

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

**IN THE JUDICIAL DIVISION ABUJA**

**HOLDEN AT ABUJA**

**DELIVERED THE 2<sup>ND</sup> JULY, 2021**

**BEFORE HIS LORDSHIP: HON. JUSTICE ASMAU AKANBI – YUSUF**

**FCT/HC/CV/1604/15**

**BETWEEN**

**DR. OMOTOLA BAMIDELE DAVIS ..... PLAINTIFF**

**AND**

**FEDERAL CAPITAL DEVELOPMENT AUTHORITY**

**HON. MINISTER OF FEDERAL CAPITAL TERRITORY ..... DEFENDANTS**

**JUDGMENT**

This matter was transferred under the Hand and Seal of the Hon. Chief Judge from Court 23, Jabi to this court on the 26<sup>th</sup> November, 2019. By a writ of summons filed by the Plaintiff on the 16-04-15, the plaintiff claims as follows:

1. A Declaration that following the Advertisement and laid down procedure for the sale of Federal Government House by the 1<sup>st</sup> & 2<sup>nd</sup> Defendants through the Ad hoc committee on the sale of Federal Government House, the plaintiff has complied with the laid down and/ or stipulated procedure and is entitled to purchase

the property particularly known and described as Block 3, Flat 22 Lapai Street, Garki, Abuja.

2. A Declaration that the plaintiff in furtherance of this expression of interest and compliance with the laid down procedure of the 1<sup>st</sup> & 2<sup>nd</sup> Defendants, did pay the sum of #4,375,000.00 being the purchase sum for the said property, receipt of same was duly received/acknowledged by the 1<sup>st</sup> & 2<sup>nd</sup> defendants representing the complete sale of the property to the plaintiff.
3. A Declaration that sequel to [1] and [2] above, the plaintiff is the legal and rightful owner of the property having fulfilled all necessary obligations for the purchase of same.
4. An Order directing the 1<sup>st</sup> & 2<sup>nd</sup> Defendants to immediately deliver vacant possession of the property to the plaintiff forthwith.
5. An Order awarding general damages of #25,000,000.00 [Twenty Five Million Naira Only] in favour of the plaintiff.
6. The cost of this action.

On the 8-7-2020 the plaintiff testified as a sole witness and adopted his witness statement on oath filed on the 16-4-2015. It is the evidence of the claimant that based on the public advertisement made by the 1<sup>st</sup> defendant via Exhibit F, he paid the 1<sup>st</sup> defendant the sum of #4,600,000.00 for a property in the Federal Capital Territory; that he paid the 1<sup>st</sup> defendant the sum of #4,600,000.00 for a property in the Federal Capital Territory and this was during the monetization of government property in FCT; that the 1<sup>st</sup> defendant offered him a property in Block 3 Flat 22 Lapai Street Area 1, Garki Abuja in which he paid the sum of #4,375,000.00 [Four Million, Three Hundred and

Seventy – Five Thousand Naira]; that this sum was deducted from the #4,600,000.00 which he paid for in an earlier bid; that on the 9<sup>th</sup> May, 2007 he paid the sum of #4,375,000.00 [Four Million, Three Hundred and Seventy – Five Thousand Naira] for the property in question vide an Oceanic Bank Draft No. 00865434 and he was issued with a property sales receipt dated the 9<sup>th</sup> May, 2007; that on the 22<sup>nd</sup> of May, 2007 the Federal Capital Territory Administration issued to him a letter of offer; that he accepted the offer on the 11<sup>th</sup> June, 2007.

It is further the evidence of the plaintiff that due to his inability to take possession of the said property, he wrote to the Minister of FCT on the 3<sup>rd</sup> of August, 2007 and same was acknowledged by the Minister FCTA on the 6<sup>th</sup> August 2007. He stated further that on the 12<sup>th</sup> of August, 2008 the 1<sup>st</sup> defendant through the ad-hoc committee on the sale of Federal Government of Nigeria Houses in Abuja and office of the Minister Federal Capital Territory Administration wrote a letter to him stating that they were aware he participated and was successful in the walk in sales exercise of May 2007 on the sale of the property in question. He continued further that on the 14<sup>th</sup> July, 2018 he sent a letter to Dr. B. D Omotola, that the 1<sup>st</sup> and 2<sup>nd</sup> defendants refused to honour or comply with the content of the letter; that on the 10<sup>th</sup> November, 2008 he wrote to the chairman ad-hoc committee on disposal of Federal Government Houses in Abuja through his former counsel, Kaddung Esq. but nothing was done on the issue.

