

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**  
**IN THE NYANYA JUDICIAL DIVISION**  
**HOLDEN AT COURT 7 NYANYA ON THE 4<sup>TH</sup> DAY OF MARCH,**  
**2021**

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

**SUIT NO. FCT/HC/CV/1964/14**

**COURT CLERK: JOSEPH BALAMI ISHAKU**

**BETWEEN:**

**OLUWAFEMI ADEDAYO.....CLAIMANT**

**AND**

1. SARAHA HOMES LIMITED
2. ALHAJI KABIRU HARUNA
3. SUPARCELL REAL ESTATE INT'L LTD .....DEFENDANTS
4. ALHAJI IDRIS ALIYU SHUAIBU
5. SUPARCELL DEVELOPMENT LTD.
6. BARR DONALD ARIKU

**JUDGMENT**

The Claimant's Writ of Summons is dated 3/07/14, it was subsequently ordered to be amended on 10/05/16. By a Writ of Summons filed via an Order of Court dated 7/12/17, it was further amended vide an Order of Court dated 16/4/18. The Further Amended Writ of Summons is dated 25/05/18 and filed the same date.

It prays the Court for the following:

1. The sum of ₦6,435,500 being money had and received by the Defendants to the Claimant's use for a consideration that has failed.

2. The sum of ₦1,100,000.00 only as money spent on the land by Claimant.
3. Interest at the rate of 22% per annum from the 15<sup>th</sup> of April 2011 until Judgment and thereafter 10% until Judgment is finally liquidated.
4. ₦3 Million as cost of the action.
5. General Damages in the sum of N5 Million.

The Claimant gave evidence for himself. He is Oluwafemi Adedayo.

That he is the beneficial Subscriber of a 3 Bedroom Bungalow known as Block B19 and situate at Plot 4 Cadastral Zone C10, Wumba District, Abuja.

The 1<sup>st</sup> Defendant is a Company contracted by the 5<sup>th</sup> Defendant to find subscribers and to facilitate the allocation of Plots in the 5<sup>th</sup> Defendant's Estate. The 2<sup>nd</sup> Defendant as its alter ego.

The 3<sup>rd</sup> Defendant is the 4<sup>th</sup> Defendant's Company in whose bank account money for infrastructure in the property was paid by him. The 4<sup>th</sup> Defendant is the alter ego of the 3<sup>rd</sup> Defendant. The 5<sup>th</sup> Defendant is the beneficial owner of the property by a Lease

Agreement entered into with the Federal Capital Development Authority.

The 6<sup>th</sup> Defendant is the legal attorney appointed by the 5<sup>th</sup> Defendant and also mandated to collect infrastructure fees in respect of Plot No.4 Cadastral Zone C10 Wumba District, Abuja.

That the Defendants at all material times held themselves out as beneficial owners of the Plot of land known as Plot No. 4 Cadastral Zone C10 Wumba District Abuja.

That by the 1<sup>st</sup> Defendant's application form and payment of the sum of ₦10,500.000 non-refundable fee evidenced by receipt dated 15/04/11, he subscribed to a Plot in the said Plot No. 4 Cadastral Zone C10 Wumba District, Abuja.

That the 1<sup>st</sup> Defendant vide the 5<sup>th</sup> Defendant granted an interest to him as expressly stated in the letter of allocation dated 20/04/11.

He was not aware of Defendant's defective title and paid ₦5 Million on the 14<sup>th</sup> of April 2011 vide a GTB Cheque No. 00011560 for the allocation. The receipt for payment upon receipt of the cheque is No. 4394 dated 15/04/11.

The 1<sup>st</sup> Defendant subsequently instructed him to pay another sum of ₦125,000.00 as transfer charges. He paid the said sum in full and was issued with a receipt No. 4416 dated 18/04/11. He paid another sum of ₦300,000.00 to the 1<sup>st</sup> Defendant on the 20/04/11 evidenced by receipt No. 4447 for setting out, excavation and survey fee, building plan and engineering supervision.

