 24th June 2014. Same was accordingly struck out)

h) A sum of ₦1.5 million as solicitor’s fees

i) General damages in the sum of ₦2 million

j) Cost of this action.”

The Plaintiff filed a Defence/Reply to Counterclaim on 17th June 2011. The said process was again signed for the Plaintiff's counsel by an unknown individual.

It is therefore incompetent and is hereby struck out.

On 28th June 2018, the court in the ruling on the Plaintiff's motion no M/3012/17, deemed properly filed and served the Plaintiff's amended statement of claim dated 6th July 2017.

No witness was recalled thereafter as parties had closed their respective cases and matter adjourned for adoption of final written addresses.

I note however that the said amended statement of claim dated 6th July 2017 was actually not filed. It was only paid for as an Exhibit. That process is equally incompetent and it is struck out.

In any event there was no witness statement on oath adopted to bring it to life.

On 9th November 2011 the matter proceeded to hearing with the Plaintiff as PW1. He adopted his witness statement on oath of 26th January 2011. The following documents were received in evidence through him:-

- Original Letter of Offer dated 1st August 2005 – Exhibit P1
- Photocopy of Letter of Offer dated 1st September 2005 – Exhibit P2
- Photocopy of Regent Bank Ltd cheque – Exhibit P3
- Photocopy of Adhoc Committee Receipt – Exhibit P4
- Photocopy of receipt for N1,100,000 – Exhibit P5
- Original Memorandum of Understanding - Exhibit P6
- Original Power of Attorney – Exhibit P7

PW1 testified inter alia that he is a civil servant with the Head of Civil Service of the Federation. That the 1st Defendant is a legal practitioner and an intimate friend of one late Adeleke Oluleye (now deceased).

That the 2nd Defendant is not directly known to him but had late Adeleke Oluleye as her agent to negotiate the proposed purchase of his house at BLOCK 1, FLAT 8, ZALANGA CLOSE, AREA 7, GARKI ABUJA – a 2 bedroom flat which the Plaintiff had occupied from 2002 to 1st May 2006.

That the said property had been offered to him for purchase by the Minister Federal Capital Territory Administration via Exhibits P1 and P2.

He gave Exhibit P2 to late Adeleke Oluyele a neighbour, to source for a buyer. Adeleke Oluyele told him he had found a buyer in the person of a certain Bosede Betty whom late Adeleke said was a staff of the Federal Capital Development Authority (F.C.D.A).

Though he PW1 had other prospective offers of ₦7 million, he allowed Adeleke to produce a buyer as Adeleke had been a good and honest boy in the neighbourhood and to assist him make some money from the commission for his school fees.

He also told Adeleke Oluyele the selling price for his flat was ₦7 million. Adeleke Oluyede informed him Bosede Betty had agreed to pay ₦7 million, and whether he would accept part payment, so that within a month the buyer could pay up the balance.

PW1 accepted to receive part payment of ₦1,100,000 from Bosede Betty but demanded to meet her physically, while requesting that she pays immediately into the account of the Ad-Hoc Committee on Sale of Federal Government of Nigeria Houses in Abuja, the initial deposit of 10% of ₦2,653,840, that is, ₦265,384.

On 23rd November 2005, late Adeleke Oluyele brought to PW1 Exhibit P4, the receipt for ₦265,384 and on his demand to see Bosede Betty, late Adeleke Oluyele said she had travelled and would come to meet the PW1 on her return.

However, before late Adeleke Oluyele could bring Bosede Betty to the Plaintiff and before the balance of ₦2,388,456 could be paid to the Government and before Bosede could pay the balance of ₦3,246,160 directly to PW1; Adeleke Oluyele died in a swimming pool accident.

PW1, knowing that the 1st Defendant is a bosom friend of this late Adeleke Oluyele, at the funeral of the deceased, PW1 relayed to the 1st Defendant the transaction he had with the deceased. The 1st Defendant invited him to his office.

Subsequently at the 1st Defendant's office, he showed the 1st Defendant Exhibit P5, the receipt for ₦1,100,000. The 1st Defendant then informed PW1 he knew Bosede Betty. PW1 demanded to meet with her, possibly in the presence of the 1st Defendant.

PW1 stated that up to the time of his testimony, he had never seen the said Bosede Betty in whose name he acknowledged the part payment made to him despite his putting pressure on the 1st Defendant to arrange a meeting or make available her phone number; so also she can pay the balance of ₦3,246,160. The 1st Defendant instead of producing Bosede Betty maintained he did not need to see Bosede Betty, and ordered PW1 to surrender to him the key (of the flat) for onward transmission to Bosede Betty. The PW1 returned home and met the sister of late Adeleke Oluyele – one Mrs Ibrahim and told her what transpired between himself, late Adeleke Oluyele and the 1st Defendant. To his surprise the said Mrs Ibrahim told him to give the key to the 1st Defendant, notwithstanding that he was still being owed ₦3,246,160 by the proposed purchaser.

PW1 rejected her suggestion. The 1st Defendant then started mounting pressure on him to release the key, which PW1 refused, insisting on seeing the purchaser for the balance of his money.

The 1st Defendant subsequently laid a criminal complaint against him at the Police Station Maitama where he was humiliated and detained at the behest of the 1st Defendant and forced to sign the Memorandum of Understanding and Power of Attorney Exhibits P6 and P7 as a precondition for his bail, coupled with the fact that he was unwell and aged.

The 1st Defendant only returned copies of Exhibits P6 and P7 to him after they were purportedly signed by Bosede Betty.

The Police further ordered him to surrender the key of his flat and vacate the flat or suffer further detention. Thus he returned the key to the 1st Defendant in the presence of the Investigating Police Officer (IPO).

