IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT GUDU - ABUJA

DELIVERED ON THURSDAY THE 1STDAY OF JULY, 2021.

BEFORE HIS LORDSHIP; HON. JUSTICE MODUPE R. OSHO-ADEBIYI

SUIT NO. CV/2562/2019

BETWEEN

DR. DIKE OBALUM ---------- CLAIMANT

AND

1. GLOBAL FORMWORK NIGERIA LTD
2. HON. MINISTER FEDERAL CAPITAL TERRITORY ----DEFENDANTS
3. FEDERAL CAPITAL DEVELOPMENT AUTHORITY

JUDGMENT

Claimantfiled a writ of summons dated31st of July, 2019 claiming jointly and severally against the Defendants as follows,

a. To put the Claimant in possession of the Unit Type A, Unit No. 2 _001, Plot No. 35, Akwa Ibom Link Saraji District, APO, Abuja.
b. General damages in the sum of N10,000,000.00 against each of the Defendants.
c. Cost of this suit at N1,500,000.00 against each of the defendants.

OR IN THE ALTERNATIVE

d. AN ORDER to the 1st Defendant to refund the sum of N7,358,000.00 being the total money collected from the Claimant.

e. General damages in the sum of NI0,000,000.00 against each of the Defendants.

f. Cost of this suit at N1,500,000.00 against each of the defendants.

Parties exchanged pleadings and the Court fixed a date for hearing. The Claimant opened his case on the 22nd of January 2020 and called his sole witness, the Claimant himself as PW1 where he adopted his witness statement on oath as his evidence in this case. The summary of the facts as stated in his evidence is that by virtue of a lease agreement and an addendum to the agreement, the 1st Defendant entered into an agreement with the 2nd and 3rd defendants to develop and build low cost houses at the Saraji District, Abuja in line with the Federal Government of Nigeria's national housing scheme with the objective of providing affordable housing for the benefits of residents of the FCT and Nigerians in general on behalf of the 2nd and 3rd Defendants. The 1st Defendant thereon named the housing scheme "Malaysian Gardens" and thereafter marketed it to the public. The Claimant showed interest because of the collaboration of all the Defendants and was offered Unit Type 1A Block/Plot No. 35, Akwalbom Link, with Unit No. 2 — 002 measuring approximately 64 sqm at the price of N7,358,000.00 inclusive of 5% VAT and a delivery of the housing unit to be within eleven months after confirmation of full payment. The Claimant agreed to the offer with the terms set by the 1st Defendant and paid the said

sum which includes an application fee of N8,000 for the type 1A house. The 1st Defendant issued receipts No. QR0763 and QR 0531 for the Application fee and the payment for House Type 1A respectively and both are dated 26th September, 2008. That he waited for the 1st Defendant to fulfil its obligations but the 1st Defendant failed to deliver possession to him within the specified period which expired on 25th August, 2009. That Claimant demanded for explanation for the breach to no avail. He thereafter made several demands for his money to no avail.That the Claimant got to know of the disputes between all the Defendants via newspaper publications. Claimant stated that aside the Defendants breaching their obligations; they have also caused the Claimant embarrassment and denied him the use of his money.

PW1 tendered the following documents as exhibits in proof of his case as follows:

1. Copy of development lease agreement between the 1st, 2nd and 3rd Defendants dated 2/07/2004 admitted as Exhibit A1.
2. Addendum to development lease agreement dated 25/05/2006 admitted as Exhibit A2.
3. Letter from FCDA dated 11/10/2006 addressed to 1st Defendant admitted as Exhibit A3.
4. Letter of Offer for the purchase of housing unit, unit type 1A (Akwa Ibom Link) in Malaysian Gardens at Saraji District Abuja dated 8/10/2008 addressed to Plaintiff and signed by the 1st Defendant admitted as Exhibit A4.