The 1<sup>st</sup> Defendant further issued him authority to proceed to site dated 25/04/11 with reference No. SRH/SEL/BGL/B19.

In addition, the 1<sup>st</sup> Defendant also handed over to him the approved prototype design/drawings for construction.

That upon approval, he undertook the construction work in accordance with the approved prototype building design without any encumbrance from the Defendants.

That the 1<sup>st</sup> Defendant through the 2<sup>nd</sup> Defendant on the 18/12/12 sent a special Notice to all landlords in Plot 4 Cadastral Zone C10 Wumba District Abuja that it has completed its contractual relationship with the 5<sup>th</sup> Defendant and further instructed all

landlords including him to deal with the 5<sup>th</sup> Defendant directly.

That immediately after the Notice, the 5<sup>th</sup> Defendant queried the signature on his allocation letter.

The 1<sup>st</sup> Defendant through the 2<sup>nd</sup> Defendant wrote a letter dated 13/05/13 confirming that the signature is genuine. That upon the fulfillment of his obligation in the allocation, he was to enjoy quiet and peaceful possession.

Sometimes in mid 2013, the 4<sup>th</sup> Defendant called for a meeting of all landlords including him where 4<sup>th</sup> Defendant raised the issue of payment of infrastructure fee. There was no agreement.

The 5<sup>th</sup> Defendant appointed the 6<sup>th</sup> Defendant as its Attorney and by the 6<sup>th</sup> Defendant's letter to him dated 13/12/13, the 6<sup>th</sup> Defendant demanded from him the sum of ₦3 Million as infrastructure fee to be paid into the 3<sup>rd</sup> Defendant's account. He paid ₦1 Million into the said account. That with the part payment of the infrastructure fee, the 6<sup>th</sup> Defendant further instructed the security men not to grant him access to his Plot.

The 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> Defendants refused to issue him receipt of payment in acknowledgement of the ₦1 Million only for infrastructure paid by him. That at the time of the purported allocation, the Defendant's title had lapsed and the Defendant had no valid title on the property and could not transfer title to him. The 5<sup>th</sup> Defendant in a Writ filed in the High Court in Suit CV/14200/11 against the Hon. Minister of the FCT & Others, prayed for an Order compelling the Hon. Minister to reinstate the ownership of the property to the Defendant. He later discovered that it is B-Net Engineering Ltd and other unknown persons and not the Defendants that are the rightful owners of the property as could be garnered from a letter of offer from FCTA to B-Net Engineering Ltd dated 16/12/2010.

On 26/05/14 after being denied entrance into his property, he instructed his Attorney to report the restriction of access to the property to the 6<sup>th</sup> Defendant who has refused any call for a meeting. That he spent ₦1,100,000.00 only for foundation works on the land.

He invested a total sum of ₦7,535,500.00 only in subscription, payment for the property and other fees regarding the property.

That the 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> Defendants are stopped and cannot be allowed to rely on procedure or any perceived illegality in respect of his allocation of Block B19 at Plot 4 Cadastral Zone C10 Wumba District, Abuja.

That it is in the interest of justice to grant the reliefs sought.

The Claimant tendered the following as Exhibits.

Exhibits A and A1 – Photocopies of application form and receipt.

Exhibit B – Allocation letter dated 20/04/11.

Exhibit C – Copy of Bank Draft issued to 1<sup>st</sup> Defendant for ₦5 Million.

Exhibit D - Official receipt of 1<sup>st</sup> Defendant dated 15/04/11 for ₦5 Million.

Exhibit E – Saraha Homes receipt dated 18/04/11 for ₦125,000.

Exhibit F – Receipt for ₦300,000 dated 20/04/11 issued by 1<sup>st</sup> Defendant.

Exhibit G – 1<sup>st</sup> Defendant’s letter of authority to proceed to site dated 20/04/11.

Exhibit H – Copy of drawing.

Exhibit I – Copy of Special Notice.

Exhibit J – Letter from 1<sup>st</sup> Defendant to 5<sup>th</sup> Defendant dated 13/05/13 drawing the attention of 4<sup>th</sup> Defendant about suspicious signature.

