IN THE HIGH COURT OF JUSTICE
FEDERAL CAPITAL TERRITORY OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT APO – ABUJA
ON, 11TH DAY OF NOVEMBER, 2021.
BEFORE HIS LORDSHIP:- HON. JUSTICE A. O. OTALUKA.

SUIT NO: FCT/HC/CV/20101/20

BETWEEN:

DSV LIMITED:.....CLAIMANT

AND

HON. MINISTER, FEDERAL CAPITAL TERRITORY:.....DEFENDANT

IfunayaOranuba for the Claimant.
AmarachiOkonkwo for the Defendant.

JUDGMENT.

The Claimant by a Writ of Summons dated and filed the 14th day of October, 2020, took out this action against the Defendant claiming for the following reliefs:

1. A declaration that the Claimant is the holder of the Statutory Right of Occupancy dated 25th June, 2002, referenced (MFCT/LA/MISC.17393) over Plot No. B-P1B Sector Centre B, Abuja.
2. A declaration that the Claimant's Statutory Right of Occupancy over Plot No. B-P1B Sector Centre B, Abuja is valid and subsisting.
3. A declaration that the payment of the sum of Four Million, Thirteen Thousand, Seven Hundred and Thirty Four Naira, Twenty Five Kobo (N4,013,734.25), being thetotal assessed Rent, Fees, Premium, Survey Fees,

Development Levy, etcetera for the issuance of Certificate of Occupancy is valid and subsisting and represents full and final paymentby the Claimant for the issuance of Certificate of Occupancy, over Plot No. B-P1B, Sector Centre B, Abuja.

4. An order directing the Defendant to issue the Claimant with the Certificate of Occupancyover Plot No. B-P1B, Sector Centre B, Abuja.
5. An order of perpetual injunction restraining the Defendant whether by himself, agents, or privies, from unlawfully revoking and or expropriating, or in any manner howsoever interfering with the rights, title of the Claimant or possession of the Claimant of Plot No. B-P1B, Sector Centre B, Abuja.
6. An award of the sum of Ten Million Naira (N10,000,000.00) as general damages against the Defendant.

Thecase of the Claimant as distilled from its Statement of Claim, is that the Defendant on 25th June, 2002, pursuant to the Claimant's application, allocated to the ClaimantPlot No. B-P1B, Sector Centre B, Abuja, covered by File No. MFCT/LA/MISC.17393 and communicated same to the Claimant vide a conveyance of a Statutory Right of Occupancy dated 25th June, 2002.

The Claimant averred that it accepted the said offer vide its acceptance letter dated 5th July, 2002, and that the Defendant issued it with the bills for Right of Occupancy, rent and fees, including the premium for Certificate of Occupancy, Survey fees and development levy, etcetera, on 2nd November, 2002. That it paid the sum of N4,013,734.25, being the requisite rent and fees, including the premium for the Certificate of

Occupancy and Survey fees and development levy, etcetera, for the preparation and issuance of Certificate.

The Claimant further averred that when the Defendant commenced re-certification of titles of land within the Federal Capital Territory, it filled and submitted the Recertification Form and paid the requisite N10,000.00 processing fee to the Defendant, and that at the request of the Defendant, it submitted the original copies of the following documents: Revenue Collector's receipt for application fees, Land Application Form, Acknowledgment, Statutory Right of Occupancy, Acceptance Letter, Recertification Form and Bank Teller for the payment of Recertification fees.

It stated that the officials of the Defendant have failed over the years on their promises and assurances to recertify the plot by digitizing its title and documents and issuing it with the Certificate ofOccupancy, as the Defendant has been holding out that he misplaced the file for all these years and therefore, could not recertify the title for the said plot.

The Claimant averred that the acts of the Defendant constitute a scheme to illegally take over the Claimant's right and titleover the said Plot No. B-P1B, Sector Centre B, Abuja, hence this action.

In its reply to the Defendant's statement of defence, the Claimant admittedonly paragraph 3 of the said statement of defence and denied the rest of the paragraphs thereof.