5. Original acknowledged copy of Bank PHB Managers Cheque bank draft No: 05055348 dated 25/09/2008 for the sum of N 7,358,000.00 addressed to the 1st Defendant admitted as Exhibit A5 .
6. Global formwork Nig Ltd receipt no. 0763 dated 26/09/2008 addressed to Dr. Dike ObalumChijioke for the sum of N8,000 admitted as Exhibit A6.
7. Global formwork Nig Ltd receipt no. 0531 dated 26/09/2008 for the sum of N7,350,000 being final payment for house Type A1 addressed to Dr. Dike ObalumChijioke admitted as Exhibit A7.
8. Copy of Daily Trust Newspaper (3 pages) advertised on sale of Malaysian Garden accompanied with a certificate of compliance is admitted in evidence and marked Exhibit A8 while certificate of compliance marked Exhibit A9.
9. Letter from Indemnity Partners dated 7/06/2019 addressed to G. M Global Formwork Nig. Ltd No. 14/16, 24 Crescent Gwarinpa admitted as Exhibit A10.
10. The EMS Courier and delivery note which Exhibit A10 was delivered admitted as Exhibit A11.
11. Letter dated 7/06/19 addressed to the 1st Defendant and written by Indemnity Partners solicitors to the Plaintiff admitted in evidence and marked Exhibit A12.
12. Green box logistics courier delivery note stating that it was unable deliver Exhibit A12above admitted in evidence and marked Exhibit A13.

The 1st Defendant on the other hand, filed its Statement of Defence and opened its defence on the 30th day of September, 2020 and called a sole witness Amah Kalu, the Administration Manager of Global Formwork Nig. Ltd who testified as DW1 and adopted his written statement on oath. The summary of facts as stated in the statement on oath is that the Development lease agreement between the 1st Defendant, the 2nd and 3rd Defendants was extended as per arbitral award without a limited time. That it is correct that the Claimant paid the sum of N7,350,000.00 inclusive of VAT for house unit type IA Plot/Block No. 35 Akwa Ibom Link unit No. 2 — 001 of about 64 sq.m to the 1st Defendant. That the apartment has since been built by the 1st Defendant and still stands firm at the estate site. That the confirmation of full payment and delivery to any allottee is further subject to other expressed concurring terms/conditions contained both in the development lease Agreement founding the Estate project, alongside those set out in the offer letter agreement of October, 2008. That the house type IA Block/Plot No. 35 Akwa Ibom Link Unit No. 2-002 bargained for has since 2009 been completed including toilet fittings and ceramic tiles but the other necessary outstanding final touches for delivery could not be attended to for reasons arising from the effectuation of necessary logistics and components at the instance of the 2nd& 3rd Defendants authorities.That the dispute between it and the 2nd & 3rdDefendants was the reason why the apartment was not delivered to the claimant eleven months after payment.That the dispute between the 1stDefendant, 2nd and 3rd Defendants is being resolved. That the 1st defendant never received any letter from the Claimant neither did it

reject any letter from the Claimant. That the Claimant cannot with the knowledge of the dispute between the 1st, 2nd &3rdDefendants maintain that the 1stDefendant is in breach of its obligations to deliver the apartment within Eleven months after payment. The 1stDefendant at all material times in the transaction had performed its own obligation with the Claimant but for the dispute with the 2nd & 3rd Defendants which was resolved by an arbitral award in favour of the 1st Defendant.That the 1st Defendant having already built the said house type 1A bargained for is prepared and willing if the Court so directs for the Claimant to take possession of the apartmentas per relief (a) sought by the Claimant and that reliefs (b) and (c) inclusive of the alternative reliefs be dismissed.

The 1stDefendant in proof of its case tendered Exhibit A14 (Photograph of Block/Plot No. 35 Unit No. 2-002-024) Akwa Ibom Link and Exhibit A15 (Certifies True Copy of Arbitration Award between 1st Defendant, Hon. Minister, FCT and The Ministry of Federal Capital Territory Administration

At the close of the case, the Court adjourned for parties to file their final written addresses.

The Claimant in his final written address, raised a sole issue for determination, which is;

> "whether the claimant has proofed her case to be granted the reliefs sought".