Exhibit K – Letter dated 13/12/13 addressed to Claimant.

Exhibit L – Ecobank Deposit Teller dated 07/04/14 for ₦1 Million for infrastructure.

Exhibit M - CTC of agreement between Hon. Minister & 5<sup>th</sup> Defendant.

Exhibit N- Copy of Writ of Summons between 5<sup>th</sup> Defendant and Hon. Minister & 2 ors.

Exhibit O – CTC of letter of allocation to B-Net Engineering dated 16/12/10.

Exhibit P – Letter dated 26/05/14 from Ebokpo Adedayo to D.O. Arikun

Exhibit Q – Receipt of payment of legal fee.

The 1<sup>st</sup> and 2<sup>nd</sup> Defendants had no question for the Claimant i.e. PW1.



On being cross-examined by 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants' Counsel, the witness answered as follows:

That he went to the office of the 1<sup>st</sup> Defendant to acquire the land.

That from information provided for him the estate belongs to the 5<sup>th</sup> Defendant as at the time he bought. He cannot remember the particular Plot within the estate. He raised a bank draft and obtained a receipt from 1<sup>st</sup> Defendant.

That payment made for 1<sup>st</sup> Defendant is said to be for 5<sup>th</sup> Defendant. Mrs. Mary Nnang, the Site Manager says it is for 5<sup>th</sup> Defendant. She works for 1<sup>st</sup> Defendant. That when he was making the payment, he did not see any representative of 5<sup>th</sup> Defendant.

The N1 Million deposit for infrastructure was paid to 3<sup>rd</sup> Defendant.

That payment was made according to the Notice from 1<sup>st</sup> Defendant to pay to the account of 3<sup>rd</sup> Defendant. The bank draft was raised in the name of 3<sup>rd</sup> Defendant.

To a question he answered that the assumption is that the account is for the 5<sup>th</sup> Defendant.

That the 3<sup>rd</sup> Defendant's account was used by the 5<sup>th</sup> Defendant for the purpose of receiving money for infrastructures.

To another question he answered that the Notice Exhibit I states the relationship.

That during the transaction, he went to the office of 5<sup>th</sup> Defendant and the Director 4<sup>th</sup> Defendant. They did not say his allocation was void.

He did not see any agreement between 1<sup>st</sup> Defendant and 5<sup>th</sup> Defendant. It was at that point that he was refused access to develop his property that he became aware that his title was defective. He is not aware that 1<sup>st</sup> and 2<sup>nd</sup> Defendants entered into the property without the consent of the 5<sup>th</sup> Defendant.

To a further question, he answered that they told him the money he paid was transferred to the 5<sup>th</sup> Defendant. He is not aware that the money was not transferred.

The 6<sup>th</sup> Defendant could not show up for a meeting.

The Defendants could not transfer title.

The above is the case of the Claimant.

The 1<sup>st</sup> and 2<sup>nd</sup> Defendant opted not to defend the action.

The 3<sup>rd</sup>-5<sup>th</sup> Defendants called a witness in defence of the Suit. He is Alhaji Idris Aliyu Shuaibu, a businessman. He adopted his Witness Statement on Oath sworn to on 15/10/19. He adopted same as his oral evidence.

In the said statement, he deposed that he has the consent of 3<sup>rd</sup> and 5<sup>th</sup> Defendants to swear to this Oath.

He is the 4<sup>th</sup> Defendant and one of the Directors of the 3<sup>rd</sup> Defendant and also the Managing Director of the 5<sup>th</sup> Defendant.

In 2005, the 5<sup>th</sup> Defendant applied to participate in the Mass Housing Development Programme and Plot No. 4 Cadastral Zone C10 at Wumba District Abuja which comprises of 240,000 square metres was allocated to her.

After the 5<sup>th</sup> Defendant received the letter of offer, they mobilized to Site and commenced construction of building and infrastructure. The 5<sup>th</sup> Defendant

paid all necessary fees and signed a Development Lease Agreement with FCDA.