It restated the averments in its statement of claim and further averred that the averments in the statement of defence are false and misleading, and a ploy by the Defendant to illegally take over the Claimant's rights and interest over the said plot of land.

At the hearing of the case, the Managing Director of the Claimant, OkerekeChijiokeStanislaus gave evidence for the Claimant.

Testifying as PW1, he adopted his Witness Statement on Oath and this Further Witness Statement on Oath in support of the Claimant's reply to the Statementof Defence. He alsotendered in evidence, the following documents:

1. CTC of Revenue Collector's Receipt for N52,000.00 – Exhibit PW1A.
2. CTC of Land Application Form dated 13/1/2020 – Exhibit PW1B.
3. CTC of Offer of Terms of Grant/Conveyance of Approval dated 25/6/02 – Exhibit PW1C.
4. CTC of Acceptance of Offer of Grant of Right of Occupancy dated 5th July, 2002 – Exhibit PW1D.
5. CTC of Right of Occupancy Rent and Fees dated 22/11/2002 – Exhibit PW1E.
6. CTC of Revenue Collector's Receipt for N4,013,134.25 – Exhibit PW1F.
7. CTC of Application for Recertification and Re-Issuance of Certificate of Occupancy – Exh PWIG.
8. CTC of AGIS Deposit slip for N10,000.00 – Exhibit PW1H.

Under cross examination by the learned defence counsel, the PW1 told the Court that he has been with the Claimant since 2015. He stated that the application for land allocation, the acceptance of offer of allocation on 5/7/2002, and the application for recertification, were not done by him personally.

He further stated that the averment in paragraph 10 of his witness statement on oath of the Defendant holding out that he misplaced the Claimant's file, as well as the alleged promises and assurances by the officials of the Defendant to recertify the

plot by digitizing the Claimant's title and documents and issue him the Certificate of Occupancy (paragraph 11 of Claimant's WSO), were communicated to the Claimant verbally.

In his defence to the suit, the Defendant filed a Statement of Defence dated and filed on the 20th day of January, 2021, wherein he averred that the Claim did not at any point in time apply for allocation of land in the Federal Capital Territory.

He stated that he did not at any time allocate any Plot known asPlot No. B-P1B, Sector Centre B, Abuja to the Claimant on 25/06/2002 or on any other date, and that neither he nor his agents did at any point convey the purported offer of Conveyance of Statutory Right of Occupancy dated 25/06/2002 to the Claimant.

The Defendant specifically denied issuing any of the documents tendered in evidence by the Claimant and stated that the Claimant did not at any point in time pay the sum of N4,013,734.25 to the Defendant or his agents as requisite Rent and Fees, Development Levy, etc, for the preparation and issuance of Certificate of Occupancy in respect of the subject plot or any plot wherever, and that the Defendant never issued any revenue collector's receipt dated 22/11/2002 to the Claimant.

The Defendant further averred that the Claimant did not at any point in time submit originals of Revenue Collector's Receipt for application fees, land application form acknowledgment,Statutory Right of Occupancy, Acceptance Letter, Recertification Form and Bank Teller for the payment of Recertification Fees in respect of the subject plot or any other plot to the Defendant or his agent. That in any event, it is not the practice of the agents of the defendant to collect originals of title documents or other land documents from allottees during

recertification, and that the Defendant usually issues acknowledgment letters to applicants who have submitted documents for recertification, but that in the instant case, the Defendant has not issued the Claimant any letter of acknowledgment in respect of the said submissions.

Furthermore, the Defendant averred that none of his agents has ever informed nor held out in any way to the Claimant that the Defendant could not recertify the Claimant's title over the subject plot because the defendant has misplaced his file. That the Defendant has never promised the Claimant that he was going to recertify the Claimant's purported title over the subject plot and issue a Certificate of Occupancy to him, as the subject plot was never allocated to the Claimant in the first place.

