

THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY ABUJA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT COURT NO. 20 WUSE ZONE 2, ABUJA
BEFORE HIS LORDSHIP: HON JUSTICE A. S. ADEPOJU.
THIS 16TH DAY OF MARCH 2021

SUIT NO: FCT/HC/CV/783/2016

BETWEEN:

DE-CHICO INVESTMENT LTD. -----CLAIMANT

AND

1. FIDELITY BANK PLC
2. CHIEDU NWOKOLO
3. CHUKWUEDU NWOKOLO
4. N.V. & U LTD. } -----DEFENDANTS

OBINNA AJOKU appears with *AGUARIAVWEOLO REBECA* for the
Claimant.

ETUKWU ONAH for the 1st Defendant.

JUDGEMENT

The plaintiff commenced this suit vide a writ of summons and statement of claim dated and filed on the 25th day of November, 2015. And by the amended statement of claim dated 13th October, 2016, the plaintiff seeks for the following reliefs;

- a. A declaration that the 1st defendant breached the contract to release the Certificate of Occupancy on payment of ~~N~~**100,000,000.00 (One Hundred Million Naira)** into the 4th defendant's account with it.
- b. An Order mandating the 1st defendant to register Deed of Release of the legal mortgage it registered in respect of plot no. 2713 no. 7 Volta Street, registered as No. 14466 at page 14466 in volume 72 file No. AN 10310 Cadastral Zone A06, Maitama District, Abuja as it is address to the plaintiff.
- c. An Order mandating the 1st defendant to handover the Certificate of Occupancy to **Jude Umeh** and 2nd defendant or in alternative submit same to the Deed Registrar Land Registry Office Abuja to enable the plaintiff obtain its Certificate of Occupancy.
- d. ~~N~~**30,000,000 (Thirty Million Naira)** as General damages for breach of contract.

It is on record that the 1st defendant, vide a motion on notice dated 11th day of June, 2016 applied to joined the 2nd defendant as party to the suit. The 1st defendant consequently filed its amended statement of defence to the plaintiff's amended writ of summons and statement of claim on the 6th day of February, 2017. The 2nd – 4th defendants did not file any pleadings.

To proof the plaintiff's case, one **Mr. Emmanuel Eze** hereinafter referred to as the PW1 testified as the sole witness on the 27th day of March, 2017. In his adopted witness statement on Oath the PW1 stated that sometime in

2010, the plaintiff was interested in going into the business of property development and was introduced to plot 2213 (No. 7 Volta Street) registered as No. 14466 in volume 72 file No. AN10310 Cadastral Zone A06 Maitama, Abuja. That the plaintiff instructed his Solicitor **Obinna Ajoku** to conduct a legal search at the Land Registry Office Abuja Geographic Information System (AGIS). And that the search revealed that the property belongs to the 3rd defendant and free from encumbrances. That the plaintiff had a meeting with the 2nd defendant wherein they agreed that the plaintiff shall buy half of the plot at a consideration of **₦140,000,000.00 (One Hundred and Forty Million Naira)**. And that when the plaintiff demanded for the original copy of the Certificate of Occupancy before payment of the agreed consideration, the 2nd defendant informed him that it is in the custody of the 1st defendant. That he was sent with one **Jude Umeh** to go with the 2nd defendant to the 1st defendant's office in Lagos to negotiate and conclude the transaction. And that at the 1st defendant's office they informed its staff that the plaintiff wanted to purchase half of the plot on the condition that the 1st defendant will release the original Certificate of Occupancy to them. That the 1st defendant assured the plaintiff's staff that if it paid **₦100,000,000.00 (One Hundred Million Naira)** only into the account of the 4th defendant for the purchase of the plot, it shall release the original title document to the plaintiff and the 4th defendant. That the plaintiff based on the 1st defendant's assurance and instruction paid the sum of

₦100,000,000.00 (One Hundred Million Naira) into the 4th defendant's account with the 1st defendant. That the plaintiff's staff and the 2nd defendant approached the 1st defendant to release the original certificate but to no avail as the 1st defendant refused to release same. He stated that the plaintiff obtained the Minister of Federal Capital Territory approval for the sub division of the plot into two parts for 3rd defendant and the plaintiff paid all the statutory fees, with a separate file no. MISC 114489 with which to process and obtain its Certificate of Occupancy over the plot it purchased.