After the close of his evidence, the matter was adjourned for cross examination as the defendants were unrepresented despite the service of the hearing notice on them. On the 15<sup>th</sup> February, 2021 when the

matter came up for cross examination, the plaintiff was present, so also his counsel; one D.G Bawa Esq. appeared for the defendants. Learned counsel to the defendants said he had no question for the witness. Hence, the plaintiff's counsel closed his case and urged the court to adjourn for defence. Counsel to the defendants stood up and said "*at this juncture, I am not calling any witness but I would address the court based on the claimant's claim*".

The matter was adjourned for adoption of addresses.

On the 1<sup>st</sup> of April, 2021 parties were absent, whilst they were represented by their respective counsel. Learned counsel to the defendant didn't file any address. The plaintiff's counsel adopted his final written address dated the 22-3-21.

As it is, the evidence before the court is unchallenged and one sided. The claimant raised a sole issue for determination, that is:

*Whether the plaintiff has succeeded in proving his case to be entitled to the award of the reliefs sought.*

Learned counsel to the plaintiff submits that the plaintiff has proved his case on the balance of probability as required by the Evidence Act 2011. He states that in an action for declaration of right and specific performance, the plaintiff must place before the court credible evidence that he is entitled to the reliefs claimed. He submits that the plaintiff in this case placed credible evidence before the court to prove that he is entitled to the reliefs sought. Counsel referred to the case of GE INTERNATIONAL OPERATIONS (NIG) LTD V Q OIL AND GAS SERVICES LTD (2016) 10 NWLR PART 1520 PAGE 304 AT 330 – 331 para d –e to

buttress his point that in declarative reliefs, a plaintiff must prove his case even on the admission of the defendant.

Counsel argued that the plaintiff has proved the elements of a valid contract through the documents admitted in this case and that these were not controverted by the defendant. He relied on the case of ALL PROGRESSIVE CONGRESS V INDEPENDENT NATIONAL ELECTORAL COMMISSION (2015) 8 NWLR PART 1462 PAGE 531 AT 584 PARA C – D to support his point that admitted facts are deemed established and thus need no further proof. He further relied on GARBA & 2 ORS V ZARIA (2005) 17 NWLR (PART 953) 55, 65 66 and some other cases to argue his point on the effect of unchallenged evidence.

It is further the argument of counsel that the defendant having breached the terms of the contractual agreement, the plaintiff is entitled to an order of specific performance of the terms and conditions of the contract and urged the court to so hold. Counsel referred to s. 125 and 126 of the Evidence Act.

Counsel urged the court to grant the reliefs sought by the plaintiff.

The following documents were admitted in evidence:-

1. Exhibit A is a photocopy of a Letter written by counsel to the claimant to the chairman adhoc committee on disposal of Federal Government houses in Abuja FCDA, FCT, Abuja on the 10<sup>th</sup> November, 2008 headed Re:MARIA OGOCHKWU OKAFOR V ADHOC COMMITTEE AND DR OMOTOLA B. DAVIS Suit No.FCT/HCV/1467/07 – settlement out of court and request for

replacement of Block 3 Flat 22, Lapai Street, Area 2 Garki Abuja to the 4<sup>th</sup> defendant.