He said throughout his stay at the Police Station, the 2nd Defendant never made any complaint against him nor appear at the Police Station, Maitama nor signed Exhibits P6 and P7 in his presence.

That subsequently the 1st Defendant sent some documents through Mr Olaniyi Lawrence for his signature, but he refused to endorse same.

He said that from November 2005 when he started negotiating for the sale of his house through late Adeleke Oluyele he had never seen the 2nd Defendant due to the untimely death of Adeleke Oluyele before the conclusion of the transaction. That the 1st Defendant is a gold digger who wants to own the Plaintiff's house without paying a kobo for it using insider's knowledge of the death of Adeleke Oluyele.

That the 1st Defendant has set out to pretend to be representing the interest of the 2nd Defendant, having gotten the documents he gave to late Adeleke Oluyele through the deceased's relations, wants to acquire the legal interest in the property without the knowledge of the 2nd Defendant.

That the 1st Defendant since 2006 when the 1st Defendant used the Police to take possession of the house, has been earning income therefrom by way of house rent, and has stubbornly refused to pay up the remaining balance of ₦3,246,160 and link him up with the 2nd Defendant.

That as a result of the acts of the Defendants, he has suffered both special and general damages.

In cross examination by Mr Toki for the 2nd Defendant he stated inter alia that Exhibit P5 does not state that ₦1,100,000 was for part payment. He did not personally make any payment to Government in respect of this transaction. At the Police Station he was put behind the counter.

In cross exam by Mr Henry for the 1st Defendant, he said he was not aware that the 2nd Defendant is in possession of the premises in question. That the 1st Defendant is a barrister, not a policeman. That as he was thrown/entered behind the counter, therefore he has entered the cell.

He said the 1st Defendant gave the police the Memorandum of Understanding and Power of Attorney to give him to sign. That he did not see the 1st Defendant at the Police Station. That the Memorandum of Understanding and Power of Attorney are to the benefit of Bosede Betty whom he had never seen. He said he was in court when the matter was called and the court asked the parties to stand up and the 2nd Defendant stood up. He said his claim for the balance sum is against Bosede Betty, the 2nd Defendant.

He has no monetary claim against the 1st Defendant.

PW2 was Fakolujo Kayode Jacob, a close friend of the Plaintiff. He adopted his witness statement on oath deposed to on 26th January, 2011 wherein he testified inter alia that he came to know the 1st Defendant as a lawyer when the Plaintiff was detained on the complaint of the 1st Defendant.

That before he arrived at the Maitama Police Station the Plaintiff had been detained in the cell. The Investigating Police Officer told him that unless they reached an agreement with the 1st Defendant, she feared the Plaintiff may not be released on bail.

He said he approached the 1st Defendant who told him that the Plaintiff can only go when he signs the Memorandum of Understanding and the Power of Attorney.

That the Plaintiff had a fever before he was arrested and which got worse a day before his arrest. That the Plaintiff was only allowed out of the cell to be forced to sign the two documents – Memorandum of Understanding and the Power of Attorney, and ordered to bring the keys to his flat and vacate same.

That the 1st Defendant is not related to the 2nd Defendant Bosede Betty and was never a party to the proposed sale of the house between the Plaintiff, Adeleke and Bosede Betty. That the 1st Defendant has put tenants in the flat and due to his closeness to late Adeleke Oluyele and access to his documents, was laying claim to a property that would have belonged to Bosede Betty had she paid in full for the flat. That the Plaintiff had received ₦1.1 million from Adeleke Oluyele from the 2nd Defendant before his demise.

That the 2nd Defendant would have paid an additional ₦3,246,160 in addition to paying off the government sum of ₦2,653,840 if she knew the Plaintiff was looking for her to conclude the transaction between them.

In cross examination, by Mr Henry Chukwudi for the 1st Defendant he said all he said in his witness statement on oath is exactly the truth of what PW1 told him.

He could not tell or ascertain whether DW1 was at the police station on the day the Plaintiff was arrested.

In cross exam by Mr Aro Sunday for the 2nd Defendant, he said he did not know Bosedede Betty and could not recollect if he saw her at the police station. He said he met the Plaintiff behind the counter. The Plaintiff's wife told him the Plaintiff was sick. That Exhibits P6 and P7 were signed at the Police Station. He could not recollect seeing, or who the other parties to Exhibit P6 and P7 were.

He was not there when Exhibit P5 and the Memorandum of Understanding, were made. Plaintiff did not tell him about ₦7 million.

Thus the Plaintiff closed his case.

DW1 Olukayode Abraham Ajulo testified for himself. He adopted his witness statement on oath sworn on 8th April 2011.

He testified inter alia that he is a legal practitioner and knew Adeleke Oluyele as the 2nd Defendant's agent in the transaction involving the sale of the Plaintiff's house. That the 2nd Defendant introduced late Adeleke Oluyele to him as a person through whom she purchased the said property from the Plaintiff in 2005 and through whom the Plaintiff handed over possession of the property to her.

That the Plaintiff voluntarily offered the house for sale when he could not pay the 10% deposit to the Ad-hoc Committee on Sale of Federal Government Houses.

That the 2nd Defendant having purchased the property, briefed him to perfect the sale transaction documentation for them.

That the 2nd Defendant informed him that the Plaintiff offered his house for sale at a total sum of ₦3,753,840. That the 2nd Defendant paid ₦1,100,000 to the Plaintiff as part payment and further paid ₦2,653,840 through Regent Bank Ltd to the Plaintiff in 2005. Thereafter she took possession and herself, Plaintiff and late Adeleke agreed to perfect the sale document thereafter.

That on 12th June 2006 she collected from his office the Memorandum of Understanding and Power of Attorney which she instructed him to prepare for execution and returned same after execution.