One KenechukwuChineme Martha, (DW1) an Assistant Chief Town Planning Officer in the Department of Land Administration, gave evidence for the Defendant at the trial of the case. She adopted her witness statement onoath in support of the averments in the statement of defence. Under cross examination she told the Court that she came to the conclusion that the documents tendered by the Claimant did not emanate from their office because they do not have in their records such plot number as is seen on the Claimant's Right of Occupancy.

She stated that the said records are in AGIS; that she did not bring them to Court, although they are printable and movable.

At the close of evidence, the parties filed and exchanged final written addresses.

In his final written address, dated and filed the 28th day of July, 2021, learned counsel for the Defendant, ChukwukaJ. Oliobi, Esq., raised two issues for determination, namely;

a) Whether land can be allocated to any person in the Federal Capital Territory without the due approval and authorization of the Defendant?
b) Whether the Claimant has proved her case to entitle her to the reliefs claimed?

Proffering arguments on issue (a), learned counsel relied on Sections 2(1), and 13(1)&(2) of the FCT Act, Section 51(2) of the Land Use Act, and Sections 297(2) and 302 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), to posit that ownership of all land in the entire areacomprised in the Federal Capital Territory, is vested in the Federal Government of Nigeria and that the President of the Federal Republic of Nigeria has given mandate to the Defendant to administer same for the development of the capital city.

He further referred to**Ona v. Atanda (2000) 5 NWLR (Pt.656) 244** and **Madu v. Madu (2008) LPELR-1806(SC).**

Hesubmitted that by the above statutory and judicial authorities, it is the Defendant that has statutory authority to issue Offer of Statutory Right of Occupancy and Certificate of Occupancy in respect of any land within the FCT.

He argued that it is the evidence of the DW1 before the Court, that the Defendant never allocated Plot No. B-P1B, Sector Centre B, Abuja to the Claimant, and that the subject plot does not exist in the records of the Department of Lands Administration. Therefore, that the Claimant does not have any valid title whatsoever over the subject plot.

He urged the Court, on the basis of the authorities referred to above and the evidence of DW1 before the Court, to hold that there was no due approval and authorization by the Defendant

for Plot No. B-P1B, Sector Centre B, Abuja to be allocated to the Claimant, and that no plot with such plot number exists in the records of the Defendant.

On issue (b), learned counsel contended that the Claimant has not discharged the burden of proof placed on her as to warrant the granting of her prayers.

He urged the Court to hold, on the basis of the arguments proffered on issue (a), to the effect that the documents tendered by the Claimant in this suit are all invalid, null and void, and of no effect whatsoever, having not emanated from the Defendant; that the Claimant is thus not entitled to the reliefs claimed.

Relying on Sections 131-133 of the Evidence Act, 2011, learned defence counsel submitted that it is a settled principle of law that he who asserts must prove.

He contended that the Claimant has the legal burden of establishing her claim and that it is trite law that cases in land matters are won on their merit; that is on the strength of the Claimant's case and not on the weakness or absence of defence – **Arase v. Arase (1981) 5 SC 33 at 37.**

He argued that the Claimant has refused to prove her case, hoping rather for the possibility of leaning on the weakness of the Defendant's defence.

Learned counsel further posited that the Court cannot grant a declaratory relief as sought by the Claimant without the party seeking for same adducing substantial evidence.

He contended that the Claimant having failed to adduce credible evidence in support of her claim, is not entitled to the declaratory reliefs being sought.

He argued on the whole, that the Claimant having wasted the time of this Court with frivolous case, has failed to discharge the legal burden of proof that rests heavily on her shoulders. He thus urged the Court to dismiss the Claimant's claims in its entirety as same lacks any iota of merit.

In the Claimant's final written address dated and filed on the 12th day of august, 2021, learned counsel for the Claimant, IfunanyaOranuba, Esq., also raised two issues for determination, namely;

i. Whether having regard to the state of pleadings and the evidence led by the parties, the Claimant has proved its case on the balance of probabilities so as to be entitled to the reliefs sought in its Writ of Summons and Statement of Claim?
ii. Whether the Defendant has proved beyond reasonable doubt that the documents tendered by the Claimant are forgeries?