Learned Counsel submitted that it is a settled principle of law that he who assert must proof and cited**Uzokwe v Dansy Industries Nig. Ltd &**

Anor (2002) 2 NWLR (pt. 752) pg. 528and **Section 134 of the Evidence Act, 2011**. Counsel submitted that the Claimant has disclosed in his pleadings and during his testimony before the honourable, proofs to substantiate facts as stated in his statement of claim thereby satisfying the requirement of the law which now shift the onus of proof from Claimant to Defendants. Counsel then submitted that upon the evidence adduced by the Claimant and the admission of the 1stDefendant, the onus of proof of a binding contract between the Claimant and the 1st Defendant is established andurged this honourable court to so hold. Counsel further submitted that the admission of the 1st Defendant needs no further proof to establish that it is guilty ofbreach of contract, **Cameroon Airlines v Otutuizu (2011) 4 NWLR (pt. 1238) 512** and that where there is a breach, the victim is entitled to award of damages as held in **B. B. Apugo& Sons Ltd v OHMB (2016) 13 NWLR (pt. 1529) 206.** Learned counsel relying on**Nospecto Oil & Gas LTD v Kenny &Ors(2014) LPELR - 23628 (CA)**submitted that the defendanthas not satisfied the requirement of the law by providing in details when the dispute between it and the 2nd and 3rd defendants arose, that the 1stDefendant simply dumped exhibit A15 on the court without relating the said exhibit to his case. Counsel submitted that the testimony of the 1stDefendant's witness particularly on exhibit A14 is not an issue raised by the Claimant. Thatthe agreement the parties had is contained in clause 10 which is delivery of a residential house. Assuming without conceding that the 1stDefendant's argument is right, counsel submitted that exhibit A14 does not depict a house in a delivery state and testimony on it cannot not be relied upon. He cited the

authority of **Ogoejeofo V Ogoejeofo (2006) LPELR-2308 (SC)** 14and urged the court to discountenance 1st Defendant's final written address. In conclusion, counsel submitted that the 1st Defendant with the support of the 2nd and 3rd Defendants breached the contract it had with the Claimant who is entitled to damages.

The 1stDefendant in its written address filed, raised a sole issue for determination thus;

> "Whether considering the dispute between the 1st Defendant and the 2nd& 3rd Defendants as evidenced by the Arbitration award Exhibit A15, the contract agreement with the Claimant can be said to have been frustrated justifying the inability of the 1st defendant to deliver the house in question to the claimant?".

Learned counsel submitted that it is trite law that no fact need be proved in any civil proceedings on which the parties to the proceedings or their agents admit and cited **Section 123 of the Evidence Act 2011**. Counsel submitted that the 1st Defendant is not in breach of the agreement reached with the claimant vide the offer letter dated 8/10/2020, cited **ODUTOLA V. PAPERSACK (NIG) LTD (2006) 18 NWLR (PT. 1012) PG. 470; BEST (NIG) LTD V. B. H. (NIG) LTD (2011) 5 NWLR (PT. 1239) PG. 95 AT PG. 117, PARAS A-C, etc**. Also that the 1st defendant cannot in law be said to have breached the provision in Clause 10 of the parties agreement in view of the act of the 2nd & 3rd Defendants who are the Lessors to the1st Defendant in failing to grant 1st defendant outstanding approvals and perform their obligations

under the Development Lease Agreement which would have enabled the 1st Defendant to deliver within Eleven months as agreed. Counsel submitted that the contract between the 1st Defendant and the Claimant was caught up by the doctrine of frustration of contract, that it was the actions of the 2nd and 3rd defendants that hindered the 1st Defendant from delivering the already built house Type to the claimant. He cited **CAMERON AIRLINES V. OTUTUIZU (2011) 4 NWLR (PT. 1238) PG 512 of pg 545 Paras A-C; NWAOLISA V. NWABUFOH (2011) 14 NWLR (Pt 1268) PG 600 AT 630; A.G. CROSS RIVER STATE V. A.G FEDERATION (2012) 16 NWLR (PT 1327) PG 425 AT PG 479 PARAS G-H PG 480 PARA F etc**. Counsel urged the Honourable court to look at the entire circumstances of this case, the pleadings and evidence before the court particularly exhibits Al, A2, A14 & A15 to come to a conclusion whether the contract executed between the Claimant and the 1st Defendant was frustrated justifying the inability of the 1stdefendant to deliver the apartment to the Claimant as envisaged in the parties agreement. Counsel further submitted that until the "obstacle erected by the 2nd and 3rd defendants to the completion of the Estate project is fully resolved, which hopefully will be resolved soonest", the 1st defendant cannot deliver the said house to the claimant except with an order of court for fear of a possible violation of the lease agreement without an approval received from the 2nd & 3rd Defendants incompliance with Arbitration award.Counsel submitted that the 1st, 2nd and 3rd Defendants with whom the development lease agreement was executed were joined in this suit by the Claimant thus recognizing the role of the 2nd and 3rd Defendants in the actualization of the agreement