That ownership of Plot No.4 in Cadastral Zone C10 Wumba District has never been in dispute not until 16<sup>th</sup> December 2010 when the Hon. Minister of FCT redesigned Wumba District and quoted part of No.4 to B-Net Engineering Ltd and others and the Minister's action was challenged by 5<sup>th</sup> Defendant by filing Suit No. CV/4200/11. The 5<sup>th</sup> Defendant who is the original allottee never assigned a letter of allocation or any part thereof to the Claimant nor authorized the 1<sup>st</sup> and 2<sup>nd</sup> Defendants or any other persons to do so.

That 5<sup>th</sup> Defendant has never collected the sum of ₦5 Million or any amount of money from the Claimant or anybody as consideration for the said Plot of land or any part thereof.

When 5<sup>th</sup> Defendant became aware of the activities of the Claimant and the 1<sup>st</sup> and 2<sup>nd</sup> Defendants on the said Plot of land, they made a complaint to the appropriate authority for necessary action. The 6<sup>th</sup> Defendant acted in his professional capacity as agent

of the 3<sup>rd</sup> – 5<sup>th</sup> Defendants' Counsel, no amount of money was paid to him directly.

That a letter of demand for the payment of infrastructure was sent to the Claimant by 6<sup>th</sup> Defendant on the 14/12/13 to produce proof of ownership or evidence of payment made in favour of 5<sup>th</sup> Defendant in order to obtain the authority of the 5<sup>th</sup> Defendant before the payment of infrastructure fee.

The Claimant failed to do so. The Claimant did not produce any title document or evidence of payment made in favour of the 5<sup>th</sup> Defendant as clearly stated in the letter before he made the payment of One Million Naira into the 3<sup>rd</sup> Defendant's Ecobank account without the consent of the 5<sup>th</sup> Defendant or his agent.

That based on the content of the letter of demand for infrastructure, it is for those who have proper title acquired from the 5<sup>th</sup> Defendant and such payment was to be made within 21 days commencing from the date on the letter.

That Claimant made the payment of ₦1 Million into 3<sup>rd</sup> Defendant's Ecobank account on the 17/04/14

after he was advised by the 6<sup>th</sup> Defendant not to make any payment into the said account. The ₦1 Million was paid four months after the letter from the 6<sup>th</sup> Defendant which specified 21 days full payment in respect of those who have title documents obtained directly from the 5<sup>th</sup> Defendant.

Immediately the 4<sup>th</sup> Defendant got the alert of the said payment on 7/04/14, he informed the 6<sup>th</sup> Defendant and he advised him to refund the money.

That on the same date, the 4<sup>th</sup> Defendant contacted the Claimant on phone to provide his bank account detail to enable him transfer the said ₦1 Million back to him but he willfully refused to provide his account details and threatened to file legal action against him and others if the 5<sup>th</sup> Defendant fails to grant the piece of land to him. He therefore issued Ecobank cheque No. 00000519 on the 11/4/14 in favour of the Claimant and the 3<sup>rd</sup> Defendant's Accountant thereafter contacted the Claimant on Phone to pick the said cheque from their office at Gudu, Abuja but he rebuked him on phone.

The 3<sup>rd</sup> and 4<sup>th</sup> Defendants also contacted the 6<sup>th</sup> Defendant to forward the said Eco bank cheque to

the Claimant and the 6<sup>th</sup> Defendant wrote a letter on 15/04/14 informing him to go to the 6<sup>th</sup> Defendant's office to collect the said N1 Million cheque issued in his favour, but he refused. The Claimant refused and instead filed a Suit No. CV/1717/14 on the 5/06/14 against the Defendants which is currently pending before another Court wherein he made frivolous allegations. The Claimant also filed this Suit CV/1964/14 against the same parties in respect of the same issue.

The Claimant did not demand or refund nor collect the said sum made available to him.

That 3<sup>rd</sup> Defendant is willing to refund the N1 Million but applicant is not ready to collect the money.

