

IN THE HIGH COURT OF JUSTICE
FEDERAL CAPITAL TERRITORY OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT APO – ABUJA
ON, 21ST DAY OF JUNE, 2021.
BEFORE HIS LORDSHIP:- HON. JUSTICE A. O. OTALUKA.
SUIT NO: FCT/HC/CV/2220/18

BETWEEN:

RTD MAJOR GENERAL FATAI OLADIPO ALLI:..CLAIMANT

AND

BAR CHUKWUDI NWEKE:.....DEFENDANT

KehindeSoremokun with Blessing James for the Claimant.
IfeyanyiChukwu for the Defendant.

JUDGMENT.

The Claimant filed this suit against the Defendant, vide a Writ of Summons under the Undefended List dated and filed the 29th day of June, 2018. The Defendant filed a notice of intention to defend and in a considered ruling, the Court transferred the matter to the General Cause List and ordered the parties to file and exchange pleadings.

The Claimant consequently filed a Statement of Claim on the 14th day of December, 2018 wherein he claimed against the Defendant as follows;

1. The sum of N11,000,000.00 (Eleven Million Naira) only, being money had and received by the Defendant from the Claimant in the suit.
2. 10% interest rate on the judgment sum from the date of judgment until final liquidation of same.
3. Cost of the action.

The case of the Claimant as contained in his Statement of Claim is that sometime in March, 2014, the Defendant offered to sell a piece of land to the Claimant for a consideration of N10,000,000.00.

The Claimant averred that upon the payment of the total sum of N10,000,000.00 in about five instalments vide bank transfers to the Defendant, the Defendant handed him a Conveyance of Approval and Regularisation of Land Titles documents in respect of the said piece of land known and described as Plot Number L12, Cadastral Zone, Kubwa Ext. 111 (FCDA Scheme), Abuja. That he thereafter made attempt to take possession of the land but met strong resistance from some Hausa settlers dwelling on the land and he brought this development to the attention of the Defendant.

He stated that he subsequently received a call from one Mr. Eboigbe who claimed to be the owner of the said Plot Number L12, Cadastral Zone, Kubwa Ext. 111 (FCDA Scheme), Abuja. That when he brought this development to the Defendant, the Defendant unequivocally stated that the said land belongs to him and that he would sort out the issues within the shortest period of time. That after several months of waiting for the Defendant to sort out the lingering issues, and due to constant pressure by the Claimant on the Defendant to have the disputes over the land resolved, the Defendant offered him an alternative piece of land around Kubwa for which the Defendant solicited from the Claimant an additional sum of N1,000,000.00 said to be for the perfection of title of the alternative land with the Bwari Area Council.

That Claimant averred that the Defendant surreptitiously collected the original title documents in respect of Plot Number L12, Cadastral Zone, Kubwa Ext. 111 (FCDA Scheme), Abujain

the guise of instituting a legal action against a third party, and that despite the additional payment made to the Defendant, the Defendant still failed to deliver the alternative land to the Claimant. He stated that he made demands for the refund of his money, in consequence of which the Defendant issued him two Skye Bank Cheques in the sum of N6,000,000.00 and N5,000,000.00 respectively. That on presentation of the said cheques for payment, they were returned to the Claimant as dud cheques, and that the Defendant has failed to comply with all his demands to repay his money, hence this action.

The Claimant also filed a reply to the Defendant's Statement of Defence wherein he averred that contrary to the claim of the Defendant that he took the Claimant to some persons temporarily dwelling on the land, that after the Defendant sold the land to the Claimant, the Claimant's engineer was restrained from commencing construction by the Hausa Settlers on the land. He maintained that the sum of N10,000,000.00 was transferred to the Defendant in purchase of the land while the sum of N1,000,000.00 was paid to the Defendant in cash and that the Defendant affirmed these payments in his statement of the Police.

In response to paragraph 13(1) of the Statement of Defence, the Claimant averred that he merely wrote a petition against the Defendant for obtaining money under false pretence and that he did not have any relationship with the Kubwa Divisional Police Officer or any of the Police Officers involved in the investigation of the case.

