

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**

**IN THE NYANYA JUDICIAL DIVISION**

**HOLDEN AT COURT 8 NYANYA ABUJA**

**BEFORE HIS LORDSHIP: HON. JUSTICE U.P. KEKEMEKE**

**SUIT No. FCT/HC/CV/900/17**

**COURT CLERKS: JOSEPH BALAMI & ORS.**

**BETWEEN:**

**GROUP CAPTAIN FRIDAY EKPAH.....CLAIMANT**

**AND**

**1. RAFUYAL NIGERIA LIMITED**

**2. TALATU FAITH ABDULLAHI**

**(ALSO KNOWN AS TALATU FAITH ADEYEYE) ...DEFENDANTS**

**(ALSO KNOWN AS TALATU LAWAL)**

**JUDGMENT**

The Claimant's Claim vide a Writ of Summons and Statement of Claim dated 10<sup>th</sup> day of February 2017 is for the following reliefs:

1. A declaration that the failure of the Defendants to hand over Block D5, HISDRAGNET LTD Estate known and situate at Plot 37 Wumba District is unlawful and a breach of contract between the parties.
2. An Order compelling the Defendants to refund the sum of N7,850.000 only being the money paid to the Defendants by the

- Claimant for the purchase of a Plot of land located at Gwarinpa or the purchase of Block D5 HIS-DRAGNET LTD Estate known and situate at Plot 37 Wumba District, Abuja.
3. 12% interest on the Judgment sum from May 2012 until Judgment is delivered.
  4. 6% interest from the date of judgment until the Judgment sum is finally liquidated.
  5. N100 Million as General Damages.
  6. N750,000 as cost of the action.

The Defendants were served on 10<sup>th</sup> day of January 2018.

They were further served with Hearing Notices.

The Claimant opened his case on 19/09/2018 and called two witnesses in proof of his case.

The first Claimant's witness is the Claimant himself. He is Group Captain Friday Ekpah of Nigeria Air Force. That he filed a Witness Statement on Oath dated 10/02/18. He adopted same as his oral evidence.

Succinctly, he states that the 1<sup>st</sup> Defendant is amongst others engaged in the business of property management, building and general contract.

The 2<sup>nd</sup> Defendant is a Director of the 1<sup>st</sup> Defendant.

That sometimes in 2012, the 2<sup>nd</sup> Defendant was introduced to him as a Developer and Manager of landed property in Abuja by Charles Yusuf and Musa Edili.

The 2<sup>nd</sup> Defendant assured him that she has a vast experience in property acquisition and development.

Based on the assurance and representations of the 2<sup>nd</sup> Defendant, parties agreed on the purchase of a Plot of land from the Defendant for the development of a 5 bedroom duplex at Gwarinpa District for a consideration of N8,500,000.00 only.

After negotiating the payment plan in the presence of Charles Ainoko Yusuf, he paid N6 Million only to the 2<sup>nd</sup> Defendant vide a Diamond Bank Cheque dated 1/05/12 as part payment. The 1<sup>st</sup> Defendant on the instruction of the 2<sup>nd</sup> Defendant issued a receipt dated 10/05/12 in his name leaving an outstanding balance of N2.5 Million. He thereafter demanded for documents evidencing the allocation of the Plot to him from the Defendants so that he can mobilize to site.

The 2<sup>nd</sup> Defendant told the Claimant to exercise patience as there are few issues to resolve.

That rather than furnish him with the documents of title, the Defendants persuaded him to pay an additional N1.5 Million out of the outstanding balance of N2.5 Million. He was issued with a receipt dated 21/12/12.

The Defendant still failed to give him the title documents. He wrote to the Defendants demanding for a Plot of land at Gwarinpa. The letter is dated 23/08/13.

The Defendants reluctantly allocated to him a Plot land for a 4 bedroom duplex at Block D5 HISDRAGNET LTD Estate know and situate at Plot 37 Wumba District Abuja instead of the Gwarinpa District, Abuja as agreed on the understanding that this new allocation would be a replacement of the Gwarinpa Plot. He accepted this new allocation in a bid to make progress in the development of his residential apartment.

He was expected to erect a structure valued at not less than N65 Million. It was also agreed that the Defendants shall not be entitled to additional payment notwithstanding the terms contained in the new allocation except money for excavation/building plan and infrastructure.

That after the receipt of the allocation paper to commence development, the 2<sup>nd</sup> Defendant asked him to pay N350,000 for excavation and building plan which he did. He was issued with a receipt dated 4/11/13.

That despite all the payments above, the Defendants failed to take him to site let alone showing him the Plot purportedly allocated to him. He thereafter petitioned the EFCC who arrested the Defendant but later granted her bail.

The 1<sup>st</sup> Defendant issued two post-dated cheques which were signed by the 2<sup>nd</sup> Defendant for N2 Million and N5.5 Million respectively covering the amount paid by him to the Defendant in the name of Charles Ainoko Yusuf the person who introduced the 2<sup>nd</sup> Defendant.

When these cheques were dishonoured upon presentation for lack of funds, the Defendants till date have failed, neglected and or refused to honour the contract they entered into with him  
He prays as per the Writ of Summons and Statement of Claim.

The PW<sub>1</sub> tendered the following Exhibits.

Exhibit A – copy of Diamond Bank cheque for N6 Million dated 10/05/12.

Exhibit B - Cash Receipt from 1<sup>st</sup> Defendant for N6 Million dated 10/05/12.

Exhibit C – Receipt issued in the name of 1<sup>st</sup> Defendant for N1.5 Million dated 21/12/12.

Exhibit D – The 1<sup>st</sup> Defendant's letter of offer dated 4/11/13.