That the Suit No. CV/14200/11 filed by the 5<sup>th</sup> Defendant against the Honourable Minister of FCT & Others has nothing to do with this case as the 5<sup>th</sup> Defendant has no transaction with the Claimant and other Defendant in this case.

This Suit is frivolous and instituted in bad faith.

The Defence witness tendered the following Exhibits:  
Exhibits R and R1 – The letter of offer in the name of Suparcell Development Company (5<sup>th</sup> Defendant) and

Development Lease Agreement between FCTA and 5<sup>th</sup> Defendant.

Under Cross-examination by 1<sup>st</sup> and 2<sup>nd</sup> Defendants Counsel, the witness answered that when he noticed the activities of the Claimant and the 1<sup>st</sup> and 2<sup>nd</sup> Defendants, he reported to his Lawyer and the appropriate authority.

To another question, he said 5<sup>th</sup> Defendant made efforts to refund when they saw the wrong payment. Claimant was invited to come and collect his money.

To another question, he answered that the activities of 1<sup>st</sup> and 2<sup>nd</sup> Defendants were not carried out on their instruction.

That they don't have any dealings with 1<sup>st</sup> and 2<sup>nd</sup> Defendants neither do they have any agreement with them. They made report to the appropriate authorities.

On being Cross-examined by the Claimant, the witness (4<sup>th</sup> Defendant) answered that he is a Director in the 3<sup>rd</sup> Defendant.

He is also a Director in the 5<sup>th</sup> Defendant.



He has no dealing with 1<sup>st</sup> and 2<sup>nd</sup> Defendants in respect of Plot 4 Wumba District.

He would be surprised if there is a transfer of fund to the account of 3<sup>rd</sup> – 5<sup>th</sup> Defendants in respect of Plot 4 Wumba District.

That 6<sup>th</sup> Defendant is his Company lawyer. He authorized Exhibit K. He is just seeing Exhibit I.

There is an ongoing Suit in Court 1 in respect of the said Plot of land.

That Exhibit N is the Writ of Summons in respect of the other suit. He had met the Claimant several times in his office. The cheque he issued is still with his lawyer.

The above is the case of the 3<sup>rd</sup> – 5<sup>th</sup> Defendants.

The 6<sup>th</sup> Defendant elected not to give evidence.

Parties were ordered to file and serve Written Addresses.

The 1<sup>st</sup> and 2<sup>nd</sup> Defendants' Counsel adopted their Final Written Address dated 4/12/20 and filed the same date.

They formulated one issue for determination which is whether an agent is liable for actions carried out at the instance of a disclosed principal. He canvassed

that once there is a disclosed principal, an agent who acted at his behest is not liable. That all the lawful actions of the 1<sup>st</sup> Defendant and its alter ego the 2<sup>nd</sup> Defendant were on the authority of the 5<sup>th</sup> Defendant.

The 3<sup>rd</sup> – 5<sup>th</sup> Defendants' Counsel also adopted his Final Written Address dated 17/08/20 but filed on the 20<sup>th</sup>.

He posited two issues for determination:

1. Whether on the facts before the Court the 3<sup>rd</sup>-6<sup>th</sup> Defendants can be considered to be parties to the transaction entered into between Claimant and 1<sup>st</sup> and 2<sup>nd</sup> Defendants.
2. Whether the Claimant has placed sufficient evidential materials before the Court to entitle him to the reliefs sought.

On issue 1, Learned Counsel argues that the Claimant is not the owner of Block B19 located within Plot No.4 in Cadastral Zone C10 Wumba District allotted to the 5<sup>th</sup> Defendant by the Hon. Minister. The original allottee did not transfer her

right of ownership or cede any part to the Claimant or anybody.

That a person who is not a party to an agreement as in the instant case cannot enforce same. That 3<sup>rd</sup> – 5<sup>th</sup> Defendants are not parties to the transaction between Claimant and 1<sup>st</sup> and 2<sup>nd</sup> Defendants and cannot be sued as such. The onus is on the Claimant who asserts that he is the owner of the block in issue and that an oral or Written Agreement to cede the Plot to him exists between the parties.