He further averred that after collecting the original documents of Plot Number L12, Cadastral Zone, Kubwa Ext. 111 (FCDA Scheme), Abuja from the Claimant, the Defendant at no point in

time handed any original document in respect of the aforesaid land to him.

He stated that the Defendant willingly issued the two Skye Bank cheques to the Claimant which turned out to be dud cheques, and that the Police is currently prosecuting the Defendant at the Magistrate Court, Kubwa, for issuing dud cheques to the Claimant.

Further in his reply, the Claimant averred that he was not are of any fundamental right suit until the instant suit was filed.

At the hearing of the suit, the Claimant gave evidence for himself. Testifying as PW1, he adopted his witness statement on oath in support of the Statement of Claim and his further witness statement on oath in support of his reply to the Statement of Defence. He also tendered the following documents in evidence in proof of his case.

1. Regularisation of Land Titles and Documents of FCT Area Councils Acknowledgment – Exh PW1A.
2. Skye Bank PLC Cheque of N6m – Exh PW1B.
3. Skye Bank PLC Cheque of N5m – Exh PW1C.
4. Letter of Demand of Payment of N11m dated 22nd June, 2018 – Exh PW1D-D2.
5. Diamond Bank Statement of Account – Exh PW1E-E1.
6. Zenith Bank Statement of Account – ExhPW1F-F1.
7. Motion on Notice No. M/9323/18 – Exh PW1G.

Under cross examination by the learned defence counsel, the PW1 told the Court that he conducted search on the land in issue before purchasing same. He admitted that he was not compelled to make payments for the land, stating that at that time he trusted the Defendant.

The PW1 also admitted that the Defendant donated a power of Attorney to him in respect of the land, but stated that he agreed to the Power of Attorney because the Defendant assured him that he would get the Occupants out of the land when he, the Claimant is ready to develop the land.

The PW1 further admitted under cross examination that he contacted one Mr. Ataborof FCDA and requested that the said Mr. Atabor should help him change the use of the Plot from residential to commercial to enable him build a Guest house on it. He also stated that the cheques, Exhibits PW1B and PW1C were given to him by the Police, and that he is not aware if the cheques were stopped by the Defendant.

In defence of the suit, the Defendant averred in his Statement of Defence dated and filed the 25th day of March, 2019, that he handed over the original title documents, to wit; Conveyance of Approval and Regularisation of Land Title Documents to the Claimant and that an Irrevocable Power of Attorney dated the 27th day of March, 2014 was equally executed between him and the Claimant in favour of the Claimant.

The Defendant admitted the presence of temporary dwellers on the land in issue as well as the adverse claim of one Mr. John Josiah Eboigbe over the land.

The Defendant however stated that after he purchased the said Plot Number L12, Cadastral Zone, Kubwa Ext. 111 (FCDA Scheme), Abuja from the original allottee, he immediately took possession of same and fenced it. That he was in peaceful and effective possession of the said Plot until sometime in 2014 when he sold the Plot to the Claimant for the sum of N10,000,000.00, which sum was paid by the Claimant in instalments.

He stated that upon completion of payment of the agreed purchase price by the Claimant, he executed an irrevocable power of attorney in favour of the Claimant and also handed over the original title documents to the Claimant.

That after two years of the transaction, the Claimant called his attention to the fact that a certain Mr. John Josiah Eboigbe challenged his title to the said Plot, and that notwithstanding having effectively transferred title to the Claimant, the Defendant opted to assist in any way he could to ensure that the interest of the Claimant in the property was not jeopardized in any way.

The Defendant averred that the Claimant later demanded that he should refund the purchase price of the property in the sum of N10,000,000.00 after about two years of the transaction and maximized his status as a retired military officer to harass and intimidate him to refund the said money.

He stated that contrary to his advice to the Claimant to institute legal action against Mr. John Josiah Eboigbe, the Claimant rather handed back the original title documents to him and insisted that he should institute the action against the said Mr. John. That he, the Defendant, instituted the said legal action in Suit No. FCT/HC/BW/CV/03/2017 and that same is still pending at the FCT High Court, sitting in Kubwa. That despite the pending suit against Mr. John Josiah Eboigbe, which the Claimant is aware of, the Claimant continued his harassment and intimidation against the Defendant, and has refused to take back the original title documents, insisting rather, that the Defendant should refund the purchase price of the property.