That he never laid any criminal allegation against the Plaintiff neither did he instigate the police against the Plaintiff in any manner whatsoever.

He stated that he sighted the letter of undertaking Exhibit P5, the evidence of payment and other title documents which the Plaintiff transferred to the 2nd Defendant through late Adeleke and confirmed same to be genuine before he prepared the Memorandum of Understanding and Power of Attorney as requested. That the 2nd Defendant took possession lawfully.

That he only performed his duties as a solicitor to the 2nd Defendant and is not a gold digger but a legal practitioner of integrity.

He stated that the Plaintiff had suffered no injury because he collected the full consideration for his house before he attempted to change his mind having noticed the demise of Adeleke Oluyele.

In cross examination by Mr Obute for the Plaintiff he stated inter alia that he did not know specifically when and where the Memorandum of Understanding and Power of Attorney were signed. He made a complaint against the Plaintiff to the police on behalf of the 2nd defendant as her lawyer on the fraudulent act of the Plaintiff – a criminal issue and wrote a letter of commendation to the police afterwards for resolving the issue amicably. The issue brought to the police was not for breach of contract.

In cross exam by Mr Toki for the 2nd Defendant he stated inter alia that he had known Adeleke Oluyele for about 6 years before his demise.

Through him the following documents were received in evidence in cross examination:-

- Copy of letter of recommendation dated 12th June 2006 – Exhibit D1
- Original copy of letter of complaint dated 5th June 2006 – Exhibit D2

He said the Plaintiff's case at the Police Station was that he needed to know Bosede Betty. The Plaintiff did not raise the issue of money as he had been fully paid.

Thus the 1st Defendant closed his case.

The 2nd Defendant's 1st witness was Rafui Ganiyu Popoola – DW2. He adopted his witness statement on oath of 17th February 2011 and testified inter alia that he is a civil servant. He knows the Plaintiff and the 2nd Defendant as they were all living at Zalanga Close, Yola Street, Area 7, Garki Abuja. He does not know the 1st Defendant. He owned a 2 bedroom flat in the same close known as Block 1, Flat 16 Zalanga Close, Yola Street, Area 7 Garki

Abuja which he sold to Comfort Adenike Ologunja in 2005 for ₦846,280 in two installments but the buyer paid the government money.

He said the going rate for the sale of two bedroom flat at Area 7, and Abuja in general in 2005 was between ₦600,000 to ₦800,000, apart from the government money. That there were many such houses for sale at that time as most of them could not afford the initial 10% deposit demanded by the government within the time stipulated. That no way would anyone agree to part with ₦3 million (apart from the government money) in 2005 for a two bedroom flat in Area 7, Abuja where there were many of such houses going for less than ₦1 million.

He was cross examined and discharged.

DW3 Alhaji Olaniyi Rahman Oladotun adopted his witness statement on oath of 25th February, 2011. He was not presented for cross examination. In fact he did not conclude his testimony before this court.

DW4 was Alhaji Lateef Ibrahim the husband of the 2nd Defendant. He adopted his witness statement on oath of 17th February, 2011 wherein he testified inter alia that he lives at Block 1, Flat 20 Zalanga Close, Off Yola Street, Area 7, Garki Abuja. He knows the Plaintiff and both Defendants. The 1st Defendant is his wife's lawyer. He knows his wife's maiden name is Oluyede and she also answers Bosede and or Betty (Elizabeth). Late Leke Oluyede was the 2nd Defendant's younger brother and was living with the 2nd Defendant till his demise in March 2006. Shortly after Leke's death, the Plaintiff visited him on several occasions to seek his advice that Leke paid for his house on behalf of a woman but he did not meet the woman before Leke died, and that the lawyer to the woman wanted him to yield possession. Not knowing it was his wife, he advised the Plaintiff that since he had collected his money, he should give up possession of the property. The 2nd Defendant later confessed to him that she was the buyer of the property but did not tell him because of the domestic problem they had then.

In cross examination he stated inter alia that his wife's full name is Mrs Olufunke Elizabeth Abosede Ibrahim.

The 2nd Defendant testified as DW5. She gave her name as Mrs Elizabeth Abosede Olufunke Ibrahim. She adopted her witness statements on oath of

17th February, 2011 and 1st April 2011 and the following documents were received in evidence through her:-

- Original letter of allocation of residential accomodation dated 15th October 2002- Exhibit D3
- Original letter of offer dated 1st September 2005 – Exhibit D4
- Original receipt of payment for ₦265,384 dated 25th November 2005 – Exhibit D5
- Original receipt of payment for ₦265,384 dated 13th April 2006 – Exhibit D6
- Original receipt of payment for N530,768 dated 26th May 2006 – Exhibit D7
- Original receipt of payment for N265,384 dated 4th August 2006 – Exhibit D8
- Original receipt of payment for N1,326,920 dated 29th June 2007 – Exhibit D9
- Original affidavit (without attachments) - Exhibit D10

And admitted for identification purposes:-

- Water bill – ID1
- NEPA Account Detail Report – ID2

She testified inter alia that she bought the property in question from the Plaintiff and paid fully for it. That the 1st Defendant is a legal practitioner and that she introudced the late Adeleke Oluyede, her younger brother to the 1st Defendant. That Adeleke Oluyede was her agent in the transaction. That the Plaintiff could not pay the 10% intial deposit of the purchase price at the Ad-hoc Committee on Sale of Federal Government Houses and decided to sell his house. That the agreement between the agent and the landlord was that the house would go for a total sum of ₦3,753,840. She the buyer would pay the initial 10% of ₦2,653,840, and later the balance.

That the Plaintiff's house was more expensive as other houses there sold for less. That a 2 bedroom in a block of flats was not and could not be going for ₦7 million in that area in 2005. She paid more to assist the Plaintiff complete his house at Mararaba, Nasarawa state.