On issue 2, Learned Counsel argues that the Claimant is not entitled to the reliefs sought, having failed to place sufficient materials before the Court.

The Claimant and 1<sup>st</sup> and 2<sup>nd</sup> Defendants failed to prove their title in the course of trial. All documents tendered do not tally with proof of title. The Exhibits do not show that he has title to Block B19 but it shows that there is a business relationship between Claimant and 1<sup>st</sup> and 2<sup>nd</sup> Defendants who are not legal owners of the Plot in issue.

That the Claimant and 1<sup>st</sup> and 2<sup>nd</sup> Defendants did not adduce evidence to show that the 5<sup>th</sup> Defendant is part of the relationship.

The 5<sup>th</sup> Defendant on the other hand has proved ownership of the Plot in dispute and that the said piece of land was allocated to one Joseph Abutu who is currently in possession.

That the evidence of the 3<sup>rd</sup> – 5<sup>th</sup> Defendants touching on ownership of the Plot in issue was not challenged or controverted.

That Claimant has failed to prove his case as required by law. He urges the Court to dismiss the case and enter Judgment in favour of the 3<sup>rd</sup> – 5<sup>th</sup> Defendants with substantial cost.

The Claimant's Counsel also adopted his Final Written Address dated 26/10/20 but filed on the 26<sup>th</sup>.

He posited one issue for determination which is whether in the circumstance of this action, the Claimant has successfully discharged the burden of proof on the preponderance of evidence and therefore entitled to the claims sought.

Learned Counsel raised a preliminary issue of whether it is appropriate for the 6<sup>th</sup> Defendant who is a party in this Suit to announce and represent the 3<sup>rd</sup> – 5<sup>th</sup> Defendants. That all processes filed by the

6<sup>th</sup> Defendant for the 3<sup>rd</sup> – 5<sup>th</sup> Defendants are incompetent and ought to be set aside.

In the circumstance, the suit is undefended.

On the sole issue, Learned Counsel canvasses that the burden of proof in a civil case rest on the party who asserts.

That at the time of the purported allocation of the property to the Claimant, the title of the 5<sup>th</sup> Defendant had been revoked by the FCTA. Refers to Exhibit N, the Writ of Summons filed by 5<sup>th</sup> Defendant against FCTA to challenge the revocation hence Claimant claimed for money had and received. The evidence of the 3<sup>rd</sup> – 5<sup>th</sup> Defendants is incredible and should not be believed.

That the Defendants lone witness is not a witness of truth.

That the oral evidence given by the 3<sup>rd</sup> to 5<sup>th</sup> Defendants' witness is improbable. He urges the Court to discountenance same to enter Judgment in favour of the Claimant as prayed.

I have read the evidence as summarized above and considered the Addresses of Counsel.

The issues for determination in my view is whether the Claimant has proved his case on the preponderance of evidence and balance of probability as to entitle the Claimant for the reliefs sought.

In proof of his case he tendered Exhibit A an application form.

It is headed **“Application Form”**.

**“Development of Saraha Homes Estate”**.

Exhibit A1 is the Receipt of the payment of ₦10,500 by the Claimant issued by the 1<sup>st</sup> Defendant (Saraha Homes).

Exhibit B is the allocation letter issued to the Claimant by Saraha Homes Ltd (the 1<sup>st</sup> Defendant) dated 20/04/11.

For the purpose of clarity and emphasis, I shall reproduce same. It is addressed to the Claimant.

**“RE- ALLOCATION OF 3 BEDROOM  
DETACHED BUNGALOW (BLOCK B19) AT  
OUR ESTATE, SUPACELL DEVELOPMENT  
LIMITED PLOT 4 CADASTRAL ZONE C10  
WUMBA DISTRICT, ABUJA.**

***With reference to your application No. 0206, we write to offer you a property in the above referred Estate on terms and subject to contract. LOCATION: SUPACELL DEVELOPMENT LIMITED, PLOT 4 CADASTRAL ZONE C10 WUMBA DISTRICT, ABUJA.”***

Pursuant to the above, the Claimant paid the 1<sup>st</sup> Defendant a GT Bank cheque of ₦5 Million dated 14 April 2011, it is Exhibit D. The 1<sup>st</sup> Defendant issued a receipt in its name quoting B19 Suparcell as the site upon which payment was made. It is dated 15/04/11. The 1<sup>st</sup> Defendant issued another receipt of ₦125,000 upon payment by the Claimant in respect of transfer charges on the same B19 Suparcell.