He further averred that the Claimant reported him to the Claimant's tribal man who is the Divisional Police Officer in charge of Kubwa Divisional police headquarters who then

arrested and detained the Defendant and compelled him to issue two cheques in favour of the Claimant. That he issued the said cheques under duress due to his incarceration and the deterioration of his health, so as to enable him regain his freedom and urgently attend to his deteriorating health. He stated that upon regaining his freedom, he immediately wrote a letter dated the 30th day of March, 2017 to his bankers explaining the circumstances of issuance of the cheques and instructing the bank to confiscate the cheques. Also, that following the continued harassment and intimidation from the Claimant and the DPO of Kubwa Divisional Police Headquarters, he instituted a Fundamental Rights Enforcement suit against the Claimant and the said DPO and three other persons. He denied being indebted to the Claimant to the tune of N11,000,000.00 or any amount, stating that proper and valid title was passed to the Claimant after the conclusion of the transaction.

The Defendant gave evidence in his defence as DW1. He adopted his witness statement on oath whereby he affirmed all the averments in his Statement of Defence. To prove his case, he tendered the following documents in evidence:

1. Writ Summons in Suit No. FCT/HC/BW/CV/03/17 – Exhibit DW1A.
2. Motion on Notice No. M/4744/2020 – Exh DW1B.
3. Power of Attorney – Exh DW1C.
4. Application to Commissioner of Police for Transfer of Case File dated 14th December, 2016 – Exh DW1D.
5. Application to IGP for Transfer of Case File dated 14th December, 2016 – Exh DW1E.
6. Petition Levelled Against John Josiah Eboigbe, dated 15th December, 2016 (To Chief of Army Staff) – Exh DW1F.

7. Petition Levelled Against John Josiah Eboigbe, dated 15th December, 2016 (to Defence Minister) – Exh DW1G.
8. Re: Petition Levelled Against John Josiah Eboigbe, dated 3rd January, 2017– Exh DW1H.
9. Petition Levelled Against John Josiah Eboigbe, dated 23rd December, 2016– Exh DW1J.
10. Application to Confiscate Cheques – Exh. DW1K.

At this point, this Court notes that in the course of his evidence in chief, the DW1 sought to tender a copy of the Originating application instituted against the Claimant for the enforcement of his fundamental rights. The Claimant’s counsel objected to the admissibility of the document on the ground that being a public document, only its certified true copy is admissible in evidence. The defence counsel however replied to the effect that the document is in its original form, and that it is thus admissible in evidence not being a photocopy. He told the Court that he did not have the authority he was relying on handy and pledged to supply same to the Court on later date. Ruling on the admissibility of the said document was therefore adjourned to the time of this judgment.

This Court, going through the authority now supplied by learned defence counsel, to wit; the case of **Isa Kassim v. The State (2018) 4 NWLR (Pt.1608) at 41**, agrees with the learned defence counsel that the original copy of a public document is admissible in evidence as same needs no further certification.

In the said case, the Supreme Court held thus:

“By Section 85 of the Evidence Act, the contents of documents may be proved by either primary or secondary evidence. Documents are in the first place proved by primary evidence which is by the production of the original copy for inspection by the

Court. Proof of the contents of a document by secondary evidence of the documents, that is, by production of a duly certified true copy of the original, is merely an alternative to the production of the original, that is the primary evidence. Since documents must be proved by producing either the original or, in its absence, the secondary evidence of it, the proof of the contents of the document by the production of the original copy should not, as in the present case, be the basis for rejecting in evidence the original.”

The document sought to be tendered is in its original form, even though a public document. On the basis of the above authority therefore, the same is admitted in evidence and accordingly marked as Exhibit DW1L.

Having given his evidence in chief, the DW1 was duly cross examined by the learned Claimant’s counsel. The DW1 admitted under cross examination that he is in custody of the original title documents in respect of Plot L12 at the moment. He also admitted making a statement to the Police, which is attached to Exhibit PW1G wherein he admitted owing the Claimant a total sum of N11m.