In arguing issue(i), learned counsel referred to Sections 131(1) and 134 of the Evidence Act, 2011 on the burden of proof.

On the standard of proof in land maters, as in civil cases generally, he referred to**Owuana v. Oparaji (2002)5 NWLR (Pt.760) 353, Adeleke v. Iyanda (2001) 13 NWLR (Pt.729)1.**

Relying on **Mogaji v. Odofin (1978)4 SC 71,** learned counsel contended that while it is true that a Claimant in an action for declaration of title to land has to succeed on the strength of his own case rather than the weakness of the defence, that the standard of proof is the same as in civil cases wherein evidence adduced by both sides are weighed on an imaginary scale to see which side preponderates.

He referred**to Idundu v. Okumagba (1976) 9-10 SC 227** on the five ways of proving title to land, and relied on**Uka v. Irole (2002) 7 SCNJ 137 at 163** to submit that proof by one method suffices.

He argued that it is only the second method laid down in **Idundu v. Okumagba (supra)** (by production of documents of title), that could apply to proof of entitlement to a statutory right of occupancy over land in the Federal Capital Territory, Abuja. He posited that theimplication is that in order to succeed, a party seeking declaration of title to land in the Federal Capital Territory has to rely on documents evidencing a grant of a right of occupancy from the Minister of the Federal Capital Territory. He referred to **Ona v. Atanda (2000) 5 NWLR (Pt.656) 244; Madu v Madu (2008) 6 NWLR (Pt.1083) 296 at 325.**

He argued that the Claimant in the instant case has traced its root of title to a grant from the Hon. Minister of the Federal Capital Territory.

Relying on **Adun v. Obaguwana (2016) All FWLR (Pt.819) 1135 at 1157,** he submitted that when a document is duly pleaded and admitted in evidence, the document becomes the best evidence of its contents and therefore, speaks for itself.

He further referred to**Sankey v. Onafifeke (2014) All FWLR (Pt.749) 1034; Egharevba v. Osagie (2009) LPELR-1044 (SC).**

On the position that documentary evidence are the hanger on which oral evidence would be hung for assessment and evaluation, and that oral evidence may not be employed to contradict, alter or vary the contents of documentary evidence, he referred to **Ebem v. Nseyen (2016) LPELR-40122 (CA)** and

FCDA v. Kuda Eng. & Const. Co. Ltd (2014) LPELR-22985 (CA).

Learned counsel further argued that the allegation that the documents relied on by the Claimant are not in the Defendant's records, flies in the face of the fact that the documents tendered by the Claimant in proof of its case are certified true copies of documents which form part of the Defendant's official records.

He posited that documents that form part of the Defendant's official records regarding allocation of land in the FCT, are public documents, and that certified true copies of public documents are presumed to be genuine.

He thus contended that the Defendant's allegation that the Claimant's title documents did not emanate from his office is preposterous, given that an official under the Defendant issued certified true copies of the documents which are in the Deeds Registry of the Defendant.

He referred to Section 146(1) of the Evidence Act, 2011 and the cases of **AICE Investment Co. ltd v. Fidelity Bank (2015) LPELR-25753 (CA),Kawu v. Minister, FCT (2016) LPELR-41142(CA), Bayawo v. NDLEA (2018) LPELR-45030(CA),** inter alia, on thepresumption of genuineness of certified copies of public documents, andsubmitted that Exhibits PW1A-PW1H have the effect ascribed to them by their contents and cannot be contradicted by the Defendant's bare denials.

Arguing further,learned counsel contended that the Claimant tendered its documents in proof of its title to the Plot in issue without any form of objection from the Defendant. He argued that the Defendant did not tender any document to rebut the facts contained in the documents tendered by the Claimant, but

rather, that the Defendant made bare assertion that the documents relied on by the Claimant did not emanate from him.