2. Exhibit B is a photocopy of a letter dated 14<sup>th</sup> July, 2008 written by Dr. B. D Omotola and addressed to the Honourable Minister of Federal Capital Territory Administration; attached is also a photocopy of a letter dated 12<sup>th</sup> August, 2008 headed Re: sale of government non-essential houses in Abuja- Block 3, Flat 22, Lapai Street, Garki.
3. Exhibit C is a photocopy of a letter dated 3<sup>rd</sup> August, 2007 written by Dr. B. D Omotola and addressed to the Hon. Minister FCDA, Area 11 Garki – Abuja.
4. Exhibit D is a certified copy of the letter of offer to the claimant dated 22<sup>nd</sup> May, 2007.
5. Exhibit E1 is certified copy of the property sales receipt issued to the claimant.
6. Exhibit E2 are photocopies of the oceanic bank drafts #10,000 and #4,600,000.00 respectively and issued the name of Ad hoc committee on sales of FGN houses in Abuja.
7. Exhibit F is the FCTA guidelines for the walk – in sale of federal government houses in the FCT to the general public.

First of all, there is the need to settle the documents admitted during the testimony of the PW1. It is on record that all the documents admitted are photocopies. Exhibits D, E1 & F are in the category of public documents and as can be gleaned from the documents, it appears that they were certified.

It is not in doubt that Exhibits A, B & C are private letters written by the claimant to public officers. These documents are photocopies and as it can be gleaned from the documents, it is only exhibit C that was acknowledged. The law is that the contents of documents may be proved either by primary or secondary evidence. See section 85 Evidence Act. By this, it is either the document itself is produced before the court or the secondary evidence is produced in accordance to the law. See section 89 Evidence Act. Exhibits A & B are photocopies of documents addressed to public officers, it is my opinion, that they form part of the official record of the 1<sup>st</sup> and 2<sup>nd</sup> defendants and as such the plaintiff ought to have them certified before same can be admitted in evidence. I so hold. See section 102 Evidence Act. EZENWA ONWUZURUIKE v. DAMIAN EDOZIEM & ORS (2016) LPELR-26056(SC)

Also, the Pw1 in the course of adopting his witness statement on oath testified orally that "...this is the ctc of the receipt by the FCDA #4, 6000, 000.00 and my payment for the #4.375m. This is the CTC of the letter of offer and acceptance. The originals were submitted at the earlier court."

It is further in evidence that the original of the documents have been tendered in the other court. Assuming, I agree with the witness that the documents had been tendered in the other court; a careful look at the documents it does not appear that exhibits A & B were received/acknowledged by the public officers. The burden is on the claimant to prove that the documents were received by the

addressee and the copies of same should have been certified by the defendants. Thus, since exhibits A & B were not certified, I hold that they are inadmissible and hereby expunged exhibits A & B from the evidence before this court.

Also, the exhibit C which has the stamp of the Minister as received on the 6<sup>th</sup> August, 2007 was certified by one Bala on the 02/08/2012, a principal registrar in the employment of the High court of Justice, Abuja. The question I ask here, can Bala a staff of the High of Court of FCT certify the document addressed to the 1st and 2nd defendants, put in another was; is he the proper person to certify document addressed to the Hon. Minister FCT? The answer is certainly, No. see section 104(1)(2)(3) Evidence Act. As it is the document being a photocopy of a private document and having not come from proper custody, it is hereby expunged from the evidence before this court and I so hold.

Now in determining the case, I have taken a careful consideration of the facts and circumstances of this case and I am of the firm view that the issue for determination, is whether on the preponderance of evidence, the claimant *has proved his case to be entitled to the reliefs.*

As rightly submitted by the counsel to the plaintiff, the onus is on the plaintiff to place before the court credible and cogent evidence before judgment can be given to him in an action for declarative reliefs. See ALHAJI UMAR IDRIS v. KACHALLA BUBA SEINE (2019) LPELR-46993(CA)

*"Declaratory reliefs are not granted as a matter of course and on a platter of gold. They are only granted when credible evidence*



*has been led by the person seeking the declaratory relief. A declaratory relief will be granted where the plaintiff is entitled to the relief in the fullest meaning of the word. It is a requirement of the law that the person seeking the declaratory relief must plead and prove his claim for declaratory relief without relying on the evidence called by the defendant. Such declaratory relief is not granted even on admission by the defendant. However, there is nothing wrong in a plaintiff taking advantage of any evidence adduced by the defence which tends to establish the plaintiff's title."*