That upon per payment of ₦1,100,000 as full payment for the property, the Plaintiff immediately and excitedly gave her all the originals of the title documents including Exhibit D3 which was not too necessary.

She also paid off the government sum of ₦2,653,840 within the stipulated time.

That several times the Plaintiff came to her husband to seek his advice whether he should give possession of the property to the buyer since he had never seen who she was. Her husband always advised the Plaintiff to give up possession having received his full money.

She did not use her full names to purchase the property because then, she had problems with her husband then and did not want him to know she was buying the property. They have however resolved their problems.

She said the Plaintiff in November 2005, after receiving his full money pleaded to be allowed 3 months to stay to enable him finish his house at Mararaba and she agreed.

Unfortunately Adeleke Oluyede died in March 2006 and the Plaintiff fraudulently wanted to take advantage of the demise of Adeleke Oluyede to renege on his agreement. He thus refused to vacate the house.

On 5th June 2006 the 1st Defendant therefore wrote Exhibit D2 to the Police for investigation. The Police formally invited the Plaintiff. The Plaintiff admitted at the Police Area Command that he had collected his full money but the reason he did not give up vacant possession was that he had not seen her before. The Police advised the Plaintiff that having collected his money in full, he should release the key to the house which he happily accepted. A few days later, the Plaintiff willingly took the key to the Police and willingly signed the Power of Attorney and Memorandum of Understanding which were prepared since March 2006 when the Plaintiff ought to have vacated. The 1st Defendant wrote Exhibit D1 in appreciation to the Police.

She said the Plaintiff willingly transferred all title documents to her and would not have done so if she was owing him. She further relied on Exhibit P5, the Plaintiff's undertaking, witnessed by the Plaintiff's daughter. She knows the 1st Defendant to be a legal practitioner of integrity, a respectable

gentleman and that the 1st Defendant is not in possession of the property. She urged the court to dismiss the Plaintiff's case and grant her counterclaim. In cross examination she stated inter alia that Elizabeth Abosede Olufunke Ibrahim is also known as Bosede Betty because "Abosede is short name for Bosede and Elizabeth is short name for Betty" (sic).

That she uses the names interchangeably.

That her lawyer brought Exhibits P6 and P7; Memorandum of Understanding and Power of Attorney to her and she signed. She did not sign it in the Plaintiff's presence. She was aware the Plaintiff was invited to the Police Station, not arrested. She was not aware he signed Exhibits P6 and P7 as a condition for his release.

Thus she closed her case.

Parties adopted their respective final written addresses.

In the final written address of Mr Kolawole Olowookere filed on 8th December 2014 adopted by Mr S.B. Wujat for the 1st Defendant, learned counsel raised the following objection:-

"Whether the Amended Statement of the Claim filed by the Plaintiff on 26th January, 2011 is not fundamentally defective and grossly incompetent when same was neither signed by the Plaintiff nor his counsel but rather by an unnamed person unknown to law."

This court had earlier determined this objection on 7th November 2016 and struck out the said amended statement of claim of 26th January, 2011. It is therefore no longer a live issue.

The learned counsel thereafter formulated a sole issue for the court's determination thus:-

"Whether the reliefs sought by the Plaintiff are cognizable in law and if answered in the affirmative whether the reliefs can be granted against the 1st Defendant."

For the 2nd Defendant, Mr Soji Toki in his final written address filed on 22nd December 2014 identified these 2 issues for determination:-

- “1. Whether the Plaintiff’s case is supported by evidence and same ought to be dismissed.***
- 2. Whether the 2nd Defendant is entitled to judgment as per her counterclaim.”***

Mr Agbo Francis for the Plaintiff in his final written address filed on 7th February 2017 identified 3 issues for determination as follows:-

- 1. “Whether the 2nd Defendant is not a mere volunteer and a stranger to the transactions involving the Plaintiff and a certain Bosede Betty, or whether Elizabeth Abosede Olufunke Ibrahim is the same thing as Bosede Betty.***
- 2. Whether the 1st Defendant is a party to the transaction to the sale of the Plaintiff’s house, and if not, whether he has a right to make a criminal complaint against the Plaintiff upon which the Plaintiff was detained and released only after he has (sic) signed the Memorandum of Understanding and the Power of Attorney.***
- 3. Whether by the facts of signing both the Memorandum of Understanding and Power of Attorney under duress, the property of the Plaintiff has passed to the 2nd Defendant.”***

, (Issue 3 was however not canvassed in his address).

Having considered the issues raised by the parties, I shall adopt the two issues raised by the 2nd Defendant with slight modification thus:-

- 1. Whether the Plaintiff’s case is supported by evidence and ought to succeed.***
- 2. Whether the 2nd Defendant is entitled to judgment as per her counterclaim.***

ON ISSUE 1

For the 1st Defendant it was submitted that in the course of proceedings and from the processes filed by the Plaintiff, that the 1st Defendant has a disclosed Principal, that is, the 2nd Defendant on behalf of whom the 1st Defendant carried out all the lawful transactions with the Plaintiff, yet the Plaintiff sued the 1st Defendant in his personal capacity.

It was submitted that an action against an agent in his private capacity for acts done on behalf of a known and disclosed Principal is incompetent. And assuming though not conceding that the Plaintiff has proved his case, it is the 2nd Defendant that he should sue and the name of the 1st Defendant be struck out.

Furthermore that what makes a person a disclosed principal is the existence and not necessarily the identity of the person.

See **UNITED BANK FOR AFRICA PLC V MRS VICTORIA FUNMILAYO OGUNDOKUN (2009) CLRN 261 PARA 25 - 330; NIGERIAN BUSINESS LAW, SWEET & MAXWELL: EZEJIOFOR; OKONKWO AND ILEGBUNE 1982 PAGE 88, PAGE 241, PARAGRAPH B** amongst others.

