

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

**IN THE ABUJA JUDICIAL DIVISION**

**HOLDEN AT MAITAMA**

**BEFORE HIS LORDSHIP: HON. JUSTICE Y. HALILU**

**COURT CLERKS : JANET O. ODAH & ORS**

**COURT NUMBER : HIGH COURT NO. 14**

**CASE NUMBER : SUIT NO: CV/542/14**

**DATE: :THURSDAY 16<sup>TH</sup> DECEMBER, 2021**

**BETWEEN:**

**MARGARET EKENG ..... PLAINTIFF/APPLICANT**

**AND**

**ELIZABETH ADEH ..... DEFENDANT/RESPONDENT**

## **JUDGMENT**

The Plaintiff commenced this action vide amended Writ of Summons and Statement of Claim filed on 10<sup>th</sup> February, 2015 and dated same day wherein the Plaintiff claims the following:-

1. A Declaration that Block 2, Flat 2, Gonda Street, Wuse Zone 1, Abuja, jointly belongs to the Plaintiff and the Defendant having contributed money in equal proportion to acquire the said property.
2. An Order directing the sale of Block 2, Flat 2, Gonda Street, Wuse Zone1, Abuja reason being that the duo can no longer cohabit as co-owners due to hostility exhibited by the Defendant towards the Plaintiff. The proceeds of sale to be shared by the Plaintiff and Defendant after

valuation by a Registered Estate valuer or Estate valuers mutually or independently appointed by them as the case may be.

3. An Order directing the Defendant to lodge the certificate of occupancy of Block 2, Flat 2, Gonda Street, Wuse Zone 1, Abuja, in her possession with the Registrar of the Court pending the proposed sale of same.
4. An Order directing the Defendant to pay the sum of N20,000,000.00 (Twenty Million Naira) only, being damages for trauma and distress.
5. An Order directing the Defendant to pay N1,000,000.00 (One Million Naira) as cost of litigation.

Upon service of the Writ on the Defendant and after pleadings were exchanged, the suit was set down for

hearing. The case of the Plaintiff as distilled from the witness statement on oath of the Plaintiff/Applicant (Margaret Ekeng) is that sometimes in August, 1999 when flat was allocated to both the Defendant and the Plaintiff, the Plaintiff paid rent regularly until the monetization program in 2004 and the two parties decided to apply to buy the flat in the name of the Defendant. Only the Defendant needed to support the application with her documents and not the Plaintiff. Therefore the Plaintiff did not present her records before any authority or body related to sale.

The Plaintiff contends further that both parties had agreement to pay the purchase price in equal halves. The reason the Plaintiff agreed to use the name of the Defendant was due to the nature of the job of the

Plaintiff, there would not be time to pursue the application.

The Plaintiff claims that the Defendant did not only inform her that she obtained a loan from Aso Savings and Loan to pay for the house, but also gave the Plaintiff a bank account into which she (the Plaintiff) should pay her own portion of the loan repayment to the Mortgage Bank. There was never an issue of anyone being disqualified. In fact, the Defendant wrote the Plaintiff a handwritten letter dated 21<sup>st</sup> November, 2007, wherein she (Defendant) supplied **Account No.: 01-3001230391** and directed the Plaintiff to the Area 8 Branch of the Aso Savings and Loans Plc. The Plaintiff paid half of the 10% initial payment is N450,000.00 (Four Hundred and Fifty Thousand Naira) only, out of which she paid the Defendant N225,000.00 (Two Hundred and

Twenty-Five Thousand Naira) only, on 25<sup>th</sup> October, 2005.

The Plaintiff also contends that she paid both directly to the Defendant and into Account No. **01-3001230391** with Aso Savings and Loans Plc, as directed by the Defendant and into the Defendant's Personal Account No. **001-008027682-01-9** with the said Aso Savings and Loans Plc. is N3,344,000.00 (Three Million, Three Hundred and Forty-Four Thousand Naira), apart from other non-receipted payments ranging from painting of the apartment to payment of tenement rate and light bills. Payment of the sum of N505,000.00 (Five Hundred and Five Thousand Naira) was made by the Plaintiff vide First Bank Cheque No: **66962051** into the Defendant's Account No: **01-3001230391** with Aso Savings and Loans Plc. on the 21<sup>st</sup> of November,

2007. However, on the 9<sup>th</sup> of July, 2008, the Defendant wrote another letter to the Plaintiff stating the Mortgage Balance to be N1,096,281.48 (One Million Ninety-Six Thousand, Two Hundred and Eighty-One Naira, Forty Eight Kobo) of which Plaintiff was required to pay half which is N548,140.74 (Five Hundred and Forty Eight Thousand, One Hundred and Forty Naira, Seventy Four Kobo). The Defendant wrote a reminder letter to the Plaintiff on the 15<sup>th</sup> of July, 2008, demanding for the said Mortgage Balance.