Also in FRANCIS OSAWE ESEIGBE v. FRIDAY AGHOLOR & ANOR (1993) LPELR-1164(SC) *"A party in a civil case, where the proof is on the preponderance of evidence, cannot safely decline to offer evidence where on the evidence led a rebuttal of such evidence is required. The onus of proof is not static; it shifts depending on the nature of the case and the evidence offered by either party. However the onus of adducing further evidence is always on the party who would fail if such evidence were not produced."*

It is also the law that where in civil cases a defendant fails to file a defence or rebut any issue in claim, the burden of proof becomes minimal. It is further the law that where the evidence is uncontradicted, the onus of proof is satisfied on a minimal proof since there is nothing on the other side of the scale. However minimal proof remains minimal and does not mean any proof. Thus, the failure on the part of a defendant to give evidence does not exonerate the plaintiff from proving his case though minimally.

There are five important elements that must be established for a valid contract to exist. There are:-

- a. Offer
- b. Acceptance
- c. Consideration
- d. Intention to create legal relations
- e. Capacity to contract

All these five elements must co exist before a contract can be made, where any of the elements is absent; then there cannot be a valid contract. BPS CONSTRUCTION & ENGINEERING COMPANY LIMITED v. FEDERAL CAPITAL DEVELOPMENT AUTHORITY (2017) LPELR-42516(SC)

Exhibit F is a copy of the Guardian Newspaper of Friday, the 23<sup>rd</sup> March, 2007 and as contained in exhibit F the walk in bid was slated for the 28<sup>th</sup> March, 2007. It is stated therein the guidelines for the walk in sale of the Federal Government Houses in the FCT to the General Public, particularly in the Part A, B & C. For the sake of clarity. The procedure, terms and conditions to be complied with by interested applicants as contained in exhibit F, are hereunder reproduced.

Part A

#### Required Documentation

A bank draft of #10, 000,00 (as non – refundable processing fee) in favour of the Ad hoc committee for the sale of FGN Houses in Abuja.

A bank draft in favour of the Ad hoc committee for the sale of FGN Houses in Abuja in the sum of 10% of the reserve price of the house as payment bond.

4no. high colour passport photographs (in case of individuals)

Certificate of incorporation, memorandum and articles of association for companies.

2. The required documents should be brought to the walk in venue located at The Centre for Art and Culture Area 10, Garki Abuja.

Part B

Walk – in – Process:

6. The process will be conducted strictly in conformity with the following procedure:
  - i. All properties as herein advertised will be sold based on a first come first served basis. A simple system by way of timing shall be employed. All applications must be made with a bond by way of bank draft, equal to the percent of the purchase value as advertised. The earliest submission for a property shall be automatically declared the preferred buyer: with the bond being retained and treated as non- refundable 10% deposit.
  - ii. The EOI form, to be used by interested applicants to submit the applications in the walk- in- auction MUST include a legible signature complete personal information, along with the complete address of the property as published in the advert,

- iii. Each EOI form contains provision for three (3) choices for purchase in the event that the initial choice of purchase is unavailable. Accordingly, prospective buyers are required to list their choices in order of preference with the option 1 being the highest preference and the lowest noting that only one house can be purchased by any one individual.
- iv. No housing unit will be sold below its established reserve price, being the Open Market Value of the property as determined by the FCTA and/or its Professional Valuers, and approved by the FEC.

#### Part C. walk in – bid Residuals: Payment Terms and Conditions

1. Payment of a minimum of 25% of purchase price (including 10% non refundable deposit) must be made to the Federal Government of Nigeria through the Ad-Hoc Committee within 90 days of the initial offer.
2. Balance of 75% (or less) must be paid by all purchasers within an additional 90 days; thus, all purchasers must effect full payment within 180 days of offer.
3. Each purchaser will be given custody of the original C of O issued by the FCT with his/her picture or RC Number scanned thereon, unless paragraph 10 below applies.
4. Where payment is made for a house (either in part or in full) using a mortgage facility, lender(s) will be given custody of original C of O with Minister's consent.
5. All transaction charges shall be for the account of the purchaser