The DW1 further told the Court under cross examination that Suit No. FCT/HC/BW/CV/03/17 – (Exh. DW1A) has been withdrawn from the Court. He confirmed instituting an action in Court in 2017 wherein he is claiming ownership of the land in issue and in which the Claimant is not a party even though he sold the land to the Claimant in 2014. He stated however, that the Claimant verbally authorized him to institute the action in his own name.

At the close of evidence the parties filed and exchanged their respective final written addresses. Following the Defendant's delay in filing his final written address, the Claimant preceded the Defendant in filing his.

The Claimant in his final written address raised two issues for determination, namely;

1. Whether or not given the facts and circumstances of this case, physical possession was not crucial to the sale?
2. Whether or not the Claimant as (sic) proved his case on a balance of probabilities to be entitled to judgment?

Proffering arguments on issue one, learned Claimant's counsel, M.S. Aremo, Esq, contended that the failure of the Defendant to put the Claimant in possession of Plot Number L12, Cadastral Zone, Kubwa Ext. 111 (FCDA Scheme), Abuja, is crucial to the sale of the said land. He referred to **Union Bank of Nigeria PLC v. Awmar Properties Limited (2019) All FWLR (Pt.987) 943; Sabru Motors Ltd vs. Rajeb Enterprises Nig Ltd (2002) 7 NWLR (Pt.767) 423** and **Adesanya v. Ottuewa & Ors (1993) 1 NWLR (Pt.270) 414.**

Learned counsel contended that the case of the Claimant is to the effect that after furnishing consideration to the tune of N11,000,000.00 to the Defendant in respect of Plot Number L12, Cadastral Zone, Kubwa Ext. 111 (FCDA Scheme), Abuja, the Defendant failed to put the Claimant in possession of the said property. He argued that even the exhibits tendered by the Defendant in this case, particularly Exhibits DW1D, GW1E, DW1F and DW1G, all bear evidence to the fact that the said Plot is a subject of dispute, and that the Claimant has not been put in possession of same by the Defendant.

He urged the Court to hold that the failure of the Defendant to put the Claimant in peaceful possession of the Plot in issue, rendered the transaction inchoate and to order the Defendant to refund the purchase price in the sum of N11,000,000.00.

Arguing issue two, learned counsel contended that the Claimant has proved his case on the balance of probabilities, and is therefore entitled to judgment against the Defendant. Relying on Section 123 of the Evidence Act, he posited that it is the law that admitted facts need no further proof. He argued that the Defendant in paragraph 13 (c) & (d) of the Statement of defence admitted that the Claimant furnished consideration to the Defendant in respect of the Plot L12, Cadastral Zone, Kubwa Extension 3, (FCDA Scheme), Abuja.

Learned counsel further argued that Exhibit PW1G is a certified true copy of Court process which contains a statement of the Defendant to the Police wherein he admitted being indebted to the Claimant to the sum of N11,000,000.00. That the said piece of evidence remained unchallenged and uncontroverted by the Defendant, and that the Court can rely on same.

He referred to **Ehinmosan v. N.N. P.C. (2016) All FWLR (Pt.837) 710-711; Ndulue v. Ojiakor (2013) 53 (Pt 2) NSCQR 26 at 40.**

He contended that the oral testimony of the PW1 to the effect that a total sum of N11,000,000.00 was received from him by the Defendant for the purchase of Plot L12, is a credible testimony that the Court ought to believe. Also, that the Claimant has gone further to tender Exhibit PW1G containing a statement wherein the Defendant admitted his indebtedness to the Claimant to the tune of N11,000,000.00; and that under cross examination, the DW1 admitted that he made the said statement. He urged the Court to accept the testimony of the

PW1 in its entirety as the Defendant has not in any way disproved the testimony of the PW1.