The Plaintiff further claims to have communicated with the Defendant vide a hand written letter dated 16<sup>th</sup> July, 2008 promising to pay soon due to the pressure from the Defendant. The Plaintiff paid the sum of N549,000.00 (Five Hundred and Forty Nine Thousand Naira) later, vide her (the Plaintiff)

Oceanic Bank Cheque No:**01411010005006** into the Defendant's Account No: **01-3001230391** with Aso Savings and Loans Plc. on the 18<sup>th</sup> of August, 2008, which was returned due to closure of the account. The Plaintiff issued another open Oceanic Bank Plc. Cheque No. **00000006** in the said sum of N549,000.00 (Five Hundred and Forty-Nine Thousand Naira), which the Defendant collected and paid into her personal Account No.: **001008-027682-01-9** with Aso Savings and Loans Plc.

It is further the claim of the Plaintiff that on the 1<sup>st</sup> of May, 2012, the Defendant called the Plaintiff, into the living room of their apartment and told the Plaintiff to start paying rent or pack out of the House and that the Defendant owns the house alone since certificate of occupancy was issued in the Defendant's name. The Plaintiff on 1<sup>st</sup> June, 2012



caused a petition to be written on her (Plaintiff) behalf by her Solicitors Isaac Okpanachi & Co. to the Metropolitan Police in Order to call the Defendant to Order.

The Defendant caused a 7 days notice to quit to be served on the Plaintiff, through the Defendant's Solicitor, Johnbull Adaghe Esq. to vacate the property that the Plaintiff jointly contributed money to purchase. Another notice of Owner's Intention to Recover Possession was served on the Plaintiff by the Defendant through her Solicitor, Johnbull Adaghe Esq. The Defendant wrote another letter dated 25<sup>th</sup> March, 2015 through her Solicitor Johnbull Adaghe Esq in which they offered to pay the sum of N2,000,000.00 (Two Million Naira) only to the Plaintiff as settlement out of Court.

The Plaintiff further contends that after seeing the excesses of the Defendant have become unbearable, the Plaintiff instructed her Solicitors to give the Defendant a counter-offer dated 27<sup>th</sup> March, 2015.

The Plaintiff further contends that she was never disqualified from buying the house at any point and that it is absolutely untrue that both parties (Plaintiff and Defendant) entered into a landlord/tenant relationship at any time. That no Civil Servant living in Government quarters has an option whether or not to pay rent. It was deducted at source from the salary.

PW1 tendered the following documents in evidence.

1. Allocation letter of accommodation.
2. Aso Savings Mortgage Form.

3. Five Letters from Defendant to the Plaintiff.
4. Letter from Plaintiff Solicitor to the Police Area Command.
5. Ruling of Court (certified true copy).
6. Plaintiff's Solicitor's letter to Defendant's Solicitor.
7. Defendant's Solicitor's letter to Plaintiff.
8. Notice to Quit from Defendant's Solicitor.
9. A Copy of letter written by the Plaintiff to the Defendant promising to pay the Mortgage balance. Letter dated 16<sup>th</sup> July, 2008 as Exhibit 'ME9'.
10. Notice of Owner's intention to recover possession Exhibit 'ME10'.

Plaintiff closed its case to pave way for defence. Defendant called upon their defence and called DW1. The case of defence as distilled from the witness statement on oath and the further amended statement of defence is that; going by the guideline for sale of Federal Government Properties, the Plaintiff was disqualified from exercising the right to purchase because she was not paying rent to the Federal Government on account of her occupation of the house as she (the Plaintiff) could not provide evidence of rent deduction from her salary and allowance as required by the guideline in the Federal Republic of Nigeria Official Gazette No. 82 which said gazette regulates the sales of Federal Government Houses to Public Servant. That the Plaintiff was in default of remittance of rent to the Federal Government prior to the sale of Federal

Government Houses to career Civil Servants as she did not carry out the required procedure to complete and deliver certain form(s) to the accounts department which would enable her employer carry out automatic deduction of rent from her monthly salary. At no time did the Defendant negotiate nor agreed with the Plaintiff to buy the said house in the Defendant's name for and on behalf of both parties. The house was purchased by the Defendant solely for the Defendant.