The plaintiff witness stated further that consequent upon the opening of the file, the plaintiff Solicitor wrote to the 1st defendant informing it of the sub division and the need for the 1st defendant to bring the Certificate of Occupancy for cancellation at the Lands Registry office to enable the plaintiff obtain the Certificate of Occupancy over its own part of the plot, but the 1st defendant refused to return the original Certificate of Occupancy. That it is impossible for the plaintiff to dispose of the property it built on the plot as it has no title document to hand over to purchaser. That the 1st defendant after collecting the **₦100,000,000.00(One Hundred Million Naira)** went and registered Deed of Legal Mortgage in the Land file at the Lands Registry thereby encumbering the plaintiff's property. And that the plaintiff's solicitors wrote series of letters to the 1st defendant to return the Certificate of Occupancy and release the mortgage it registered in the land to enable it obtain this Certificate of Occupancy and the 1st defendant

refused to comply. Furthermore he said that the conduct of the 1st defendant has adversely affected the business of the plaintiff, hence the institution of this action.

The PW1 in addition to his oral testimony adduced the following documentary evidence.

1. Revenue collectors receipts of ~~N~~**100,000 (One Hundred Thousand Naira)** dated 11th June, 2011 - Exhibit A1.
2. Re-Letter of Comfort for sales of property at Abuja dated 23rd of October, 2012 - Exhibit A2.
3. Re. Letter of Comfort for sales of property at Abuja dated 18th day of September, 2012 - Exhibit A3.
4. Re-Letter of Comfort for sales of property at Abuja dated 5th June, 2015 - Exhibit A4.
5. Re-Letter of Comfort of sales of property at Abuja dated 10th June, 2016 - Exhibit A5.
6. Consent for the sub division of plot 2713 Cadastral Zone A06, Maitama District, Abuja dated 22nd day of December, 2011 - Exhibit A6.
7. Revenue Collectors receipt in the sum of ~~N~~**4,303,040 (Four Million, Three Hundred and Three Thousand and Forty Naira)** only dated 14th day of February, 2012 - Exhibit A7.
8. Legal search report dated 16th day of September, 2010 - Exhibit A8.

9. Re-Letter of Comfort for sales of property at Abuja dated 29th day of December, 2010 - Exhibit A9.
10. Approval of Consent to Mortgage C of O dated 11th day of May, 2011 - Exhibit A10.

Under cross examination by counsel to the 1st defendant, the PW1 agreed that the property was collateral in respect of the Loan advanced to the 2nd defendant. He is however not aware of the reason why the 2nd defendant wanted to sell the property. He maintained that it is the 1st defendant that asked them to pay **₦100,000,000 (One Hundred Million Naira)** for the property so that they can release the Certificate of Occupancy. He is not aware that the Certificate was surrendered to FCDA for subdivision and the FCDA refused because there was sub Deed on it. He is also not aware that there is a case between Fidelity Bank Plc, 2nd defendant and 3rd defendant, 4th defendant which is now on appeal. The witness was not re-examined.

2nd – 4th defendants were not in court nor represented by counsel and were foreclosed from cross examining the PW1. The plaintiff closed its case on this note.

DEFENCE:

The 1st defendant opened its defence on the 26th of February, 2018 with testimony of one **Mr. Francis Ogwu**, the Regional Legal Officer of the 1st

defendant who testified as the DW1. The following documents were tendered through the DW1:

- (a) Offer of **₦150,000,000 (One Hundred and Fifty Million Naira)** overdraft facility dated 8th January, 2009 - Exhibit DW1.
- (b) Resolution to Obtain the Facility – Exhibit DW2.
- (c) Certificate of Occupancy – Exhibit DW3.
- (d) Letter of Consent to Mortgage – Exhibit DW4.
- (e) Deed of Tripartite Legal Mortgage – Exhibit DW5.
- (f) Notice of Appeal - Exhibit DW6.
- (g) Notice of Cross Appeal – Exhibit DW7.