Furthermore, learned counsel contended that by the provisions of the Rules of this Court, the Court has the power to award a post judgment interest of 10% in favour of the Claimant. He referred to Order 39 Rule 4 of the High Court of the Federal Capital Territory Civil Procedure Rules, 2018; **Bolanle v. Access bank PLC (2016) All FWLR (Pt. 831) 1423** and **Akudo v. Guinness (Nig.) PLC (2012) 15 NWLR (Pt. 13321) 50 at 164.**

The Defendant in his own final written address dated 26th day of January, 2021 and filed on 4th February, 2021, raised four issues for determination; namely;

- a. Whether given the facts and evidence before the honourable Court, the Claimant can unilaterally rescind the concluded contract between the parties and recover the purchase price and other claims when the title of the Defendant has not been established to be defective?
- b. Whether given the evidence and facts before this Court, the Claimant was given possession of Plot L12, Kubwa Extension 111, FCDA Scheme, Kubwa, Abuja, measuring about 1,200 square metres, by the Defendant?
- c. Whether the suit of the Claimant is premature given the pendency of Exhibit DW1A, DW1B & DW1i(sic) before a sister Court?
- d. Whether the Claimant has discharged the evidential burden of proof on him to warrant the grant of his claims?

In arguing issue (a), learned counsel for the Defendant, Ifeanyi Chukwu, Esq, posited that the transaction that brought about this suit is purely contractual civil land transaction freely entered into by the parties and for which relevant title documents were executed in favour of the Claimant and that all

title documents were handed over to the Claimant and the Claimant taken to the property without hindrance.

Placing reliance on **Idoniboye-Obu v. Nigeria National Petroleum Corporation (2003)2 NWLR (Pt.805) 589**, he submitted that parties are bound by the contractual agreement they freely and voluntarily entered into.

Learned counsel contended that upon completing the payment of the purchase price of the property as agreed by the parties and the execution of the transfer of title documents as well as subsequent handing over of all title documents to the Claimant, effective title was transferred and vested on the Claimant. He referred to **Mustapha v. Abubakar&Anor (2011) 3 NWLR (Pt.1233) 123**.

He argued that the Claimant under cross examination admitted that Deed of Assignment and Power of Attorney were executed in his favour and that after title document were handed over to him, he took possession and attempted building a hotel on the land.

He contended that there exists a valid and concluded contract between the parties as all the five ingredients of a valid contract are present in the concluded transaction between the parties herein. He posited that parties who enter into a contract intend for the contract to be binding and enforceable. That the Claimant's claim however, is intended to rescind the concluded contract between him and the Defendant.

He argued to the effect that even though a contract may be rescinded, that it is only when all or any of the vitiating elements of a contract is proved or established, such as mistake, misrepresentation, duress, undue influence and

illegality. He referred to **First Bank of Nigeria PLC v. Akinyoseye (2005) 5 NWLR (Pt.918) 340.**

He contended that none of the vitiating elements has been proved or established by the Claimant before this Court, and urged the Court to resolve issue (a) in the negative and hold that the Claimant cannot unilaterally rescind the concluded contract between the parties and recover the purchase price and other claims when the title of the Defendant has not been established to be defective.

On issue (b), on whether given the evidence and facts before this Court, the Claimant was given possession of Plot L12, Kubwa Extension 111, FCDA Scheme, Abuja, measuring about 1,200 square metres, by the Defendant; learned counsel argued that contrary to the claim of the Claimant that he was not put in possession of the property, that the Claimant was clearly shown the property and put in possession of same after the execution of the transfer of title documents. That it is in evidence that when the Claimant complained to the Defendant about his conversation with Mr. John Josiah Eboigbe, the Defendant immediately took him to the Plot where the Hausa leader confirmed to the Claimant that there was no problem in respect of the property and the Defendant's ownership.

Arguing that the Claimant admitted the said piece of evidence under cross examination, he urged the Court to hold that the Claimant was indeed, put in possession of the property.