Exhibit E – Receipt from 1<sup>st</sup> Defendant to witness dated 4/11/13 for N350,000.

Exhibit F and F<sub>1</sub> – Two Forms of particulars of Directors dated 11/12/07 and 24/05/14.

Exhibit G – Petition of witness Solicitors to EFCC dated 1/09/14.

Exhibit H – Receipt dated 28/10/16 for legal services.

The Defendants failed, refused and or neglected to cross-examine the witness.

The Claimant's 2<sup>nd</sup> witness is Charles Ainoko Yusuf.

He stated orally that he lives at No.33 Royal Palm Street, Ministry of Works & Housing Estate, Karu.

That on 10/02/17, he filed a Witness Statement on Oath. On 27/03/19, he filed an Additional Witness Statement on Oath. He adopts them as his final evidence.

In his 1<sup>st</sup> Witness Statement on Oath he corroborated the evidence of the PW1. The evidence is on all fours with the evidence of PW1. It is therefore unnecessary to summarise same.

The PW2 Additional Witness Statement sworn to on 7/03/19 stated that the 2 cheques issued by the Defendants which was signed by the 2nd Defendant in his favour as refund of purchase price to the Claimant are for N2 Million and N5,850,000.00 respectively covering the amount paid to the Defendants by the Claimant.

The said cheques are Exhibits J and J1.

The above is the case of the Claimant.

The Defendants failed or neglected to give evidence despite service of Hearing Notices. The Claimant's Counsel adopted his Final Written Address.

He posited only one issue for determination which is whether the Claimant has established with credible evidence the essential elements required in law to be entitled to the reliefs sought. He submitted that the Claimant has adequately discharged the evidential obligation placed on him to prove his case on the balance of probability.

That the uncontroverted evidence of Claimant clearly established the existence of a contract between the Claimant and Defendants and the flagrant breach thereof by the Defendants.

That by the issuance of receipt of purchase and Exhibits A – D, the Defendants impliedly covenanted that they had a valid title to the land they sought to transfer.

That from the evidence, the Defendants knew they had no property to convey yet, went ahead to misrepresent facts to the Claimant which made him to part with N7,850,000.

He also urges the Court to grant cost.

In totality the Claimant has discharged the burden placed on him.

He urges the Court to grant all the reliefs.

I have read the evidence summarised above and considered the Written Address of Counsel.

In civil cases such as this, the burden of proof is on the party who asserts a fact to prove same, for he who asserts must prove. The

standard of proof required is on a preponderance of evidence and balance of probabilities.

See ***MANI VS. SHANONO (2006) 4 NWLR (PT.969)132.***

***ITAUMA VS. AKPE-IME (2000) 7 SC (PT.11) 24***

***BRAIMAH VS. ABUSI (1998) 13 NWLR (PT.581) 167 SC.***

The Defendants were introduced to the Claimant as Property Developers. The Defendants also presented themselves as property and Estate Owners.

Based on the representation that the Defendants will allocate a Plot of their estate land to the Claimant for development, it was agreed that the Claimant pays N8,500,000.

The Claimant paid a total of N7,850,000.

Receipts were issued which were Exhibits. The Defendants failed, neglected to show the Claimant the said land to enable him commence development. The Claimant demanded the refund of the purchase price The Defendant issued Exhibits J and J1 for N2 Million and N5,850,000.00 respectively but they bounced.

The Claimant claim is as per the Writ of Summons. The contract of the parties is oral. The law is that an oral transaction or agreement freely entered into by the Parties is binding on the parties thereto and gives rise to an enforceable contract.

See ***J.E. OSHEVIRE LTD VS. TRIPOLI MOTORS (1997) 5 NWLR (PT 503) P.1 SC.***

Where a party alleges an oral agreement as in this case, it must be proved with credible evidence.

See ***ARCHIBONG VS. ITA (2004) 2 NWLR (PT.858) 590 SC.***

There are five important factors that must be present in a valid contract. They are (1) Offer, acceptance, consideration, intention to create legal relationship and capacity to contract.

All the above ingredients are present in the evidence before me. Whenever on an issue, evidence comes from one side and is unchallenged and uncontroverted as in this case, it ought normally to be accepted on the principle that there is nothing to be put on the other side of the balance unless it is of such quality that no reasonable tribunal should have believed it.

So when evidence goes on one way, the onus of proof is discharged on a minimal of proof.

See ***ALHAJI ABDULLAI BABA VS. NIGERIAN CIVIL AVIATION TRAINING CENTRE, ZARIA (1991) 7 SC NJ. 1 Ratio 3.***

I believe the evidence of the Claimant's witnesses. They are credible and probable. I hold that there is a valid contract between the Claimant and the Defendant.

I also find and hold that the Defendants breached the said contract. Building materials have gone up. The Defendant tied down the funds of the Claimant, therefore entitled to damages.

In the circumstance, Judgment is entered in favour of the Claimant against the Defendants as follows:

1. It is hereby declared that the failure of the Defendants to hand over Block D5 HIS- DRAGNET LTD Estate known and situate at Plot 37 Wumba District, Abuja is a breach of the contract entered between the Claimant and the Defendants.
2. The Defendants are hereby ordered to refund the sum of N7,850,000.00 only being the money had and received from the Claimant for the purchase of the Plot of land.
3. 6% interest from the date of judgment until judgment sum is finally liquidated.
4. N10 Million as general damages for breach of contract.

Cost is assessed at N500,000.00 pursuant to Order 56(3) and (4) of the rules of Court.

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**HON. JUSTICE U.P. KEKEMEKE**

(HON. JUDGE)

9/03/21.

Parties absent.

No legal representation.

Judgment delivered

Signed.

Hon. Judge.

9/03/21