between the Claimant and the 1st Defendant.He urged the court to dismiss the Claimant's reliefs (b) & (c) inclusive of the alternative reliefs.

I have listened and read processes as filed by both parties. From evidence before me, Claimant in this suit bought property described as unit No. 2 – 001, Block/Plot No 35, Akwa Ibom Link, Malaysian Gardens, Saraji District Abuja from the 1st Defendant for the consideration of ₦7, 350,000 with non refundable sum of ₦8000 as application fee. To this effect, Defendant had made offer to the Claimant for the purchase of the property on 8th October, 2008 vide a letter of offer titled "Offer for the Purchase of Housing Unit Type ***1A (AKWA IBOM LINK) IN MALAYSIAN GARDENS AT SARAJI DISTRICT ABUJA)*** as evidenced in exhibit A4 Claimant in turn had accepted the offer by signing the acceptance portion enclosed in Exhibit A4; Claimant accepted the said offer on the 8/10/08 and duly signed same.Claimant had subsequently issued a Bank PHB draft to the 1stDefendant for the agreed sum of ₦7, 358,000 which 1stDefendant duly acknowledge receipt of same.It is safe to state that by the perfection of offer and acceptance a contractual relationship has been established between both parties in respect of the sale of property subject matter of this suit. The said property was to be concluded and delivered to the Claimant within 11 months from confirmation of full payment. The first Defendant had named the scheme "Malaysian Gardens". Upon payment of required fees by the Claimant, 1st Defendant had issued Exhibit A6 & A7 to the Claimant which are

receipts exhibiting the payment of ₦7, 350,000 for the unit property and ₦8,000 non refundable sum for the application form. That 1st Defendant was unable to deliver at prescribed time and in fact 1st Defendant is yet to deliver till date.That Claimant through his lawyers had written several demand letters to the 1st Defendant which 1st Defendant failed to reply. It is also the case of the Claimant that he got attracted to the scheme due to the collaboration of the 1st, 2nd& 3rd Defendant in the said scheme.

The Defendants had entered into an agreement for the 1st Defendant to develop and build the housing scheme in line with the Federal Government of Nigeria National Housing Scheme Plan with the aim of providing affordable houses for Federal Capital Territory residents.The Defendants on their part had entered into a development lease agreement duly executed by all the Defendants to develop Saraji District which was to house Malaysian Gardens of which Claimant purchased a unit.That dispute arose between the Defendants which affected the completion of the subject matter Plot. That as a result of the dispute, all 3 Defendants had submitted to arbitration and the arbitral award was in favour of the 1st Defendant. The said arbitral award was delivered on the 21st February, 2014. 1st Defendant in its defence stated that Claimants unit has been completed since 2009 including toilet fittings and ceramic tiles but the other necessary final touches could not be effected due to the dispute that arose between all Defendants.Admitted as Exhibits A13 & A14 are the arbitral award and the picture of the block of units.The 1stDefendant through its witness

stated that the action of the 2nd& 3rd Defendantsled to dispute amongst parties greatly hindered the 1st Defendant from completing the project within stipulated time being 11 months from the date of completion of payment as the 2nd& 3rd Defendants refused to grant 1st Defendant all outstanding approvals.