That the 2nd Defendant is in possession of the property not the 1st Defendant. That the 1st Defendant is not shown to be claiming privy or any advantage in the contract in question.

Learned counbsel urged that the Plaintiff himself testified he had no business with the 1st Defendant but transacted with Bosede Betty, the 2nd Defendant and had no monetary claim against the 1st Defendant.

Therefore reliefs (a), (b), (c), (e), (f) and (g) of the Plaintiff's writ of summons cannot be granted against the 1st Defendant. He further urged that the evidence of PW2 is hearsay and ought to be rejected by the court.

Finally it was argued that the Plaintiff's reliefs (d) and (h) on fundamental rights were not initiated under the Fundamental Rights (Enforcement Procedure) Rules and are therefore incompetent. I have dealt with this point in my Ruling on 4th April 2010 in the 1st Defendant's notice of preliminary objection. My view that the matter is not for Fundamental Rights (Enforcement Procedure) Rules has not changed.

The court was urged to hold that the Plaintiff has not proved his case and accordingly strike out the 1st Defendant's name or dismiss the entire suit.

For the 2nd Defendant it was submitted that the Plaintiff's case is not supported by his evidence. That Exhibit P5 written by the Plaintiff and witnessed by his daughter does not state anywhere that the sum of ₦1,100,000 paid by the 2nd Defendant to the Plaintiff was for part payment.

The court was urged to reject any insinuation that it was for part payment as a mere afterthought. The law is equally trite that oral evidence cannot contradict what is written.

See Section 128 Evidence Act (as amended); **UNION BANK V PROF A.O OZIGI (1994) 3 NWLR (PT 333) 385; BANK OF THE NORTH V ALIYU (1999) 7 NWLR (PT 612) 622.**

Learned counsel urged the court to hold that Exhibit P5 is a complete document with no vacuum. That the only ancillary provision is that the Memorandum of Understanding will be made after.

The said Memorandum of Understanding is Exhibit P6 and only confirms what is in Exhibit P5, just as Exhibit P7. They did not create a new contract. Thus he urged the court to find that Exhibits P6 and P7 were voluntarily made.

Besides, there is nothing to show they were made under duress, not even from PW2 who was a witness to Exhibits P6 and P7.

It was urged that the Plaintiff signed Exhibits P6 & P7 on 9th June 2006 but did not address the alleged duress until 2009 (3 years later).

To make matters worse, the Plaintiff did not join the Police who he alleged forced him to sign Exhibits P6 and P7. The court was urged to reject the position that the Police forced him to sign the documents.

Learned counsel pointed out inconsistencies in the evidence of PW1 and PW2 and urged that they are not credible witnesses.

On whether the identity of the 2nd Defendant will cure any defect in the Plaintiff's case.

Learned counsel submitted that the Plaintiff must succeed on the strength of his own case, and not on the weakness of the defence.

That when the Plaintiff made Exhibit P5, he did not make the identity of the 2nd Defendant a condition. Nor has he presented anybody or any evidence to show that there is anybody anywhere else in the world who is the 2nd Defendant apart from DW5. That the Plaintiff who alleges that DW5 is not the 2nd Defendant is required to prove same.

Learned counsel submitted that it is the fundamental right of a person to take a name of his fancy.

See **OFFOBOCHE V OFFOBOCHE (2006) 13 NWLR (PT 992) 298 AND ABEJE V APEKE (2014) ALL FWLR (PT 215) 326 AT 353 PARAGRAPH F-G.**

He queried how the Plaintiff who said he had never met the 2nd Defendant can turn around to claim that DW5 is not the person.

On the other hand the 1st Defendant who is the lawyer of the 2nd Defendant agrees that DW5 is the 2nd Defendant.

DW5 says she is the 2nd Defendant. DW4, her husband says DW5 is the 2nd Defendant.

DW5 tendered Exhibit D10, an original affidavit pre-dating the transactions leading up to this case. All this evidence was unshaken in cross examination.

The 2nd Defendant was given all the original documents which she tendered as Exhibits D5 –D9. She also explained why she did not use her full name in the purchase of the property. This was not controverted. He urged the court to hold that the 2nd Defendant is DW5.

Learned counsel further submitted that just as the Plaintiff's amended statement of claim of 26th January, 2011 was signed by an unknown person for a legal practitioner and therefore incompetent, so also was the Plaintiff's defence and reply of 11th April 2011 signed. He urged that the result is that the Plaintiff has no amended statement of claim and no response to their amended statement of defence/counter claim. He urged that the Plaintiff case be dismissed.

ON ISSUE 2

It was submitted that the 2nd Defendant had established her counterclaim. That proof of same is on minimal proof, the Plaintiff having no defence thereto neither did he adopt any witness statement witness on oath in proof of same.

The court was thus urged to dismiss the Plaintiff's case and grant the 2nd Defendant's counterclaim.

FOR THE PLAINTIFF

On issue 1 it was submitted that the 1st Defendant is not privy to the contract between the Plaintiff and a certain Bosede Betty and is therefore a stranger to the transaction.

Learned counsel referred to paragraphs of the 1st Defendant's witness statement on oath and paragraphs of the 2nd Defendant's witness statement on oath. That the 1st Defendant is the lawyer to the 2nd Defendant on record and ought to have only been involved as a lawyer but the 2nd Defendant stated she was not aware the Plaintiff was arrested.

Therefore the 1st Defendant was on his own when he laid a criminal allegation against the Plaintiff at Maitama Area Command of the Nigeria Police Force, and is liable for false imprisonment, mischief, forceful signing of Exhibits P6 and P7, and false ejection from the premises.