He referred to **Federal Mortgage Finance (2009) 15 NWLR (Pt. 1165) 506 at 534-535.**

On “**whether the suit of the Claimant is premature given the pendency of Exhibit DW1A, DW1B &DW1i(sic)?**” (issue (c)), learned counsel argued that the Claimant's suit is

premature and inchoate given the “gentleman’s agreement” between the parties and the pending and yet to be determined suits, especially Exhibits DW1A and DW1B which were instituted with the tacit support and consent of the Claimant. He contended that granting the claims of the Claimant in this suit will only foist a situation of fait accompli on the Court in respect of the suits evidenced by Exhibits DW1A and DW1B. He referred to **SPDC v. Amadi&Ors. Vol 5-7 (Pt.1) MJSC 1.**

Referring to **Achor v. Adejoh&ANor (2010) 6 NWLR (Pt 1191) 537 at 572** on the principle of ‘estoppel by standing by’, he contended that the Claimant having tacitly supported initiation of the pending suits evidenced by Exhibits DW1A and DW1B, and stood by while the Defendant took action on his behalf and with his consent and support, he cannot but be bound by the Defendant’s action.

He urged the Court to resolve issue © in the affirmative and hold that the present suit of the Claimant is premature given the pendency of Exhibits DW1A, DW1B and DW1i(sic).

In arguing issue (d) on “whether the Claimant has discharged the evidential burden of proof on him to warrant the grant of his claims?” learned counsel submitted that the standard of proof in civil cases has been settled in a plethora of cases to be proof on the balance of probabilities or preponderance of evidence, and that such evidence must be convincing and compelling. He referred to **Amokomowo v. Andu (1985) LPELR-469(SC)** and Sections 131, 132 and 133 of the Evidence Act, 2011.

He argued that for the Claimant to succeed in his case, that the burden rests on him to prove or establish that there are either vitiating elements in the contract between the parties, or other legal factors such as defect in the title of the Defendant. On this, he referred to **Enemchukwu c. Okoye (2017) 6 NWLR**

(Pt.1560) 37 at 55-56 and **Buhari v. Obasanjo (2005) 7 SCNJ 1 at 47.**

He contended that the Claimant has not placed any material evidence before this Court to warrant this Court to vitiate the valid, subsisting and concluded contract between the parties and affirm the claim of the Claimant by ordering a refund of the consideration in respect of the transaction.

Arguing further, learned counsel posited that the Claimant may well succeed in his claims before this Court if he were to have succeeded in establishing that the title transferred to him by the Defendant was a defective title. – **Salami v. Lawal (2008) 14 NWLR (Pt.1108) 575; Jatau v. Danladi (1995) 2 NWLR (Pt.415) 592 at 613-614.**

He argued that the title of the Defendant has not been effectively controverted by the Claimant even as the Defendant consistently maintained in his pleadings that he was the valid and subsisting beneficial owner of the said Plot, that was sold to the Claimant.

Referring to **Mustapha v. Abubakar (supra)** on the principle that the Courts must base their decisions on empirical evidence, factual situations and factual account of events presented before them by the parties, he argued that the Claimant's alleged claim of lack of possession or inability to take possession of the property that the Defendant sold to him, is not supported by evidence before this Court. He contended that the Defendant took active steps and ensured that the Claimant was indeed put in possession of the property.

He submitted in conclusion, that based on the facts and preponderance of evidence before this Court, that the Claimant has failed to establish his claims before this Court and that the

said claims ought to fail and be dismissed accordingly. He urged the Court to so hold.

In the determination of this case, it is my considered view that a consideration of the 4th issue for determination (issue(d)) raised by the Defendant in his final written address, will effectively resolve the issues between the parties in this suit. I will therefore adopt the said Defendant's issue(d) in this judgment with slight modification to wit;

“Whether the Claimant has discharged the burden of proof on him to warrant the grant of his claims?”

The case of the Claimant in this suit is, simply put, that the Defendant received a total sum of N11m from him in respect of a plot of land, Plot L12, Kubwa Extension 3, FCDA Scheme, Kubwa, Abuja, and that after paying the said sum to the Defendant, the Defendant failed to put him in actual, unencumbered physical possession of the said plot of land, and therefore, he claims a refund of the money paid for the purchase of the land, post judgment interest and cost of this action.

What then, in consideration of the above issue, is the burden on the Claimant in the circumstances? It is to prove, on the preponderance of evidence or on a balance of probabilities, vide credible evidence, that the Defendant received the said amount from him for the purchase of the land, and that the Defendant thereafter failed to put him in unencumbered physical possession of the land.