At this point it becomes necessary for this court to note that learned counsel to the Defendant in his written address paragraph 26 stated that "rather than the 2nd& 3rd Defendants to comply with the arbitration award to facilitate the completion of the estate project they opted to contest the award in the FCT High Court by originating Summons dated & filed on 23/5/2014 in Suit No. FCT/CV/1620/14 which was later dismissed in favour of the 1st Defendant". This piece of evidence was never included in Defendants evidence.In respect of dispute between parties, Defendants evidence through DWI was that all parties had submitted to arbitration of which arbitral award was in favour of 1st Defendant. On this issue I refer to the case of **NIGER CONSTRUCTRION LTD VS OKUGBENI (1987) 4 NWLR (Pt.67) 787** where the court held that an address of counsel is not a substitute for evidence and it cannot take the place of evidence in any judicial proceeding. Hence learned counsel to the Defendants submission amounts to evidence which this court will discountenance accordingly.

The issues for determination in my view is: -

1. Whether there exists privity of contract between Plaintiff, 2nd and 3rd Defendants.

2. Whether Plaintiff has been able to prove its claims against 1st Defendant to be entitled to the reliefs sought.

The following facts are unchallenged and uncontroverted: -

(1) That 1st Defendant offered and Claimant accepted to purchase a unit from the low cost houses unitssubject matter of this suit.
(2) That Claimant paid the sum of ₦7, 358,000.00 to 1st Defendant as consideration for the house which includes purchase of application form of a non-refundable fee of N8,000.00.
(3) That both Claimant and 1st Defendant entered into a contract that Claimant would take delivery of the residential unit within 11 months after confirmation of full payment. Contract duly executed by both parties.
(4) That 1st Defendant issued a receipt to the Claimant confirming full payment. Receipt is dated 26/9/2008.
(5) That till date 1stDefendant is yet to put Claimant into possession by 1st Defendant.

From the above it is not in doubt that there is a binding contract between Plaintiff and 1st Defendant.

1st Defendant had prior to selling to Claimant entered into a development lease agreement between 1st Defendant on the one part and 2nd& 3rd Defendants on the other part. The agreement between all Defendants was for the 1st Defendant to build a low cost housing scheme in the FCT. The said lease agreement was dated 2nd July, 2004; also admitted as exhibit is an addendum to the lease agreement

between defendants dated 25th May, 2006. From evidence before me, dispute arose between all 3 Defendants which crystalized into all 3 Defendants submitting themselves for arbitration. The Hon Chief Judge of FCT High Court set up the process of arbitration on 15th November, 2012.Claimant has filed this suit against 1st, 2nd& 3rd Defendants. From evidence before me 2nd& 3rd Defendants were not parties to the contract between Claimant and 1stDefendant, neither did 1st Defendant disclose in the agreement between 1st Defendant & Claimant that 2nd& 3rd Defendant are his principal.

It is trite that a contract affects only the parties stated therein and cannot be enforced by or against a person who is/was not a party to the said contract. Hence only parties to an agreement can enforce same and a person who is not a party to a contract cannot enforce it neither can the contract be enforced against a non party.In essence Claimant has not been able to prove that there is privity of contract between Claimant & 2ndand 3rd Defendants. The words of the contract/agreement between Claimant & 1st Defendant are clear and unambiguous thus the operative words contained therein should be given their simple and ordinary meaning. It is not the duty of the court to read into a contract what is not intended by parties. **See DALK NIG LTD VS OIL MINERAL PRODUCING AREAS DEVELOPMENT COMMISSION (OMPADEC) (2007) 7 NWLR (Pt. 1033) Pg. 441 Paragraphs A-B Per Ogbuagu JSC** where the learned jurist held that "The courts cannot legally or properly read into an agreement, the terms on which the parties have not agreed". The term privity of contract comes to fore

when a party to a contract as in this case the Claimant seeks to enforce the contract against a party who is not a party to the contract (i.e the 2nd& 3rd Defendants).Only a party to a contract can sue and be sued on it. **See MAKWE VS NWAKOR (2001) 14 NWLR (Pt. 733) pg 356 @ Pg. 372 paragraphs B-F per Iguh JSC** where the Supreme Court held that a contract affects only the parties thereto and cannot be enforced against a person who is not a party to it as only a party to a contract has the right to sue and be sued on it. Hence Claimant having failed to prove that 2ndand 3rd Defendants are parties to the agreement for purchase of the housing unit cannot sue for enforcement of the contract against the 2nd& 3rd Defendants as I am of the view and I so hold that there is no privity of contract between the Claimant and 2ndand 3rd Defendants.