Besides denying the knowledge that the Plaintiff was arrested, the 2nd Defendant testified that she was in her house when the 1st Defendant brought Exhibits P6 and P7 for her to sign and that she never signed them in the presence of the Plaintiff.

He urged the court to set aside Exhibits P6 and P7 and enter judgment in favour of the Plaintiff.

See **THOMAS CHUKWUMA MAKWE V CHIEF OBANUA NWUKOR & 10R (2001) 7 NSCQR 435 AT 437.**

On issue 2, it was submitted that the present 2nd Defendant on record is not Bosede Betty who made the deposit of ₦1,100,000 to the Plaintiff.

That whereas the said Bosede Betty lives at Plot 210 Apata Crescent Maitama, the present 2nd Defendant impersonating as the Bosede Betty lives at Block 1, Flat 20 Zalanga Close, Yola street, Area 7, Garki Abuja.

That she has not been able to establish that Mrs Elizabeth Abosede Ibrahim or Mrs Elizabeth Abosede Olufunke Ibrahim, is the same thing as Bosede Betty. The court was urged not to accept her explanation that the names are the same.

That except her statement on defence and witness statement on oath, there is no other document or evidence filed before this court wherein "Bosede

Betty” was shown to be a short form of “Elizabeth Bosede Betty” or “Elizabeth Abosede Olufunke Ibrahim.”

Learned counsel submitted that oral evidence cannot alter documentary evidence.

See Section 128 Evidence Act (as amended). **OGUNDELE & 1 OR V SHITTIE AGIRI & 1 OR (2010) 9 WRN 107, RATIO 2**; per Muntaka – Coomasie JSC.

Learned counsel further argued that Exhibit D10 was in the name of “Mrs Ibrahim Olufunke” for loss of a document in the name of “Elizabeth Bose Oluyede” not “Bosede Betty”.

Learned counsel finally submitted that the 2nd Defendant has not been able to discharge the onus on her to prove that she is “Bosede Betty”, “Elizabeth Abosede Olufunke Ibrahim” or “Elizabeth Bose Oluyede Ibrahim”.

See Sections 131(1), 133 (1) Evidence Act 2011. The court was urged to resolve the issue in the Plaintiff’s favour.

I have considered the evidence on both sides and the written and oral submissions of learned counsel on both sides.

RESOLUTION ON ISSUE 1

Whether the Plaintiff’s case is supported by evidence and ought to succeed.

Without much ado, I am in agreement with the Defendants that the Plaintiff’s case is not supported by the evidence led, looking at claims (a) to (h) of the statement of claim. On claim (a) there is nowhere on record where the 1st Defendant claimed to be privy to the contract of sale between the Plaintiff and the 2nd Defendant nor sought to gain any advantage for himself or suffer liability therefrom.

In fact the 1st Defendant from the evidence before me, acted as solicitor to the 2nd Defendant throughout the transaction. See Exhibits D1, D2 and in his dealings with the Plaintiff.

Therefore, as rightly argued by learned counsel to the 1st Defendant, he ought not to have been sued, being an agent of a known Principal who is the 2nd Defendant.

It has been argued by the learned counsel for the Plaintiff that the 2nd Defendant denied knowledge of the Plaintiff's arrest, therefore the 1st Defendant was acting on his own.

What the 2nd Defendant stated was that she was not aware the Plaintiff was arrested but she was aware that he was invited to the police station, not arrested. Quite a different thing from what learned Plaintiff's counsel is suggesting.

The contention of the Plaintiff is that the sum of ₦1,100,000 paid by Bosede Betty to him via Exhibit P5 was for part payment of his flat situate at Block 1, Flat 8, Zalanga Close Area 7, Garki Abuja.

For ease of reference I reproduce Exhibit P5 verbatim below as follows:-

“ LETTER OF UNDERTAKING

I, Mr Adebayo Adewumi collected the sum of (₦1,100,000) One Million One Hundred Thousand from Mr Adeleke Oluyele on behalf of Mrs Bosede Betty for the sale and transfer of ownership of Block 1 Flat 8, Zalanga Close Area 7, Garki Abuja. As now as a rightful owner occupier.

The memorandum of understanding will be made after.

In the present of: Collector

Name: Adejoke

Occupation: Student

Signed

23/11/05

Name: Adebayo A

Occupation Civil Servant

Signed 23/11/05

Purchaser

Name: Bosede Betty

Address: Plot 210 Apata Crescent Maitama

Occupation: Civil Servant

Signed

For Mrs Bosede Betty”

(Emphasis mine)

Exhibit P5 speaks for itself. I have read Exhibit P5 very carefully and thoroughly and do not find where it is stated therein that the sum paid was for part payment.

I agree with learned counsel for the 2nd Defendant that the only ancillary provision therein is that “the memorandum of understanding will be made after.”

The law is trite that where words in a document are plain and unambiguous, they should be given their ordinary or literal meaning.

See **IHUNWO V IHUNWO & ORS (2013) LPELR 20084 (SC); PG 41 PARAGRAPH F per Aka’ahs JSC.**

HON. IFEDAYO SUNDAY ABEGUNDE V THE ONDO STATE HOUSE OF ASSEMBLY & ORS (2015) LPELR - 24588 (SC) PAGE 41 PARA B-C per Mohammed JSC; CHIEF VICTOR SUNNY OGBEBOR V UTAGBA RUBBER ESTATE LTD & ANOR (2014) LPELR - 24476 (CA) AT PAGE 9 PARAGRAPH A-B, per Ogunwumiju JCA; BALIOL NIGERIA LIMITED V NAVCON NIGERIA LIMITED (2010) LPELR-717 SC PAGE 18 PARA F-A, per Fabiyi JSC.