Furthermore, he argued that the Defendant did not state that the plot in issue has noallottee or who the rightful allottee is, and that neither did the Defendant present his records to enable the Court ascertain that the Claimant is not the allottee of the plot of land in issue.

He thus contended that the Claimant has proved on the preponderance of evidence that it is the holder of the Statutory Right of Occupancy over Plot No. B-P1B, Sector Centre B, Abuja, and is therefore entitled to all the reliefs sought in this suit.

Arguing issue(ii) on ***"whether the Defendant has proved beyond reasonable doubt that the documents tendered by the Claimant are forgeries",***learned counsel relied on Sections 135 (1)&(2) and 140 of the Evidence Act, 2011, and the cases of **Ndoma-Egba v. African Continental Bank (2005) 14 NWLR (Pt.944)74;Adelaja v.Alade (1999)6 NWLR (Pt.608)137 at 153** to posit that the averment by the Defendant that the documents relied upon by the Claimant did not emanate from the Defendant, is tantamount to the Defendant saying that the said documents are forgeries. He therefore argued that the allegation of forgery, which is an allegation of crime in a civil case, shifted the burden of proof to the Defendant to show that the said documents are indeed forgeries.

He contended that it does not matter whether the allegation of crime was couched in negative or positive assertions; that the burden of proof is on him who will lose if the allegation is not proved. He further referred to **Emmanuel v. Umana (2016) All**

FWLR (Pt.856)214; Orlu v. Gogo-Abite (2010)8 NWLR (Pt.1196)307.

Learned counsel further relied on **Babatola v. Adewumi (2011) LPELR-3945 (CA)** to submit that forgery is a very serious crime under our criminal laws, and that where it is alleged by a party to a civil action, either as a foundation of a claim or defence, it must be proved beyond reasonable doubt.

He argued that in this case, the Defendant at trial, did not provide this Court with any forensic basis to arrive at the finding that the documents tendered by the Claimant in proof of its case are forged.

He urged the Court, on the basis of the evidence led by the Claimant, to hold that the presumption of regularity operates in favour of the Claimant, and that the title documents were regularly issued and that all formal requirements for their validity were complied with by the Defendant. He referred to **Eromosele v. FRN (2017) 1 NWLR (Pt.1545) 55 at 108-109.**

On the evidence of the DW1 that they do not have in their records, the allocation being claimed by the Claimant, learned counsel urged the Court to disregard the oral testimony of the DW1 as same is inadmissible secondary evidence of a public document. He urged the Court to apply Section 146 of the Evidence Act and hold that the documents tendered and relied on by the Claimant in this case are genuine.

He further urged the Court in conclusion, to hold that on the balance of probabilities or preponderance of evidence, the Claimant has proved that it has a valid and subsisting right of occupancy over the plot of land in issue, and to grant all the reliefs sought by the Claimant.

Having painstakingly gone through the pleadings and evidence presented by the parties at the hearing of this case, as well as the legal arguments of both learned counsel in their respective final written addresses; the issue that calls for consideration in the determination of this suit, is: **whether the Claimant has made out any claim enforceable by this Court?**

First, let us explain or define what a claim is.Augie, JCA as he then was in **Oando PLC v. Mrs Comfort Ajaigbe&Ors (2015) LPELR-24816(CA)**expatiated the meaning of claim the meaning of claim relying on Black's Law dictionary 8th Edition; to be ***"the aggregate of operative facts giving rise to a right enforceable by a Court."***

It means therefore, that the absence of any operative facts, no right to enforce them would exist. In other words, the existence of a legal wrong can ground an action in law. In the law of contract and its enforcement, the general rule is that there must be the existence of mutuality – in **Bilante Inter Ltd v. Nig. Deposit Ins Corp (2011) LPELR-781(SC)**

> ***"Contract is defined as an agreement between two or more persons which creates an obligation to do or not to do a particular thing. Its essentials are competent parties, subject matter, legal consideration, mutuality of agreement and mutuality of obligation."***

In contract for sale of land either from individual to another or statutory allocation of land that is guided by specific statutes governed by LUA in states of acquisition of land in Federal Capital Territory, the Courts are guided by the precise mode of performance fixed by the law or agreement of parties. Therefore the enforceability of such contracts must be within the ambit of the law andthe Court's attitude has always inclined to grant specific performance.