The Claimant paid another ₦300,000 to the 1<sup>st</sup> Defendant.

The 1<sup>st</sup> Defendant issued a receipt describing the payment as being for setting out and excavations.

In Exhibit G, the 1<sup>st</sup> Defendant gave the Claimant authority to proceed to site. It is dated 20/04/11.

I shall reproduce the relevant portion. It is titled:

**“AUTHORITY TO PROCEED TO SITE FOR 3  
BEDROOM DETACHED BUNGALOW (BOCK B19) AT  
OUR ESTATE, SUPACELL DEVELOPMENT  
LIMITED, PLOT NO. 4 CADASTRAL ZONE C10  
WUMBA DISTRICT, ABUJA.**

***Having satisfied the following payment***

- 1. Setting out, excavation and survey fee.***
- 2. Building plan***
- 3. Engineering supervision***

***Please pay into Union Homes Savings & Loans  
Plc Wuse Abuja.***

***Account Name – Saraha Homes Ltd.***

***Account No. 2060720535 ...”***

However, in Exhibit L – The Claimant paid ₦1 Million  
into the account of the 3<sup>rd</sup> Defendant.

Exhibit K is a letter of demand by the 6<sup>th</sup> Defendant  
acting for the 5<sup>th</sup> Defendant.

The 6<sup>th</sup> Defendant supplied the account No. of the 3<sup>rd</sup>  
Defendant.

The letter is addressed to the Claimant.

It is dated 13/12/13.

It is titled **“LETTER OF DEMAND FOR THE  
PAYMENT OF INFRASTRUCTURE FEES OF THE**



**SUM OF N3 MILLION TO ENABLE THE DEVELOPER TO PROVIDE THE BASIC INFRASTRUCTURES...**

***You are to come to our Office with photocopies of all your title documents and evidence of payment for the process of your individual certificate of occupancy with AGIS.”***

From the above, the payment of the N3 Million precedes the production of the title documents.

It also shows that the 5<sup>th</sup> Defendant is aware that the Claimant was allocated B19 an interest in its estate.

In Exhibit 1, the special Notice issued by 1<sup>st</sup> Defendant dated 18/12/12, all landlords are directed to henceforth deal directly with Suparcell as its contractual relationship with Suparcell had expired.

In Exhibit J- the 1<sup>st</sup> Defendant wrote the 5<sup>th</sup>

Defendant that the signature of the allocation letter in Plot B19, 3 bedroom at Plot No.4. Cadastral Zone C10, Wumba District Abuja is genuine.

The 3<sup>rd</sup> – 6<sup>th</sup> Defendants kept quiet after the receipt of the above letter.

It is obvious that the Claimant applied for an interest in the estate of the 5<sup>th</sup> Defendant. Most of the considerations were paid to the 1<sup>st</sup> Defendant with the knowledge of the 3<sup>rd</sup> – 6<sup>th</sup> Defendants as they failed, refused and or neglected to stop the 1<sup>st</sup> Defendant from introducing subscribers into their estate but rather condoned and endorsed it as could be deduced from evidence.

The 3<sup>rd</sup> – 5<sup>th</sup> Defendants denied him entrance into his property. He reported the restriction to the 6<sup>th</sup> Defendant who refused to meet him.

That he invested a total of ₦7,535,500:00 on the property. He has been denied possession and ownership.

He claims as per the Writ of Summons and Statement of Claim.