Citing from “The Law of Evidence” (2nd Ed; Sweet & Maxwell, London at p.369), the Supreme Court in **Okoye & Ors v. Nwankwo (2014) LPELR-23172 (SC)**, held per Muhammad, JSC, that:

“The term, ‘burden of proof’, also known as “onus of proof”, refers to the legal obligation on a party to satisfy the fact finders, to a specified standard of proof, that certain facts are true. The facts for this purpose are the facts in issue, the facts on which the legal rights and liabilities of the parties to the case depend.”

It is in line with the above, that the Claimant owes it a duty to satisfy this Court, on the preponderance of credible evidence, that the facts, which he asserts as forming the basis of his claims in this case, are true.

From the pleadings and evidence of the parties before this Court, it is not in dispute that the Defendant received the sum of N10m (in instalments) from the Claimant for the purchase of Plot L12, Kubwa Extension³, FCDA Scheme, Abuja. What is in dispute is the receipt of additional N1m by the Defendant from the Claimant in relation to the transaction, and the alleged failure of the Defendant to put the Claimant in possession of the land.

The Claimant pleaded in paragraph 15 of his statement of claim and paragraph 16 of his witness statement on oath that the Defendant solicited and received from him, an additional N1m for the purposes of perfecting the title of an alternative land which he ostensibly promised to give the Claimant as replacement for Plot L12, Kubwa Extension 3, FCDA Scheme, Abuja. The Defendant in paragraph 11 of his statement of defence, merely averred that he denies paragraph 15 of the statement of claim and puts the Claimant to the strictest proof of same, without more. That is an insufficient traverse in law and therefore an admission of receiving additional N1m from the Claimant.

What is more? The Claimant tendered in evidence, Exhibit PW1G which contains a statement made by the Defendant to the Police wherein he stated inter alia;

“The one million he paid later was the one I used in fencing the alternative Plot I gave to him. Since Gen. Ali said he does not want the Plot again, I have admitted refunding him the One Million Naira. By this, I am indebted to General Ali at the amount of Eleven Million Naira only. I shall pay him the money if am given between now and August, 2017.”

The Defendant was only being clever by half by putting the Claimant to the strictest proof that he received additional N1m from the Claimant. Under cross examination, the Defendant admitted making the above statement. The said statement is a clear and unambiguous admission of receipt of extra N1m from the Claimant in addition to the N10m previously paid to him by the Claimant. The law is trite that what is admitted needs no further proof. See **Oguanuhu&Ors v. Chiegboka (2013) LPELR-19980(SC)**.

There is also, before this Court, Exhibits PW1B and PW1C which are cheques issued by the Defendant to the Claimant for a total sum of N11m. The Defendant admitted issuing the said cheques in satisfaction of the debt mentioned in the above statement. His contention however, is that he issued the cheques under duress in order to secure his freedom. It is highly improbable, no evidence supported the alleged duress. The said bounced cheques were duly issued for N5m and N6m making it N11m, impliedly admitting the debt owed.

It is therefore, my finding, from the totality of the foregoing, that the Defendant indeed, received an additional sum of N1m from the Claimant, thereby bringing the total sum of money received from the Claimant by the Defendant to N11m.

The next question then is; having received the above stated sums from the Claimant, **did the Defendant put the Claimant into unencumbered possession of the Plot of land which he paid for?**

It is the case of the Claimant that when he sought to take physical possession of the land sold to him by the Defendant to commence development of same, he was resisted by some temporal dwellers on the land who asserted that the land belongs to a third party; one John Josiah Eboigbe, and that after several failed attempts at taking possession of the land, he demanded for a replacement of the plot, and subsequently, for the refund of his money entirely as the Defendant also failed to deliver the alternative land to him.

The Defendant on his part insisted that he did put the Claimant in possession of the Plot; stating that he severally took the Claimant to the Plot to meet the temporal dwellers thereon after the Claimant complained to him.