According to the DW1, the 4th defendant was granted a loan facility of **₦150,000,000 (One Hundred and Fifty Million Naira)** by the 1st defendant for a year term using the property referred to above as security and a tripartite Deed of Legal Mortgage was signed and registered over the property in favour of the 1st defendant. The 2nd – 4th defendants defaulted in repaying the facility. The 1st defendant commenced the process to dispense of the mortgaged property. At this point the plaintiff was introduced by the 2nd defendant as an interested party desiring to purchase the undeveloped portion of the mortgaged land. The plaintiff purposed to pay the sum of **₦100,000,000 (One Hundred Million Naira)** into the account of the 4th defendant out of the balance of **₦150,000,000 (One Hundred and Fifty Million Naira)** into the account of the 4th defendant and was further agreed

that the 2nd defendant shall pay the sum of **₦20,000,000 (Twenty Million Naira)** only within **three (3) months** and that the 1st defendant will accept same as full and final payment and release the title document.

The 1st defendant in fulfilling this promise released the Certificate of Occupancy to their Solicitor **Messrs Etukwu Onah** who surrendered same for submission with a letter to Abuja Geographic Information System (AGIS) dated the 10th day of October, 2012 and the certificate was rejected due to the encumbrance on the twin duplex (Sic) within the property. That the failure to process the sub division was due to the failure of the 4th defendant to pay off its indebtedness which is now a subject of litigation in **Suit No. CV/740/12** pending before the FCT High Court No. 20 presided over by **Honourable Justice Adeniyi**. The witness was cross-examined by learned counsel to the claimant.

The relationship manager of the 1st defendant **Miss Oluwatoyin Meseke** testified as the DW2. And Exhibit DW8-DW16 were tendered and admitted through her; they are:

1. Deed of Tripartite Legal Mortgage between NV & U Limited and **Elikwendu Nwokolo** and Fidelity Bank Plc – Exhibit DW8.
2. Re: Consent for the Submission of Plot No. 2713 Cadastral Zone No 6 Maitama District, Abuja addressed to the Deeds Registrar, Area 11, Garki, Abuja – DW9.

3. Re: Indebtedness of **₦123,379,159.00** to Fidelity Bank Plc Recall of Facility and Demand Notice from the firm of Pepple & Pepple dated 29th July, 2010 – Exhibit DW10.
4. Re: Liquidation of outstanding balance of **₦120,000,000** availed to NV & U Limited dated December 30, 2010 – Exhibit DW11.
5. Offer of One Hundred and Fifty Million Naira (**₦150,000,000**) overdraft facility – Exhibit DW12.
6. Re: Resolution of Financial Relationship – Exhibit DW13
7. Re: Liquidation of Facility of **₦120,000,000** availed to NV & U Limited – Exhibit DW14.
8. Guarantee – Exhibit DW15.
9. Application for an Overdraft Facility dated October 13 2008 – Exhibit DW16.

The DW2 was also cross-examined after the tendering of Exhibit DW8-DW16. There was no re-examination. The 1st defendant closed its case with the testimony of the DW2. It is on record that the 2nd – 4th defendants were foreclosed from cross-examining the DW1 and DW2 due to their persistent absence from the court despite service of hearing notices. After the close of the 1st defendant's case, parties filed and exchanged written addresses. An order of extension of time was granted to the 1st defendant to file its final written address on the 17th September, 2020. And same was also deemed as properly filed and served on 17/9/2020.