It is equally the law that oral evidence cannot displace documentary evidence. See **FAKOMITI N. ILORI & ANOR (2018) LPELR - 46367 (CA); ASHAKACEM V ASHARATUL MUBASHSHURUN INVESTMENT LTD (2019) LPELR-4654 (SC).**

The 2nd Defendant herself paid the government money of ₦2,653,840. See Exhibits D4 – D9. Therefore the contract for the sale of the Plaintiff’s flat to Bosedede Betty was complete with Exhibit P5.

Furthermore, I do not subscribe to the Plaintiff’s contention that he agreed with Adeleke Oluyede that his flat will go for ₦7 million. The evidence of DW2, Rafiu Ganiju Popoola who owned a similar flat in the Plaintiff’s block which he sold to Comfort Adenike Ologunya in 2005 for ₦846,280 and that she paid the government money was not shaken or controverted in cross examination. He said the going rate for such 2 bedflat at Area 7 and Abuja in general in 2005 was between ₦600,000 to ₦800,000 apart from the government money. That nobody would agree to pay extra ₦3 million for such a flat apart from government money in 2005. He was not shaken in cross examination.

The Plaintiff himself did not bring even one person who had agreed to pay ₦7 million for his flat to testify.

The Plaintiff having executed Exhibit P5 was bound by the contract he freely entered into with the 2nd Defendant, Bosede Betty. See **BEST (NIG) LTD V BLACKWOOD HODGE NIG LTD & ANOR (2011) LPELR 776 SC, ENEMCHUWKWU V OKOYE & ANOR (2016) LPELR - 40027 CA.**

Again Bosede Betty, the 2nd Defendant is in possession of the said flat and rightfully so. The 1st Defendant is not in possession of the said flat.

On fundamental rights: It is the case of the Plaintiff that the 1st Defendant breached his fundamental right to freedom of movement.

The onus is on the Plaintiff to prove that his said fundamental right has been breached.

To prove this the Plaintiff tendered through the 1st Defendant Exhibits D1 and D2. 1st Defendant wrote Exhibits D1 and D2 as “Lawful attorneys of Bosede Betty”, the 2nd Defendant.

In Exhibit D2 the complaint against the Plaintiff is for “Cheating and Criminal Breach of Trust in selling of a two bedroom flat (Block 1 Flat 8, Zalanga Close, Area 7, Garki 1 Abuja”. Exhibit D2 called on the Area Commander, Nigeria Police Maitama Abuja to investigate the matter under the Police Act.

Exhibit D2 states that after selling his flat to the 2nd Defendant and collecting ₦1,100,000 in full, the Plaintiff refused to give up possession as agreed and resorted to tricks and making unwarranted demands, touting his closeness with a public official in authority to intimidate the Defendants.

It is not in dispute that the Police Act empowers the Police to investigate reasonable allegations of crime and to arrest offenders.

Pursuant to Exhibit D2, the Plaintiff was invited by the Police. The Plaintiff claims he was arrested.

Assuming without conceding that he was arrested, he was kept behind the counter (not in the cell) and released the same day he was “arrested”. He therefore cannot complain of breach of his fundamental right.

See **ENE & ORS V BASSEY & ORS (2014), LPELR - 23524 (CA) PAGE 23 PARAGRAPH D**, where Ndukwe – Anyanwu JCA held that:-

“An arrest properly made cannot constitute a breach of fundamental rights. A citizen who is arrested by the police in the legitimate exercise of their duty and on grounds of reasonable suspicion of having committed an offence cannot sue the police in court for breach of fundamental rights.”

The Plaintiff also alleged that the 1st Defendant instigated his arrest and forced him to sign Exhibits P6 and P7 as a precondition for his bail through the Police.

The onus is on the Plaintiff to establish these facts.

Again the Plaintiff was unable to establish these facts.

On the day he signed Exhibits P6 and P7, he stated that he did not see the 1st Defendant at the police station.

PW2 his witness did not help his case at all. PW2 in his witness statement on oath stated that at the Police station the Investigating Police Officer told him that unless they reached an agreement with the 1st Defendant, she feared the Plaintiff may not be released on bail, and that he approached the 1st Defendant who told him the same thing and showed him the Memorandum of Understanding and Power of Attorney.

In cross examination the same PW2 stated that he could not tell whether the 1st Defendant was at the Police station on the day the Plaintiff was arrested. In fact he said he could not ascertain very much what happened that day. He also did not know the 2nd Defendant.

Also he said Plaintiff did not tell him about ₦7 million.

Now, apart from the fact that the Plaintiff failed to prove that the 1st Defendant instigated his arrest and used the Police to force him to sign the Exhibits P6 and P7, the Plaintiff raised a lot of dust on Exhibits P6 and P7. I think the crux of this case rests on Exhibit P5 – which the Plaintiff tendered himself. That is the foundation of his contract with the 2nd Defendant.

Exhibit P5 is clear. Plaintiff has not said he was forced to sign Exhibit P5. He signed it willingly and is therefore bound by it.

The law is trite that parties are bound by their contract voluntarily entered into.

Indeed even if Exhibit P5 was for part payment which is not conceded, the Plaintiff is still bound by it. See **MINI LODGE LTD & ANOR V CHIEF OLUKA OLAKA NGEI & OR.**

In **MINI LODGE LTD & ANOR V CHIEF OLUKA OLAKA NGEI & ANOR (2009) LPELR -1877 (SC) AT PAGE 41 PARA B-D** Adekeye JSC held that:-

“Where part payment is paid, the law is that the contract for purchase has been concluded and is final, leaving the payment of the balance outstanding to be paid. The contract for the sale and purchase is absolute and complete for which each party can be in breach for non-performance and for which an action can be maintained for specific performance.”