First, merely taking a person to a Plot of land and possibly pointing to the land, does not amount to putting a person in possession of the land. A purchaser of goods or property must be able to enjoy peaceable possession without encumbrance or interference from adverse claim of title. Thus in **Abba v. Shell Petroleum Development Company of Nigeria Limited (2013) LPELR-20228 (SC)**, the Supreme Court, per Galadima, JSC, held that;

“There is always the implied warranty that the Appellant would enjoy quiet possession of goods and implied warranty that the goods shall be free from any charge or encumbrance from any third party not declared or known to the Respondent.”

Secondly, the claim of having put the Claimant in possession of the property by the Defendant, is totally negated by the actions taken by the Defendant in respect of the said Plot as evidenced by the exhibits before this Court. It is in evidence that the Defendant is currently in custody of the original title documents of the property as the Claimant returned same to Defendant and demanded a refund of his money. The Defendant in Exhibit PW1G, made it clear that he agreed to refund the Claimant his money, and he indeed attempted to do so by the issuance of the cheques, exhibits PW1B and PW1C, which allegedly bounced.

Also, by Exhibit DW1A and DW1B, the Defendant, in 2017 and 2020 respectively, long after the completion of the purported sale to the Claimant, instituted actions for himself and in his own name, against the 3rd party, John Josiah Eboigbe, claiming title to the said Plot L12, Kubwa Extension 3, FCDA Scheme, Kubwa ,Abuja. The same land he had purportedly put the Claimant in possession of, was the same land John Eboigbe took possession of and the Defendant sued him. The said John Eboigbe is presently building on the site through his workers.

It is therefore, inconceivable, that the Claimant will be in possession of the Plot, as claimed by the Defendant, and a third party at the same time will be on the land and carrying out building construction thereon. On the contrary, all the steps above taken by the Defendant, go to support the claim by the Claimant that the Defendant failed to put him in possession of the Plot he paid for.

The Defendant in his attempt to justify the institution of the actions in his name wherein he is claiming title to the Plot, alleged that the action were instituted with the consent and support of the Claimant. This allegation is however, not

supported by any credible evidence. On the basis of the fact that the Claimant knew about the suits instituted by the Defendant, the Defence counsel in his final written address invoked the doctrine of “estoppel by standing by”, arguing that the Claimant is estopped from complaining, having failed to apply to the Court to be joined in the suit. This is totally non sequitur, as the Claimant is not laying claim to the Plot, but is rather claiming a refund of his money, which the Defendant had promised to refund but has now reneged on the said promise.

One may ask, whether the Claimant is entitled to a refund of his money under the circumstances?

In **UBA PLC v. Mustapha (2003) LPELR-6203 (SC)**, the Court of Appeal, per Ogbuagu, JCA, held thus;

“... it is settled law, that where a vendor fails to put a purchaser (in possession) say of an unencumbered land or the property he legitimately purchased; that amounts to a failure of consideration which entitles the purchaser to a refund of the money he paid for the purchase.”

This Court has made a finding that the Defendant received from the Claimant a total of N11,000,000.00 as consideration for the land transaction they entered into. It is also the finding of this Court from evidence adduced in this case, that the Defendant, who is currently in a legal battle with a third party over the title to the land, failed to put the Claimant in unencumbered possession of the said land, this amounts to failure of consideration, and therefore, entitled the Claimant to a refund of the money he paid to the Defendant.

The Defendant in his pleadings laid much emphasis on the fact that the Claimant requested for a refund about two years after

the transaction. This contention, to my mind, does not lend any help to the case of the Defendant. It rather enures in favour of the Claimant as it will seem to show how long the Claimant attempted to no avail to take possession of the land.

From the totality of the foregoing therefore, the issue for determination is resolved in favour of the Claimant and this Court holds that the Claimant has discharged the burden of proof on him and is thus entitled to the grant of his claims.

Accordingly, judgement is entered for the Claimant as follows;

- i. Defendant is order to refund the Claimant the sum of N11,000,000.00 (Eleven Million Naira) only, being the money had and received by the Defendant from the Claimant in the suit with immediate effect.
- ii. 10% interest rate on the judgment sum from the date of this judgment until final liquidation of same.
- iii. Cost awarded against the Defendant in favour of the Claimant is N500,000.00(Five Hundred Thousand Naira) being out of pocket expenses.

HON. JUSTICE A. O. OTALUKA
21/6/2021.