6. In the event that a purchase fails to comply with the payment terms, the non-refundable deposit (being 10% of the purchase price) will be forfeited to the Federal Government, the contract of sale shall be rendered null and void and the house declared unsold immediately and automatically. Any payment in excess of the non-refundable deposit shall be subsequently refundable less any administrative costs.
7. Subject to the implementation of the subsequent payment terms and condition as specified in paragraphs 5 through 8 above, the successful applicant will take possession of their property after completion of full payment being 100% of the reserve price.
8. In order to ensure transparency and accountability, the particulars of the successful Applicants will be published. Detailed property descriptions and relevant information will also be widely accessible, both in print and electronic media as well as on the internet. The FCTA, as its sole and absolute discretion, reserves the right to withdraw any and all properties hereby advertised at any point with transaction. Updates on the availability of the housing units as listed below can be found online at [www.fct.gov.ng](http://www.fct.gov.ng).

It therefore means that for the plaintiff to be entitled to the subject matter he must have followed the laid down procedures stated in Exhibit F; that is, he must have completed an application form, raised a bank draft of #10,000 in favour of the Adhoc committee for the sale of

FGN Houses in Abuja, another bank draft in favour of the Adhoc committee for the sale of FGN Houses in Abuja in the sum of 10% of the reserve price of the house as payment bond of the property he applied for. He must have also filled an expression of interest form [EOI] and must have submitted same timeously, since it is a first come first serve basis and the EOI must also contain his personal information and signature as well as the complete address of the property.

The documents mentioned in Part A & B are preconditions which are necessary to be complied with by the plaintiff. It is upon the fulfillment of part A & B of the exhibit F that the plaintiff can proceed with the terms and conditions stated in Part C. At this stage, the question I ask is did the plaintiff comply with the procedures stated in part A & B of the exhibit F? I do not hesitate to say No

Exhibit F was made on the 23<sup>rd</sup> March, 2007 and the walk in bid was slated for 28<sup>th</sup> March, 2007. The plaintiff was expected to take to the walk in bid venue an application duly completed and signed by him together with a bond by way of bank draft equal to ten per cent of the purchase value of the property he applied for. Also the plaintiff is expected to submit his EOI form together with the application and also the complete address of the property published.

The plaintiff herein, neither pleaded the application form, EOI in his statement of claim nor put the defendant on notice to produce the said documents. He also failed to plead the bank drafts he used as a bond in the bidding process of the unnamed property as well as the property mentioned in paragraphs 7 & 8 of his statement of claim.

In the present case, it is the evidence of the plaintiff that he paid to the 1<sup>st</sup> defendant the sum of #4,600.000.00 for a property in the Federal Capital Territory during the monetization of Government property in FCT and that the 1<sup>st</sup> defendant failed to deliver the property to him; that the 1<sup>st</sup> defendant subsequently offered him Block 3 Flat 22, Lapai Street, Area 2 Garki in the sum of #4,375,000.00; that this sum was deducted from the #4,600.000.00 which was the cost of the house that he paid for in the earlier bid. [See paragraphs 7 & 8 of the statement of claim]. The plaintiff however failed to avail this court with credible evidence of another walk in bid exercise asides from the one stated in exhibit F. It is the duty of the plaintiff to plead and prove every material fact that is necessary by way of credible evidence for the success of his case. See Section 131(1) (2), 132 of the Evidence Act.

Furthermore, the plaintiff neither pleaded the EOI in his statement of claim nor put the defendant on notice to produce the said document. He also failed to plead the bank drafts he used as a bond in the bidding process of the unnamed property as well as the property mentioned in paragraphs 7 & 8 of his statement of claim. I find as a fact that exhibit E2, the photocopy of Oceanic Bank draft dated the 9/5/2007 cannot be said to be in respect to the walk in exercise conducted on the 28<sup>th</sup> March, 2007 which is almost two months after the walk in sale of the Federal Government Houses advertised in exhibit F. I so hold.

From the above, it appears the plaintiff has to first comply with the procedure stated in Para A & B of the exhibit F, before he can proceed with the terms and conditions stated in Para C of the exhibit F.