The 1st defendant formulated a sole issue for determination of this court to wit:

1. Whether the plaintiff has proved its case against the 1st defendant for it to entitle to the reliefs sought or in the alternative; By the state of pleadings and evidence led at the trial, whether there is a contractual relationship between the plaintiff and the 1st defendant.

In the same vein, the claimant in its written address distilled a sole issue for determination to wit:

1. Whether from the pleadings and evidence led, the claimants is entitled to the reliefs contained in its statement of claim.

The 1st defendant also filed a reply on points of law dated 16th September, 2020. It is apparent from the testimonies of the respective parties and documents tendered in support that the sole issue for determination can conveniently be pivoted around the issues formulated by the claimant in their written address which is whether the claimant is entitled to the reliefs sought from the pleadings and evidence adduced at the trial. It encompasses the issue of the 1st defendant as set out by the learned counsel to the 1st defendant. In my view there are two divides to the arguments of counsel to the respective parties. The learned counsel to the 1st defendant argued and rightly too that there is no privity of contract between the 1st defendant and the claimant with respect to the loan facility granted the 2nd

and 4th defendants to which the property of the 3rd defendant was offered as collateral. The Learned Counsel **Etukwu Onah** argued further that there is no contractual relationship between the plaintiff and the 1st defendant in the entire transaction for the defendant to be liable for breach. That the plaintiff, before it can succeed in its claim must prove the existence of contract between the plaintiff and the 1st defendant.

He further argued that the tripartite Deed of Legal Mortgage is between the 1st, 2nd – 4th defendants. He referred to Exhibit DW1 and DW9. Exhibit DW1 is the Offer of the Loan Facility to the 4th defendant by the 1st defendant dated 2nd May, 2008 and Exhibit DW9, the Consent for the Submission of Plot No. 2713 Cadastral Zone No 6 Maitama District, Abuja addressed to the Deeds Registrar, Area 11, Garki, Abuja Surrender of Certificate of Occupancy No. e80uw-3ad4z-5b06r-a078u-10 addressed to the Deeds Registrar AGIS signed by **Etukwu Onah**, the Counsel to the 1st defendant. He argued that the law is settled that a contract cannot confer enforceable right or impose obligation arising under it on any party except parties to it; that only parties to a contract can sue on it. He relied on the cases of **DUNLOP PNEUMATIC TYRE CO. LTD V SELFRIDGE LTD (1915) A. C. 847 @ P. 853, IKEPEHZU V A. B. C. (1965) NMLR 374, UNION BEVERAGE LTD V PEPSI COLA INTERNATIONAL LTD (1994) 3 NWLR (PT. 330)1, UNION BANK OF NIG PLC V SPARKLING BREWERIES LTD & ORS (1997) 5 NWLR (PT. 505) 334 @ 363.**

He further argued that the reversionary interest on the mortgage property covered by the Certificate of Occupancy which the plaintiff is contending that it must be released to AGIS to enable it perfect its title reverts back to the 3rd defendant who is the original owner of the property before the 2nd and 3rd defendants used same to secure the facility availed them. It is therefore the argument and submission of the learned counsel to the 1st defendant that the entire claim of the claimant based on the transaction between the 1st defendant and the claimant must crumble.

The Claimant Counsel, **Mr. Obinna Ajoku** on the other side of the divide argued that their contention is that Exhibit A9 is the agreement between the claimant and the 1st defendant. That the purported agreement to pay **₦20,000,000 (Twenty Million naira)** by the 4th defendant vide Exhibit DW14 which the 1st Defendant and 4th defendant entered into after Exhibit A9 is not binding on the claimant and therefore cannot vary the terms of Exhibit A9. He relied on the case of **CHIEF S. O. AGBARCH & ANOR VS. DR. ANTHONY MIMRA & ORS(2008) 4 LPELR 43211 SC** where the Supreme Court held:

“Also settled, is that an agreement is binding only on the parties thereto and not on third parties. See the case of W.D.N. LTD V OYIBO (1992) 5 NWLR (PT.239) 77 @ 100-100 CA.”