However, the Court cannot decree specific performance which cannot be enforced. The aggregate of the operative facts giving rise to a right must be in existence to make it enforceable. It must be crystal clear that a legal relationship exists creating a definite contract.

In the instant suit, the summary of the case of the Claimant is that she asking for specific performance of the contract she claims existed by seeking a specific order of issuance of Certificate of Occupancy in her favour.

While the Defendant on the contrary argues that there was no legal relationship resulting in a binding contract. There must be the existence of a definite contract in existence which would demand a specific performance from the Court.

Specific performance is an equitable remedy granted to enforce the contract against the defaulting party. Demand for specific performance commonly arise in contracts concerning land.

For consideration for specific performance, I consider the existence of these issues;

(1) Existence of an enforceable agreement.
(2) There must be mutuality between the parties.
(3) The Claimant must have performed part or wholly the terms of the contract.
(4) Claimant must prove that he obtained the title from the proper vendor.

From the conglomerate of facts before me, I form the opinion which is very strong that the two parties had no mutuality in the so called contract. Claimant tendered CTC of title documents claiming it is from the office of the Defendant. The Defendant on the contrary denies having any contract relationship with

Claimant and never issued any of the CTC title documents the Claimant is relying upon.

The onus has never shifted from the Claimant to the Defendant in civil matters particularly where the Defendant has not discharged herself of the onus. It is not enough to say that these photocopied documents but certified came from your office.

The Defendant in debunking the evidence of the Claimant stated that the Claimant's name is not in their system as one of the allottees and that the said CTC documents did not emanate from them. Even though the stamp of certification represents the "FCT Dept of Land Administration" and signed by apersonnel of the Department ofLand Administration, Federal Capital Territory.

The burden of proof still remains with the Claimant to explore and prove the existence of one "Yakubu Ahmed" that purportedly signed 'For' Deeds Registrar 19/04/2005 as indicated on the CTC stamp. The burden to prove the existence of the contract by allocation of land to Claimant should be established. Further to succeed in this suit the Claimant should prove that there was a concluded legal relationship. From the facts and documentary evidence before me and according to the Claimant from paragraph 7 statement of claim that she submitted the original copies of her titled documents for recertification at the payment of N10,000.00 (Exh PW1H) to the Defendant.Exh PW1H is a 'Deposit slip' emanating from Standard Trust Bank. Exh PW1H is not a receipt per se but a deposit slip indicating that a payment of N10,000.00 was purportedly paid into the account of Abuja Geographical Information System (AGIS) on 18/4/05 from recertification. The receipt of the said N10,000.00 by Abuja Geographical

Information System (AGIS) was not tendered.The banks stamp receiving the payment is blurred and one cannot clearly see the receiver of the said deposit as Standard Trust Bank and as claimed by the Claimant. Therefore, where the letters of a document are not plain or clear to enable the Court interpret it and give effect to it, such document is regarded as being legally ineffective. It is settled that interpretation of a document must be in whole and not in parts or isolation.

The different parts of a document commencing with the dates, the stamp, the content, the signatures and whatever then makes the document complete before the Court must be in harmony to achieve the intendment of the maker of the document. The said Exh PW1H supposedly represents a payment toStandard Trust Bank. Therefore, it is pertinent that the stamp indicating the receipt of the money should be clear and readable beingcrucial part of the document to enable the Court give a clear interpretation of when the receipt of the money allegedly paid was made.Unfortunately I have not seen that and I declare Exh PW1H legally ineffective to support the case of the Claimant. To add steam to the above, the Claimant further in paragraph 7 of her pleadings, pleaded the acknowledgment slip from Abuja Geographical Information System (AGIS). This document was not tendered implying indeed that the acknowledgement of recertification which ought to exhibit the submission of the original documents the Claimant presented to the Defendant for recertification. In the absence of any acknowledgment of any original copies of document submitted to the Defendant, it means or implies that no such title documents were forwarded to the Defendant for recertification I am convinced that the Claimant’s original titled documents were not submitted to the Defendant.