Also the exhibit D is the letter of offer dated the 22<sup>nd</sup> May, 2007 and for ease of reference, I find it pertinent to reproduce same:

FEDERAL CAPITAL TERRITORY ADMINISTRATION

OFFICE OF THE MINISTER

FCDA Secretariat, Kapital Road, Area 11, P.M.B 24, Garki, Abuja.  
Nigeria.

Tel: (09) 314 1295, 3142371

Fax: (09) 314 3859

22<sup>nd</sup> May, 2007

[www.fct.gov.ng](http://www.fct.gov.ng)

OMOTOLA DAVIS BAMIDELE

LETTER OF OFFER

We refer to your Application and subsequent successful Walk-in Bid to Purchase the property owned by the Federal Government of Nigeria situate at Block 3 Flat 22 Lapai Street Garki, Abuja FCT and more particularly described in "Schedule A" hereto, together with all appurtenances, rights, rights of way, easements, reversionary rights and privileges related thereto ("the Property") and, in accordance with the published Approved Guidelines, are pleased to inform you that, having submitted the earliest application on said Property, we hereby offer you the right to purchase the Property as herein indicated.

This Letter shall constitute the Terms of Offer from the Federal Capital Development Authority ("FCDA") on behalf of the Federal Government of Nigeria ("the Lessor") and upon execution, the Acceptance by you (the "Lessee") to purchase the Property from the Lessor, on such terms and conditions as are more particularly set forth below:



1. The Lessee shall signify acceptance of this Letter and the Terms contained herein, by the execution of same and the enclosure of the executed duplicate copy, within a period of Fourteen (14) days from the date hereof.
2. At the Closing Date as hereinafter defined under Clause 4(a) the Lessee shall purchase the Property, subject to any conditions contained in a Deed of Lease or imposed by any law.
3. The purchase price of the Property as per the reserve price shall be ₦4,375,000.00 (Four Million Three Hundred and Seventy Five Thousand Naira only) which you have already paid in one installment.
4. In the event of the Lessee fails to comply with the terms outlined in (1) above, this transaction shall be avoided and the Lessee shall forfeit to the Lessor, 10% of the said Reserve Price as stated in (3) above and in addition thereto, (s) he shall be responsible for the payment of all costs and charges associated with the transaction.
5. The Lessee's acceptance of this Letter shall constitute an undertaking on his/her part that:
  - a. (s) he has paid the full purchase price, as stipulated in (3) above, being the successful purchaser on the Property, in accordance with the payment terms stipulated in (3) above; (s)he shall be responsible for the payment of all cost and charges associated with the transaction.
  - b. Where pertinent, all common areas and shared facilities (such as in premises of estates, Block of Flats, terrace houses, etc.) shall be the joint responsibility of the bona fide co-purchasers for value, for purposes including, without limitation, cooperation for obtaining all such approvals and licenses as are necessary, facility management, insurance, taxation, charges, utilities, safety, maintenance, public use and liability and such other necessary incidentals;

- c. (s)he shall abide by all relevant planning, environmental, health and safety laws, rules and regulations, including but not limited to all conditions, which may from time to time be required and or stipulated by the FCDA or other Municipal Administration; and
  - d. (s)he shall adhere strictly to development control standards and use his/her best and reasonable endeavors to ensure that no additional structures are erected without the written approval of the Development Control Department of the FCDA.
6. The Lessee hereby agrees and understands that time is of the essence in the performance of each of the conditions aforementioned, which conditions constitute valid and binding obligations enforceable according to the terms set out.
7. This Letter, and the obligations therein contained, shall be governed and construed by and in accordance with the Laws of the Federal Republic of Nigeria.

Kindly indicate your acceptance of this offer by, executing this Letter (and enclosing a duplicate), dating same in the space provided therefore, and returning same along with further payment of the outstanding balance to the Ad-Hoc Committee on the Sale of FGN Houses, Room 109, Minister's Block, FCDA Secretariat, Area 11-Garki, at which time the Offer and Acceptance become a binding agreement, in commitment to the fulfillment of the conditions precedent.