That Exhibit A9 is a binding contract between it and the 1st defendant that part of the property to which the claimant had paid **₦100,000,000 (One Hundred Million Naira)** cannot be encumbered in any way whatsoever by the 1st defendant after it received the money. He relied on the case of ***AISHATU ABUBAKAR & ORS. V LARABA ALI & ORS (2009) LPELR 3666.*** Learned Counsel further argued that the reversionary interest to which the property covered by Exhibit DW3 cannot revert back to the 3rd defendant because the 3rd defendant with the consent of the 1st defendant sold part of the plot to the Claimant and delivered possession to it. That with the Claimant's consented approval the 1st defendant has an equitable interest in part of the property. He further stated that that 1st defendant's Witness Statement on Oath is a breach of the terms of Exhibit A9 when it refused to release the Certificate of Occupancy and went ahead to register Exhibit DW5 vide Exhibit A10, that to the claim of the Claimant is specific performance of the terms of Exhibit A9 and general damages. That this court has jurisdiction to award both to the Claimant. He relied on case of ***UNIVERSAL VULCANIZING (NIG) LTD. V IJESHA UNITED TRADING AND TRANSPORT COMPANY LTD(1992) LPELR 3415 SC.*** He therefore urged the court to grant the Claimant's reliefs for the following reasons;

- (1) That Exhibit A9 is a valid contract between the Claimant and 1st Defendant.

(2)The Claimant complied with the terms of the contract while the 1st Defendant did not comply with the terms of the contract.

(3)That the claimant suffered injury because of the breach of the contract.

The 1st defendant's reply on point of law reiterated argument in the main written address there is no point revisiting or repeating same here.

The fundamental question that flows from the argument of the learned Counsel to the claimant is whether Exhibit A9 constitutes a contract between the claimant and the 1st defendant. The term contract has been argued in plethora of authorities to mean the existence of an agreement between two parties to be mutually bound by the terms and condition of their agreement and also more importantly to create a legal relation. A contract is said to be legally enforceable when it consists of these four elements, namely offer, acceptance, consideration and the intention to create or enter into a legal relation. It is also trite that not all agreements are contracts, but all contracts are agreements. It is elementary also to state that parties are ad-idem when they agree to be mutually bound by the terms and conditions of their agreement. However, parties even though agree to be mutually bound, such an agreement may not constitute an enforceable contract by the court, where any of the essential elements of a contract is missing.

In the case of **BEST (NIG) LTD V BLACKWOOD HODGE NIG. LTD & ANOR (2011) LPELR 776 SC** where Adekeye JSC states thus:

“A contract may be defined as a legally binding agreement between two or more persons by which rights are acquired by one party in return for acts or forbearance on the part of the other. In effect a contract is a bilateral affair which needs the ad-idem of the parties, therefore where the parties are not ad-idem, the court will find as a matter of law that an agreement or contract was not duly made between the parties. ODUTOLA V PAPERBACK (NIGERIA) LIMITED (2006) 18 NWLR (PT.1012) PG 470, OLOWOFOYEKU V A.G OYO STATE (1990) 2 NWLR (PT.132) PG 369, ORIENT BANK (NIGERIA) PLC. V BILANTE INTERNATIONAL LIMITED (1987) 8 NWLR (PT.515) PG 37, SOCIETE GENERAL BANK (NIGERIA) V SATA STEEL AND CHEMICAL MANUFACTURING LIMITED (1998) 5 NWLR (PT. 548) PG 168.”

See also **GREEN FINGERS AGRO INDUSTRIES ENTERPRISES LIMITED Vs. SAHEL AGRICULTURAL CO. LTD (2014) LPELR 22334 CA** Per Abiru JCA.

The counsel to the claimant argued that Exhibit A9 is an Offer to the Claimant. He submitted in paragraph 4.3 of his address thus:

“We submit that Exhibit A9 is a clear Offer to the Claimant. The claimant having accepted the offer through strict compliance to the mode of acceptance stated in Exhibit A9 by paying the ~~N~~100,000,000 (One Hundred Million Naira) into the 4th defendant’s account, Exhibit A9 is a binding

contract between the Claimant and the 1st defendant to release the Certificate of Occupancy to the representative of the claimant and 4th defendant.”