The Defendant approached the Plaintiff for financial assistance to enable the Defendant meet obligation of purchasing the house since the Plaintiff indicated interest to continue to live in the house even after the offer of the property to the Defendant. Plaintiff granted the Defendant's request and advanced the Defendant monies in the following manner:-

**25<sup>th</sup> October, 2005 – N225,000.00**

**21<sup>st</sup> July, 2006 – N450,000.00**

**2<sup>nd</sup> March, 2007 – N500,000.00**

**26<sup>th</sup> November, 2007 - N500,000.00**

And N86,084.98 between the month of February, 2007 to December, 2007.

Defendant also contends that she (Defendant) never had any agreement with the Plaintiff nor received any sum from the Plaintiff for the purpose of using same for bidding for the house. The sale of the property to the Defendant was not through a competitive bid. The property was offered to the Defendant in line with the Federal Government Policy of Occupier's right of **“first acceptance first refusal”** being the only occupant qualified to

purchase the property in accordance with the official gazette, having shown the evidence of rent deduction from my salary for six months immediately preceding the sale.

The Defendant further claims to have informed the Plaintiff that she (Defendant) obtained a Mortgage facility from Aso Savings and Loans Plc. at 9.5% interest for the purpose of purchasing the house. That the loan was not obtained “to enable both parties pay up the cost of the flat” as the Plaintiff was neither qualified to be offered nor was she offered the said property for purchase.

The Defendant further vehemently denies paragraphs 12, 13, 14, 15, 17, 18, 19 and 20 of the further amended statement of claim and states that facts alleged therein are false and non-existent. All

transaction with Aso Savings and Loans Plc. are documented are contained in the Mortgage loan offered letter, Mortgage Loan Agreement and other associated documents. Account number **01-3001230391** and **001-008-027682-01-9**, at the time, domiciled with Aso Savings and Loans are one and the same as earlier was the old account number before the said account number was changed by the Bank to the latter upon the instruction of its regulating agency as I was told by the Mortgage Bank.

The averments therein contained in paragraph 18 of the further amended statement of claim are incorrect and non-existent. The alleged payment of a cheque in the sum of N540,000.00 (Five Hundred and Forty Thousand Naira) into the Defendant's Mortgage account was not authorized by the Defendant. But



the Defendant admits the said cheque was returned to the Plaintiff by the Mortgage Bank.

DW1 tendered the following documents in evidence;-

1. Rent deduction for six (6) months – Exhibit “D1”
2. In Principle Offer of Mortgage Loan – Exhibit “D2”
3. Letter of offer from FCT - Exhibit “D3”
4. Certificate of Occupancy – Exhibit “D4”
5. Defendant’s counsel’s letter to Plaintiff – Exhibit “D5”
6. Hand-over Form – Exhibit “D6”

The Defendant’s counter claim as follows:-

That the allocation of Flat 2 in block 2, Gonder Street, Wuse Zone 1, Abuja was made on 4<sup>th</sup> day of August, 1999 was made to both the Plaintiff and the Defendant vide a letter of Allocation of Residential Accommodation dated 4<sup>th</sup> August, 1999 with Ref No: **P501023186**.

The Defendant states that she took a mortgage loan from the Aso Savings and Loans Plc. in the sum of N3,150,000.00 (Three Million, One Hundred and Fifty Thousand Naira) only at interest rate of 9.5% per annum plus other associated charges. Defendant pleads the offer of mortgage loan titled, ‘in principle, offer of mortgage loan’ dated 29<sup>th</sup> September, 2006.

- a. A Declaration that title to Block 2, Flat 2, Gonder Street, Wuse Zone 1, covered by a Certificate of Occupancy Number: 9e3uw –

fe192 – 53fdr – 1504a – 10 Abuja, is vested in the Counter – Claimant.

Parties closed their respective cases to pave way for filing and adoption of written addresses.