The Offer shall be deemed to have been withdrawn at the close of business on the Fourteenth (14<sup>th</sup>) day following the date hereof, unless prior thereto, the Lessor shall have received a written, valid Acceptance, in satisfaction of all conditions precedent, from the Lessee.

Upon Acceptance, by the execution of this Letter of Offer and the return of its duplicate copy, the respective heirs and successors-in-title of the Lessor

and the Lessee shall become bound by the terms and conditions of this Agreement.

It must be emphasized that time is of the essence for the acceptance of the Letter, as no extension whatsoever shall be granted.

#### Schedule A

All that Property known as a Flat situated at Block 3 Flat 22 Lapai Street Garki, Abuja FCT including and not limited to the party walls, roofs, plumbing and electrical, sewage and other systems, together with all appurtenances, rights, rights of way, easements, reversionary rights and privileges related thereto.

Signature \_\_\_\_\_

Nasir Ahmad el-Rufa'I, OFR

Minister of the Federal Capital Territory

#### ACCEPTANCE

Accepted by the within named lessee

Name: Dr. B. D Omotola

Signature: \_\_\_\_\_

Occupation: Public Servant

Date: 11<sup>th</sup> June, 2007

In the Presence of:

Name: John Funsho Tehinse

Date: 11<sup>th</sup> June, 2007

Signature: \_\_\_\_\_

It is crystal clear from exhibit D that the offer is subject to the fulfillment of some conditions and as stated earlier the onus is on the plaintiff to prove his case on the preponderance of evidence. The mere acceptance of the offer does not amount to a binding contract between the parties. In an offer for the purchase of a property all the conditions for the purchase of the property must be read together and complied with before it can be said that there is a valid offer, acceptance and that the contract is legally binding the parties. It is stated in exhibit D that at the closing date as hereinafter defined under clause 4 (a) the lessee shall purchase the property, subject to any conditions contained in a Deed of lease or imposed by any law.

The plaintiff failed and neglected to present before the court the deed of lease or any agreement entered into by parties or the agreement which contains the clause 4 (a) mentioned in the letter of offer. Furthermore, it is contained in exhibit F that each purchaser will be given custody the C of O issued by the FCT with his/her picture scanned on it and where the purchase is via a mortgage facility, the lender will be given the C of O. There is no evidence that the plaintiff here was issued with the C of O of the said property as stated in exhibit F. I find as a fact that the plaintiff having failed to present the C of O as stated in Part C, Paragraph 9 of exhibit F, this court cannot grant the reliefs sought.

It is also stated in exhibit F that in order to ensure transparency and accountability, the particulars of the successful applicants will be published and a detailed property description and relevant information

will also be widely accessible, both in print and electronic media. This was also not presented by the plaintiff to the court.

In civil cases, the burden is placed on the plaintiff; he is to rely on the strength of his own case and not to depend on the weakness of the defendant's case. He has the duty to plead and prove every material fact that is necessary by credible evidence for the success of his case. It is the duty of the court to weigh the evidence by placing it on an imaginary scale of justice before arriving at a decision. From the evidence adduced by PW1, he has not discharged the onus placed on him. I am not unmindful of the fact that the defendant did not file a statement of defence, the failure to file one does not prevent the plaintiff from proving his claims. As stated earlier, cases are decided on the preponderance of evidence or probabilities; the plaintiff must succeed on his own strength. See s.134 *Evidence Act*. The burden is on the plaintiff to prove that he was issued with the C of O of the property in question as stated in exhibit F and this he failed to do. Having placed the testimony of the Pw1 on the scale of evidence, I cannot attach any weight to the evidence placed before the court by the Pw1, thus the matter is resolved against him.

On the whole, I hold that the plaintiff failed to prove his case on the balance of probabilities. Accordingly, the claims of the plaintiff are hereby refused and same is dismissed. There is no order as to cost.

.....  
ASMAU AKANBI-YUSUF  
HON. JUDGE

APPEARANCES:

P.O Onuncheyo, G.B Ogunmole, T.A Akapa, for the Plaintiff

D.G Bawa, for the defendant