For the purpose of clarity the content of Exhibit A9 is hereby reproduced hereunder:

“

December 29, 2010

*The Managing Director
De-Chico Industries Limited,
Plot 14 Eastern Road,
Rumi Okiro,
Port Harcourt,
Rivers State.*

Attention: Jude Umeh

Dear Sir,

RE: Letter of Confirm of Sale of property At Abuja.

*We write in respect of your proposed payment of the sum of ~~₦~~**100,000,000 (One Hundred Million Naira)** only into the account of NV & U Limited for purchase of part of a parcel of land sold to your good selves.*

We confirm that we are in custody of the title documents and agree to release documents registered as No. 14466 at page 14466 in volume 72 file No. AN 10310 of 7 Volta Street Abuja.

The documents will be released jointly to NV & U Limited (represented by Chiedu Nokolo) and De-Chico Investments Limited (represented by Jude Umeh) respectively upon receipt of value.

Thank you in anticipation of your co-operation.

Yours faithfully,

For Fidelity Bank Plc

Peeta Azubogu

Head, Remedial Management Team 1

Iyke Azubogu

Group Head Remedial Management”

An offer may be defined as a default indication by one person to another that he is willing to conclude a contract on the terms proposed which when accepted will create a binding legal obligation. The offer may be verbal, written or even implied from the conduct of the offer. See **MAJEKODUNMI V NATIONAL BANK OF NIGERIA(1978) 3 SC 119 @ 129, AMANA SUITE HOTEL LTD. V PDP (2006) LPELR 11675 CA, OMEGA BANK (NIG) PLC. V O. B. C. LTD (2005) 8 NWLR (PT928) 547 SC. RABIU VS. USMAN (2016) LPELR 40233 CA.** While acceptance may be defined as any act signifying the offerees consent to the terms proposed by the offeror. An enforceable contract will not come into existence unless the acceptable terms is brought to the attention of the offeror.

Looking at the Exhibit A9, the paragraph 1 thereby appears to make reference to an offer by the Claimant and not to the Claimant by the 1st defendant as argued by the Learned Counsel to the Claimant. The letter

referred to the *“proposal by the Claimant to make payment of the sum of **₦100,000,000 (One Hundred Million Naira)** only for the release of Certificate of Occupancy of a parcel of land sold to your good selves”* The background story of this case showed that the Claimant was introduced by the 2nd defendant at the point the 2nd -4th defendants defaulted in satisfying their obligation to the 1st defendant and 1st defendant was about to dispose off the property. Apparently the claimant was brought in to purchase part of the property in order to forestall a foreclosure and selling off of the property by the 1st defendant. This can be deduced from the uncontradicted testimony of the DW1 in their defence.

In my view if there was any contract at all, it was between the claimant and the 2nd -4th defendants. The said Exhibit A9 merely refers to the negotiations that took place between the claimant, the 1st defendant, and 2nd -4th defendants. I therefore find it difficult to construe that there was a contract between the claimant and the 1st defendant. Furthermore, another reason why it cannot be said that there was a contract between the claimant and the 1st defendant was because the payment for the property as agreed between the parties during their negotiations was paid into the account of the 4th defendant with the 1st defendant to liquidate part of the indebtedness, of the 2nd - 4th defendants to the 1st defendant. Also the statement in the last paragraph of Exhibit A9 that ***“the documents will be released jointly to NV & U Limited (represented by Chiedu Nwkolo) and***

De-Chico Investment Limited(represented by Jude Umeh) respectively upon receipt of values.” is a promise. There is nothing in the Exhibit A9 indicative of the fact that the claimant and the 1st defendant intended to create a legal relation. The Exhibit A9 does not create any legal duty on the part of the 1st defendant to release the Certificate of Occupancy to the Claimant, as there is no reversionary interest on the Claimant but on the 3rd defendant.