Learned counsel for the Defendant formulated the following issues for determination in his written address to wit;

- 1. Whether the Plaintiff has discharged the onus on her to prove that her advancement to the Defendant was meant to jointly purchase and vest title, in Block 2, Flat 2 Gonder Street, Wuse Zone 1, Abuja on both parties?*
- 2. Whether in the light of the approved guidelines for the sale of Federal Government Houses in the FCT to career public servants, (the gazette) the alleged agreement to alienate in-part, title*

*in Block 2, Flat 2, to the Plaintiff, is unlawful and unenforceable.*

**3. *Whether the Defendant has proved her counter claim to be entitled to the relief claimed?***

It is the submission of learned counsel that the burden of proof is on the party who alleges and who would lose if evidence is not lead in proof of the facts alleged. In other words, the burden of proof is on the party who asserts the positive.

***ARCHIBONG VS. ITA (2004) ALL FWLR (Pt. 197) 930 at 950 F – G.*** was cited in support of the argument.

It is the contention of learned counsel that the burden of proof is on the Plaintiff having asserted that her advancement to the Defendant was for the

purpose of jointly purchasing the property in Defendant's name.

***OGUNDEPO VS. OLUMESAN (2012) ALL FWLR (Pt. 609) 1138 at 1148, E.***

***OGUNLEYE VS. ONI (1990) LPELR – 2342 (SC) 58, B – D.*** They were cited.

Counsel further submits that the issuance of title documents of the property in the name of the Defendant raises a presumption that the Defendant is the sole and lawful owner of the property, thereby further casting the burden of proof on the Plaintiff.

***EZEANAH VS. ATTAH (2004) LPELR – 1198 (SC) 28 – 29, D – B*** was also cited.

The burden of proof can only be discharged by evidence in writing indicating that the parties did agree to alienate in-part, interest in the property, to

the Plaintiff. It is settled law that an agreement to alienate or vest title in a landed property on a party must be evidenced in writing and not by bare-faced assertion. *USMAN VS. IBE (2017) LPELR – 43303 (CA) 33 at D – F.* were cited.

Counsel also submits that the averments and testimonies of the Plaintiff are riddled with inconsistencies, conflicts and contradictions and therefore patently unreliable making reference of PW1's statement on oath filed on the 18<sup>th</sup> January, 2017 (now her testimony) paragraph 12, testimony filed on the 25<sup>th</sup> September, 2020 paragraphs 10 and 15.

***AL-RISSALAH PRINTING CO. LTD. VS. EL-HOUSSEINI (2007) LPELR – 8543 (CA) 28, A –***

***B; DAREGO VS.A.G LEVENTIS (NIG) LTD.  
(2015) LPELR – 25009 (CA) 1415, E – A.***

On issue 2, learned counsel submits that Plaintiff's averment that she had an agreement with the Defendant to jointly purchase the house in the name of the Defendant is illegal and unenforceable in law and equity. Such agreement assuming but not conceding it exists, is meant to defeat the purpose of the law under Section 12 of the Gazette, by vesting the Plaintiff with the privilege she had been stripped off under the gazette. There is no evidence before the court to prove that Plaintiff subjected her rent allowance to rent deduction to qualify her to acquire interest in the property.

Counsel further humbly submitted that the position of the law that where a contract is tainted with

illegality as in the case, the court will not enforce such contract. This principle of law is founded on public policy and is expressed in latin maxim “ex turpicausa non oritur action” meaning an action cannot arise from a base cause.

***EKWUNIFE VS.WAYNE WEST AFRICA LTD.  
(1989) LPELR – 1104 (SC).***

On issue 3, learned counsel submits that the rule of pleadings does not allow a fresh allegation of fact inconsistent with the averment in the statement of claim to be raised in a reply. Paragraph 17 of Plaintiff’s reply to the Defendant’s further statement of defence and counter claim is inconsistent with paragraph 20 of the further amended statement of claim and raises a fresh allegation of fact. Order 15



Rule 8 of the Rules of this Honourable Court was cited.

The rationale for disallowing fresh allegation inconsistent with the statement of claim is anchored on the fact that the Defendant will be prejudiced as he would have no opportunity to either admit or deny the allegation having completed her circle of pleading. *ADENIJI VS. FETUGA (1990) 5 NWLR (Pt. 150) 375 at 391* was cited. On the whole, counsel urge the Court, to dismiss Plaintiff's claim and uphold Defendant's counter-claim.