On the second issue for determination, it is uncontroverted that Claimant went into a contractual agreement with the 1st Defendant. It is also uncontroverted that 1st Defendant entered into a contract with 2ndand 3rd Defendants in order to actualize Claimants purchase. Both contracts are two different contracts independent on its own and freely entered into by parties concerned and each party is strictly bound by the terms of its contract. In other words, claimant not being a party to the contract between all 3 Defendants is not bound by the terms of the contract. Learned counsel to the 1stDefendant is his written address raised a very fundamental issue which is frustration of contract by the 2nd& 3rd Defendants.Learned counsel to the 1st Defendant stated in his written address that 1st Defendant being unable to deliver to the Claimant as agreed was as a result of the contract being frustrated by

the 2nd and 3rd Defendants. Although Learned counsel to the 1st Defendant did not raise the doctrine of frustration of contract as a defence in its pleadings but this court will spare no effort in considering same.

Frustration of contract as defined by **ADEKEYE JSC in G.N. NWAOLISAH VS PASCHAL NWABUFO (2011) 14 NWLR (Pt. 1268) 600 AT 630 H TO 631 A-f** occurs where the law recognizes that without defaults of either party, a contractual obligation has become incapable of being performed because the circumstances in which performances is called for would render it radically different from what was undertaken by the contract.

The Supreme Court listed the following events that will constitute frustration of contract.

(1) Subsequent legal changes or statutory impossibility.
(2) Outbreak of war
(3) Destruction of the subject matter of the contract or literal impossibility.
(4) Government acquisition of the subject matter of contract.
(5) Cancellation by an unexpected event like where other party to a contract for personal service dies or either party is permanently incapacitated by ill-health, imprisoned e.t.c.

However, it is trite that he who asserts must prove. 1st Defendant has relied heavily on the dispute between it and the 2nd and 3rd Defendants being a government agency and the Hon. Minister of the FCT by

unjustly withholding approvals and their failure to effect the necessary steps in order to actualize the delivery of the unit house to the Claimant.Unfortunately, learned counsel to the 1st Defendant is of the mistaken belief that frustration of contract occurs because government through the office of the 2ndand 3rd Defendant has allegedly failed to perform their own part of the contract between parties which affected the delivery of the housing unit to the Claimant.On the contrary time is of essence where the parties have expressly made it so, or where the circumstances show that it is intended to be of essence or where a definite time is fixed for execution.This failure to perform a contract within the limit will constitute a breach as in this case a breach of contract. Save and except 1st Defendant is able to prove that contract was frustrated within the time limit of delivery of unit apartment agreed by both parties.**See A.G CROSS RIVER STATE VS A.G OF THE FEDERATION (2012) 16 NWLR (PART 1329) 425 @ 479 H-480 A-F.OKEREKE & ANOR VS ABA NORTH LGA (2014) LPELR – 23770 CCA.**

Exhibit A4 which is the contract of sale between Claimant and 1st Defendant states: -

> "Time of delivery: each allottee shall take delivery of his/her residential house within eleven months after confirmation of full payment".

Receipt containing full payment of purchase price was issued to the Claimant on 26/9/2008 (Exhibit A7) which in effect can be interpreted

that Claimant was to take the delivery of his house before the 1st July 2009.Unfortunately, 1st Defendant failed to give evidence as to date and time when dispute between al Defendants arose but from processes before this court particularly Exhibit A15 which is the Arbitration Award pg. 4 of the award paragraphs 1.6 is reproduced below: -

> "Following the disagreement and other disputations between parties, Claimant on 24/10/2012 instituted suit No. CV/489/12 before the High Court of the FCT against the Respondent (i.e. 2nd& 3rd Defendants)"

Paragraphs 1.7

> "By letter dated November 15, 2012 signed by the registrar of the Abuja Multi-Door Court House, the matter was on the orders of the Hon. Chief Judge of the High Court of the FCT in the exercise of powers conferred on him, transferred to its Abuja Multi-Door Court (AMDC) unit for pre session meeting, hearing and determination following which Claimant duly nominated J.H.C Okolo (S.A.N) as member representing it on the arbitration panel".