However, a proprietary interest appears to have inured to the claimant over the said sub-divided plot which makes it inequitable for the 1st defendant to hold on to the entire mortgaged property. A crucial examination of Exhibit A6 titled; *“Consent for the Subdivision of Plot 2713, Cadastral Zone A06 Maitama District, Abuja”* and Exhibit DW9, a letter surrendering the C. of O. with the Approval for Consent for Subdivision by the Land Department Administration of the Federal Capital Territory addressed to the Deeds Registrar AGIS by Counsel to the 1st Defendant and also the attached letter dated 25th September, 2012 wherein the 1st defendant acknowledged the right of the Claimant to the sub-divided plot. The 1st defendant stated in his letter thus;

“The above subject customer refers.

The above named customer of ours is presently processing the partitioning of a property covered by Certificate of Occupancy in the name of Chukwunedu Nwokolo and reported as no. 14466 at page 14466 in volume 72 in the land

registry office at Abuja used as collateral for a facility granted by us and requests that we make available the original Certificate of Occupancy for the process.

Consequently, we hereby make available to you the Certificate of Occupancy and instruct you to release same to the appropriate authority when you have duly confirmed that the Bank's interest in the document is firmly assured.

Kindly acknowledged receipt of the said certificate of occupancy in the duplicate copy attached.

Thank you.

Yours faithfully,

For Fidelity Bank Plc.

Signed

Abubakar Ringim
Legal Services Division.

Eloko Orurino
Legal Services Division."

By this above referred letter, the 1st defendant is estopped from denying the right of the Claimant to the said sub-divided part of the mortgaged plot purchased by the Claimant where a consideration was paid. On the doctrine of proprietary estopped, I rely on **CHITTY ON CONTRACT VOLUME 1 GENERAL PRINCIPLES PAGE 343 @ PARAGRAPHS 3-137**, where it is stated thus:

"Proprietary estoppe is said to arise in certain situations in which a person has done acts in reliance on the belief that he has or that he will acquire rights in or over another's land."

On the scope of proprietary estopped, the author referred to two instances:

“ (1) Acquiescence and (2) “Encouragement” in the sense of conduct by the land owner or a representation by him from which a promise to other party (the promisee) can be inferred to the effect that the promisee has a legally enforceable interest in the land or that one will be created in his favour. If the other party acts in reliance on such a promise, the question will arise to what extent the promise can be enforced, even though it may not be supported by consideration, or fail to satisfy the other requirements (such as those of certainty or form) of a binding contract.”

The author further opined that this doctrine of propriety estopped can be invoked to prevent the promisor from asserting of rights against the promisee in land which the latter had acquired from a third party, and from enforcing a charge which had been created in the promisor’s favour over the promisee’s land.

The 1st defendant in the instant case have by their conduct, and Exhibit DW9, with attached letter dated 25th September, 2015 waived their rights to the entire mortgaged property and cannot take refuge under the guise that the 2nd -4th defendants have defaulted in paying the balance of **₦20,000,000(Twenty Million Naira)** deny or refuse the Claimant’s right to the sub-divided plot. The contention of the 1st defendant that the Federal Capital Territory Administration Land Department refused to register the

sub-divided plot does not hold water, the claim is not backed up with any proof. Exhibit A6 is an approval for sub-division of the plot granted by the Honorable Minister of Federal Capital Territory with the terms and conditions therein contrary to the contention of the 1st Defendant that the Deed Registrar FCT refused to register the sub-division.

Consequently the 1st defendant is hereby ordered to release the Certificate of Occupancy No. e80uw-3ad4z-5b06r-a078u-10 over Plot No. 2713A, Maitama (AO6) District to the Deed Registrar Land Registry office for registration of the sub-divided plot in favour of the Claimant with immediate effect.

SIGN

**HON. JUDGE
16/3/2021.**