By reason of Exh PW1G – ***"Application for Recertification and Re-issuance of C of O"***was made by one Daniel OkwunaObiorah on 2/12/1999. On the face of the Exh PW1G, item 11 demanded, ***"what documents is submitted for Recertification?"*** The item 11 requested the Applicant Daniel O. Obiorah to tick in the box all the documents he has submitted to wit: (a) Letter of intent(b) Allocation letter (c) Right of Occupancy (d) Certificate of Occupancy.The Applicant never indicated that he submitted the title document as requested in Exh PW1G. To compound issues, the application Exh PW1G was dated 2/12/1999, while the payment for the recertification according to the Claimant was made on 18/4/05 (Exh PW1H).The Claimanthas not explained to this Courtconvincingly how he could apply for recertification on 2/12/1999 and make payment for it 6 years after on 18/4/05. I am in serious doubt as in the authenticity of the documents produced by the Claimant.

Further question is <u>whether a mere production of title document is sufficient to prove a claim for declaration of title?</u>

Production of documents is one of the 5 ways of proving title to land but definitely not sufficient to prove title. It is trite law that the Court should investigate further to prove the authenticity of such documents. – **<u>International Beer & Beverages Industries Ltd &anor v. Mutun (2011) LPELR 4329 (CA).</u>**

Gleaned to the exhibits relied upon by the Claimant, to put the matter straight, the said title documents failed to prove that there was any contractual transaction between the parties to produce an enforceable claim. Pats-Acholonu, JCA as he then held;

> ***"In an action for breach of contract in which a claim for specific performance is made there must be a***

valid, solid and subsisting and enforceable contract. The contractshould not be colourable or based on mere specification or intuitiveness or guesswork. The parties must both have understood each other that they have entered into a binding contract and it is no business of the Court to create or devise a new contract where none existed before…"

Best (Nigeria) Ltd v. Blackwood Hodge Ltd (1998) 10 NWLR (Pt.569) 253.

By the facts and evidence of both parties, it is crystal clear and unfolded in the eyes of this Court that there was no existing contract not to talk of a binding contract. The parties have not established any legal relationship and this Court would not allow the Claimant to pull wool over its eyes to speculate or involving in guesswork of believing the existence of a contract between the parties. In the absence of the principle of mutuality, there is no enforceable contract. The Claimant owes herself the Defendant and the Court the burden to prove his case on the balance of probabilities or the preponderance of evidence that the reliefs he sought are grantable. He who asserts must prove. Burden of proof has been established in Section 132, 133 and 136 of the Evidence Act 2011. The burden of proof of any fact lies on the party against whom the judgment of the Court would be given.It follows therefore, that the Claimant who has asserted has woefully failed to prove and earn his reliefs. The evidence of the Claimant is highly improbable and cannot be believed. Conclusively I depend strongly on the judgment of the erudite Justice Oputa, J.S.C of blessed memory

"When evidence is improbable, it can easily be dismissed as un truc as probability has always been

> ***the surest road to the shrine of truth and justice. The balance of probability will thus reflect also the balance of truth. When this happens it then becomes the balance of justice."*** -**Daniel Dibiamaka&Ors v. Prince O. Osakwe&Ors (1989) LPELR-940(SC).**

I quickly remind the parties of this saying,***"Truth is the mother of justice and it will surely show up at the end of the race."*** Indeed, I am convinced that the Claimant with the plethora of exhibits tendered have failed to prove the existence of any land allocation in her favour.

Having failed to prove its case, the Claimants case fails and is hereby dismissed with a cost of N100,000.00 (One hundred Thousand Naira).

HON. JUSTICE A. O. OTALUKA
11/11/2021.