The 1<sup>st</sup> and 2<sup>nd</sup> Defendants failed, refused and or neglected to defend the action. I find as a fact that there was a relationship between the 1<sup>st</sup> and 2<sup>nd</sup> Defendants and the 3<sup>rd</sup>-6<sup>th</sup> Defendants in respect of the estate in contention.

- (2) The 3<sup>rd</sup> – 5<sup>th</sup> Defendants are aware that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants were marketing the estate

and were issuing letters of offer on their behalf to subscribers.

(3) The 3<sup>rd</sup>-6<sup>th</sup> Defendants were also aware that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants were receiving payments on their behalf. There is however no evidence to suggest that the monies were paid to the 3<sup>rd</sup> – 6<sup>th</sup> Defendants. The 3<sup>rd</sup> – 5<sup>th</sup> Defendants were represented by the 6<sup>th</sup> Defendant who entered appearance for them vide his Memorandum of Conditional Appearance dated 27/01/15,

Rule 17(5) of the Rules of Professional Conduct states that a lawyer shall not appear as Counsel for a client in a legal proceedings in which the lawyer himself is a party.

In the instant case the 6<sup>th</sup> Defendant Barrister Donald O. Ariku is the 6<sup>th</sup> Defendant.

He appeared for the 3<sup>rd</sup> – 5<sup>th</sup> Defendants by his Memorandum of Conditional Appearance dated 27/01/15 but filed on the 29<sup>th</sup>.

He filed the Statement of Defence and Final Written Addresses of the 3<sup>rd</sup> – 5<sup>th</sup> Defendants.

There are plethora of authorities to the effect that a Legal Practitioner cannot be a party to a case and at the same time appear as Counsel for another party in that case. The 6<sup>th</sup> Defendant can only appear as a litigant and cannot appear as Legal Practitioner for himself or on behalf of others.

The consequence of the attitude of the 6<sup>th</sup> Defendant is that he has not filed anything for the 3<sup>rd</sup> -5<sup>th</sup> Defendants.

By filing and arguing the case for the 3<sup>rd</sup> – 5<sup>th</sup> Defendants, he had appeared for them.

In the circumstance all the processes filed by him are incompetent.

Assuming I am wrong in coming to the above conclusion, there is evidence that the Claimant paid N1 Million to the 3<sup>rd</sup> – 5<sup>th</sup> Defendants. The Defence admitted same. There is also evidence that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants received payment for Block B19 it allegedly offered Claimant. The 3<sup>rd</sup> – 5<sup>th</sup> Defendants claimed ignorance but there is evidence that they are aware of the transaction. There is no evidence that 1<sup>st</sup> and 2<sup>nd</sup> Defendants transferred the money to 3<sup>rd</sup> – 5<sup>th</sup> Defendants.

There is no rebuttal that Claimant spent ₦1 Million for laying foundation.

In my view, the Claimant has proved his case against the Defendants on the preponderance of evidence and balance of probability.

The Claimant did not prove how he comes to be entitled to 22% interest per annum from the 15<sup>th</sup> of April 2011 until Judgment. It is not borne out of agreement or contract or the nature of the business of estate development. It is accordingly refused.

Relief 4 cannot be granted.

It is unjust to transfer the burden of paying the legal fees of his Counsel on another party.

In totality, the 3<sup>rd</sup> – 5<sup>th</sup> Defendants' Counterclaim fails. It is dismissed.

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

1. The Defendants are ordered to pay to the Claimant the sum of ₦6,435,500 only as

money had and received by Defendants as cost of the land and other fees.

2. The sum of ₦1,100,000 only as money spent on the development of the land by the Claimant.
3. ₦3 Million as General damages.
4. 10% interest from the date of Judgment until Judgment sum is finally liquidated.

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

**(HON. JUDGE)**

**4/03/21.**

Claimant present

Defendant absent.

J.I. Ebokpo for the Claimant.

Max Ogar with David Utibe for the 1<sup>st</sup> and 2<sup>nd</sup>

Defendants.

D.O. Arikun for 3<sup>rd</sup> – 5<sup>th</sup> Defendants.

Signed.

Hon. Judge.

4/03/21