On the part of Plaintiff, the following issues were formulated in their final written address to-wit:-

1. *Whether the Honourable Court will allow a defence based on legal error lies and deceit to succeed before it.*

*2. Whether by the operation of the doctrine of constructive/implied/resulting trust a person can claim the ownership of a flat through the title documents obtained in the name of another.*

On issue one, learned counsel argues that paragraph 12 of the approved guidelines for the sale of Federal Government Houses does not forbid a qualified purchaser from entering into an agreement to jointly purchase a building with another person. The guidelines do not set out to muscle out any civil servant's freedom of action to deal with his personal rights and privileges as he thinks fit. Otherwise, that would be impinging on a citizen's freedom of association and the right to acquire and own immovable property anywhere in Nigeria contrary to Sections 40 and 43 of the 1999 Constitution.

Freedom of contract which recognizes the liberty of the parties to freely contract and as a matter of public policy, insists that such contracts, voluntarily entered into, must be held sacred and enforced by the Court. ***PRINTING AND NUMERICAL REGISTERING CO. VS. SAMPSON (1875) LR 19 EQ 462 Page 465*** was cited.

The Defendant has denied any agreement or contract of joint purchase of the flat by both parties. However, there is evidence of payments made by the Plaintiff to the Defendant or into her accounts to defray the mortgage loan the Defendant had taken to purchase the flat in dispute. The law is that where there is evidence of money changing hands, the courts will enforce sale. Both oral and documentary evidence can together prove the existence of valid

contract voluntarily entered into with capacity and that courts will enforce it.

***ALH.SHOBANKE VS.ALH.ABDULLAHI SARKI & OR (2006) ALL. FWLR (Pt. 292) 131*** was also cited.

On issue two, learned counsel for Plaintiff argues further that it is clear that where a person buys property in the name of another and the intention is clear that the buyer is not making a gift to the other, equity creates an implied or a resulting constructive trust in favour of the person who actually furnished the money.

A crucial point a Plaintiff claiming the existence of any indication that the parties intended to create such a trust at all times relevant to the purchase of the property.

***IDRIS VS. OBAFEMI (2004) 11 NWLR (Pt. 884) 396 at 413 Paras A – C.*** was cited, on how the common intention of parties is ascertained.

The Defendant has proceeded on the basis that she is the sole owner of the flat in dispute. However, her interest of 40.1% and though the certificate of occupancy is in her name, she holds 59.9% of the interest in the property in trust for the Plaintiff and not herself. This brings to mind what the duty of the Defendant as trustee of the beneficial owner who is the Plaintiff? “A constructive trust is the formula through which the conscience of equity finds expression. When property has been acquired in circumstances that the holder of the legal title may not in good conscience retain the beneficial interest, equity converts him into a trustee.”

***BEATTY VS. GUGGENHEIM EXPLORATION CO. 225 N.Y 380 (1919)*** was cited.

“A trustee may not make a profit from his position as a trustee, nor may he qua trustee, take personal advantage at the expense of the cestui qui trust”.

***KEECH VS. SANFORD (1726)2 Eqcas Abr. 741.***

In a long line of cases, the courts have consistently decided that a partner who advances money acquires beneficial interest in the property purchased from the joint effort of spouses. The law has gone further to enunciate that partners will own such property in proportion to the contribution they made.

Learned counsel for Plaintiff financially adds that the law see the Defendant as a trustee of the Plaintiff’s 56.9% interest out of which she cannot take a personal benefit. She has asked the Plaintiff to

vacate the premises for her. No, she cannot do that. Plaintiff has shown clearly that paragraph 12 of the guidelines for the sale Federal Government House does not prohibit the Defendant from contracting with any person of her choice for the joint purchase of the flat in dispute.

Counsel urge the court to find for the Plaintiff, grant all her claims and dismiss the Defendant's counter-claim.

**COURT:-**

I have considered the pleadings filed by both Plaintiff and Defendant, on the one hand and the documentary and oral evidence of both Plaintiff and Defendant and the legal arguments, on the other hand.

Relief 1 of Plaintiff's claim is declaratory in nature.

Declaratory reliefs generally speaking is not granted as a matter of course... it is usually and always granted on the strength of the evidence in support of such a party's case. The weakness or absence of Defence is will equally not be a basis for granting such relief, nor admission on the part of a Defendant.

I am minded to observe that whereas, Plaintiff gave evidence for herself, Defendant called two witnesses. Herself and one other.