Apart from the above excerpt culled from the arbitration award (exhibit A15) 1st Defendant in its evidence did not proffer an explanation as to what caused the delay in delivering of apartment within the time limit of 11 months agreed by parties (1st Defendant & Claimant). In fact, 1st Defendant did not give evidence as to what transpired between 26/9/2008 up till 15th November, 2012. 1st Defendant having failed to

deliver within the time frame of eleven (11) months and having failed to proffer any evidential proof explanation as to its failure to deliver within the time frame agreed upon by parties, mere explanation will not suffice and it is my view and I so hold that on the authority of **OKEREKE & ANOR (Supra)** the defence of frustration of contract cannot avail the 1st Defendant.

To proceed into the substance of this suit, it is uncontroverted that Claimant paid 1st Defendant for a unit of residential flat which 1stDefendant failed to deliver to Claimant within the specified time as agreed by parties in an agreement. 1st Defendant had stated in its evidence that it is ready and willing to deliver the said unit to the Claimant although same is not fully completed. 1st Defendant in its statement on oath paragraph 9 stated: -

> "In further answer to paragraphs 14, the 1st Defendant state that the House bargained for has since 2009 been completed including toilet fittings and ceramic tiles but the other necessaryoutstanding final touches for delivery could not be attended to for reasons arising from the effectuation of necessary logistics and components at the instance of the 2nd& 3rd Defendants authorities".

From the evidence of DWI as quoted above it is evident that the unit of residential apartment paid for by the Claimant is not ready for delivery neither is it fit for habitation. Claimant having paid 1st Defendant since the year 2008 which is clear 13 years ago, has been magnanimous with

the 1st Defendant by not filing this claim earlier. From evidence before me Claimant had through his lawyer's written letters of demand to the 1stDefendant but the 1stDefendant did not deem it fit to reply to Claimant. On the backdrop of the above I therefore hold that Claimant has successfully proved his claim.

The Claimant is asking for the sum of ₦10,000,000.00 as general damages for the breach of contract. The law is that once there is a breach of a contract entered into by parties, the party in breach would be liable in damages resulting from the breach to the other party to the contract against whom the breach was committed. In this instant case, the Claimant has proved that the 1stDefendant has breached their contract by the failure to keep to the terms of the offer letterto deliver possession to the Claimant on the agreed time (eleven (11) months) after confirmation of full payment thereby causing him embarrassment and denied him the use of his money.The Court in **ALHAJI MUSTAPHA ALIYU KUSFA V. UNITED BAWO CONSTRUCTION CO. LTD. (1994) 4 NWLR (PT. 336)** 1, held that in cases of breach of contract, the damages that would be awarded are the pecuniary loss that may fairly and reasonably be considered as either arising naturally from the breach itself or such as may reasonably be supposed to have been in the contemplation of both parties at the time they made the contract as a probable result of the breach".

However, Claimant in this suit filed two claims, the second being an alternative claim thereby giving this court the discretion to adopt

whichever of the relief is best suited for this action. I am of the view that the 2nd alternative claim would be appropriate under the circumstances.

Consequently, IT IS HEREBY ORDERED AS FOLLOWS: -

(1) That the 1st Defendant immediately refund the sum of₦7, 350,000 to the Claimant being the money collected from the Claimant for the purchase of the unit apartment known as Unit Type A, Unit No. 2 – 001, Plot No 35, Akwa Ibom Link Saraji District, Apo, Abuja.

(2) General damages in the sum of ₦10, 000,000 (Ten Million Naira) only is hereby awarded against the 1st Defendant in favour of Plaintiff.

(3) Cost in the sum of ₦1, 000,000 (One Million Naira) only is hereby awarded against the 1st Defendant only.

Parties: Absent

Appearances: Victor Agunzi for the 1st Defendant. 2nd and 3rd Defendants not represented.

HON. JUSTICE M. R. OSHO-ADEBIYI

JUDGE

1ST JULY, 2021