See also **CHIEF OHIA CHUKWU & ORS V JOHN AMADI & ORS (2011) LPELR-3960 (CA) AT PG 37 PARA D-F** per Muhammed JCA.

By Exhibit P5, the receipt of purchase the 2nd Defendant acquired equitable interest for which the 2nd Defendant can insist on specific performance.

Indeed I venture to add that whether or not the 2nd Defendant showed up, the Plaintiff was bound to execute Exhibits P6 and P7 having collected his ₦1,100,000 full purchase price of his flat.

I do not believe the Plaintiff that he was forced to sign Exhibits P6 and P7 in favour of the 2nd Defendant. He signed them voluntarily in accordance with the agreement with the 2nd Defendant in Exhibit P5. Exhibits P6 and P7 are not in favour of the 1st Defendant but the 2nd Defendant. They are valid documents.

The 1st Defendant has stated that he is not in possession of the Block 1, Flat 8, Zalanga Close, Area 7, Garki Abuja. The 2nd Defendant says she is in possession. The Plaintiff has not refuted that.

Having considered all the above, I hold that the Plaintiff's case is not supported by the evidence. I therefore answer issue 1 in the negative in favour of the Defendants. The entire case for Plaintiff is accordingly dismissed.

RESOLUTION ON ISSUE 2
On the Counterclaim

The Plaintiff has raised a lot of dust that the 2nd Defendant is not Bosede Betty.

It must be noted that the Plaintiff did not file a reply to the 2nd Defendant's statement of defence/defence to counterclaim, neither did he give evidence in rebuttal of the case of the 2nd Defendant that she is the same person as Bosede Betty.

Therefore the onus on the Defendant to prove that she is Bosede Betty is discharged on minimal proof. See **LARMIE V DATA PROCESSING MAINTENANCE & SERVICES LTD (2005) LPELR - 1756 (SC); BABA V NIGERIAN CIVIL AVIATION TRAINING CENTRE & ANOR (1991) LPELR - 692 SC.**

2nd Defendant testified that she is Bosede Betty, which are derivations or abbreviations of her name Elizabeth Abosede Olufunke Ibrahim Nee Oluyede. That she did not use her full name in the purchase of the flat because she did not want her husband to know as they had a domestic issue then.

That late Adeleke Oluyede was her younger brother and agent in the transaction.

That it was Adeleke who put her address as Plot 210 Apata Crescent, his friend's address.

She tendered Exhibit D10 – an affidavit she deposed to on 19th October 2005, before this suit was instituted, for loss of her document bearing Elizabeth Bose Oluyede.

DW1 and DW4 also stated that Bosede Betty is the 2nd Defendant in court.

On a balance of probabilities, I find the evidence of the 2nd Defendant as DW5 and her witnesses credible and unshaken in cross-examination, that she is the same person as Bosede Betty.

This court will take judicial notice that "Abosede" is commonly abbreviated to "Bosede" and "Elizabeth" is commonly abbreviated to "Betty".

The onus thus shifts to the Plaintiff to dislodge same.

The Plaintiff has not placed anything before this court to tilt the imaginary scale in his favour. He has not presented any other person with the name Bosede Betty whether at Plot 210 Apata Crescent or anywhere else.

I therefore hold without equivocation that the 2nd Defendant, Bosede Betty is the same person as DW5 who testified before this court.

Having found so, the agreement of the Plaintiff and the 2nd Defendant in Exhibit P5 was that ₦1,100,000 paid by the 2nd Defendant for the Plaintiff's flat was full payment. The Plaintiff handed over all title documents to Adeleke Oyelede for the 2nd Defendant.

The 2nd Defendant paid up the ₦2,653,840, the government price for the flat. See Exhibit D5 – D9

The Plaintiff voluntarily executed Exhibits P6 and P7, the Memorandum of Understanding and Power of Attorney in the 2nd Defendant's favour.

I hold that the 2nd Defendant has proved that she is the owner in equity of the 2 bedroom Block 1 Flat 8, Zalanga Close, Area 7 Garki Abuja.

Accordingly, I enter judgment in her favour in her counterclaim for:-

- (a) A DECLARATION that she is the owner in equity of all that 2 bedroom Flat 8, Zalanga Close, Area 7, Garki, Abuja.
- (b) A DECLARATION that the Memorandum of Understanding dated 9th day of June 2006 and Power of Attorney dated 9th June 2006 both executed by and between the Plaintiff and the 2nd Defendant are real, genuine and duly executed.
- (c) AN ORDER directing the Plaintiff to execute in favour of the 2nd Defendant any other document necessary to enable the 2nd Defendant perfect her title to the property known as Block 1, Flat 8, Zalanga Close, Area 7, Garki, Abuja.
- (d) AN ORDER of perpetual injunction restraining the Plaintiff from further parading or holding out himself as the owner of all that 2 bedroom flat known as Block 1, Flat 8, Zalanga Close, Area 7, Garki, Abuja.
- (e) AN ORDER of perpetual injunction restraining the Plaintiff, whether by himself or through his agents, servants, privies etc from further disturbing and or threatening the 2nd Defendant's peaceable

enjoyment of the property known as Block 1, Flat 8, Zalanga Close, Area 7, Garki, Abuja.

as prayed on counter claim.

On counterclaim (f) on use and occupation of the flat, I do not find evidence as to the annual rent of the flat on which to hinge the relief of ₦300,000 sought.

It is hereby dismissed.

On counter claim (h) – There is no evidence led on solicitor’s fees. Same is hereby dismissed.

On claim (i) for general damages – I do not think a claim has been made out for general damages.

Same is also dismissed.

(j) On costs of this action.

A successful litigant is entitled to costs of action. This is a 2011 matter. Accordingly I assess costs in favour of the 2nd Defendant in the sum of ₦150,000 against the Plaintiff.

Hon. Judge