From the state of pleadings of parties, issues clearly have been narrowed to the ownership of that house known and described as, **“1 No. 4 bedroom Flat at Wuse Zone 1”** which both Plaintiff and Defendant were jointly allocated-to as civil servant vide a letter of allocation from the office of Head of Civil



Service of the Federation with reference No. **PSO/023/86** dated the 4<sup>th</sup> day of August, 1999.

The said letter of allocation which was tendered by Plaintiff in evidence as Exhibit “1”, is partly hereby reproduced for the purposes of clarity and posterity:-

*“Mrs. E.M.E Adeh*

*Miss M.U Ekeng*

**APPLICATION OF RESIDENTIAL**  
**ACCOMMODATION**

**I am directed to convey approval for the allocation of 1 No. 4 bedroom flat at Wuse Zone 1 to two of you.**

**Two of you should share the common living room, while retaining two bedrooms, each. It is expected that both of you would conduct the sharing of the**

rooms in a very fair and amiable manner. The two of you are responsible for the upkeep of the apartment.

The two keys to the flat are, hereby, given to Mrs. Adeh, who should please coordinate the cleaning and maintenance of the flat. Any misuse of the flat could lead to the withdrawal of this allocation paper.”

Suffices to mention that both Plaintiff and Defendant have lived in this house together and in peace from 1999 when they were allocated the said house since none of them gave evidence of any lack of understanding or lack of maintenance of the house.

The hostility between Plaintiff and Defendant began when the Government of President OlusegunObasanjo, came up with a policy for the

sale of Federal Government Houses to Civil Servants on owner-occupier basis.

It is the claim of Defendant as counter-claimed that under the said program of sale of Federal Government Houses, regulated by Gazette **No. 82 vol. 92**. She was solely sold the house to the exclusion of the Plaintiff.

Plaintiff on her part did not contest the fact that the house was sold to the Defendant under the Federal Government Program, but maintained that both of them had agreed to pay for the said house together which was in the name of the Defendant Elizabeth Adeh.

The best form of evidence is documentary evidence. It is the hanger for oral evidence.

**See *ORJIEKWE & ANOR VS. ORJIEKWE & ANOR (2012) LPELR 20448 (CA)*.**

I have read the issues formulated by both counsel for Plaintiff and Defendant which have already been mentioned in the preceding part of this Judgment.

Issues 1 and 2 formulated by Defendant's counsel, i.e. whether the Plaintiff has discharged the onus on her to prove that her advancement to the Defendant was meant to jointly purchase and vest title in Block 2, Flat 2, Gonder Street, Wuse Zone 1, Abuja, on both parties;

And whether in the light of the approved guidelines for the sale of Federal Government Houses in the FCT to career Public Servants, (the Gazette) the alleged agreement to alienate in part, title in Block 2,

Flat 2, to the Plaintiff is unlawful and unenforceable, are apt.

I hereby adopt both issues as mine for determination.

I need state here that both Counsel for Plaintiff and Defendant have made extensive arguments on sale of landed property and the issue of contract in their final written addresses and other legal arguments all with a view to convincing this Court to give them Judgment.

It is the law that only evidence shall be used to give Judgment and not legal argument not founded on already existing evidence before the Court. Arguments in final written addresses cannot replace evidence.

***See ALIYU & ORS VS. INTERCONTINENTAL BANK PLC.& ANOR (2013) LPELR (20716) CA.***

Let me frontally state that, from the documents before the Court tendered, Defendant clearly was offered the said house in her name by Committee on the sale of Federal Government Houses... this area of pleadings is not in contention at all. The allocation of the said house to the Defendant is evidenced by Exhibits “D3”, “D4” and “D6” respectively which are letter of offer of the house described as **Block 440 Flat 2 Gonder Street WuseZone 1, Abuja, FCT**, certificate of occupancy of the said house and hand over form, in that order...all the aforementioned exhibits bore the name of the Defendant (Elizabeth Mary-AdehiakheAdeh).

The only question begging for answer is whether Defendant and Plaintiff agreed to pay for the house together and co-own same having stayed in the

house from 1999 – to date... Both Plaintiff and Defendant seem not to be in agreement on the issue of ownership of the said house... Whereas Plaintiff is claiming to co-own the house, Defendant is claiming to be the sole owner of the house.

I shall unravel the truth from the evidence before the Court shortly...

I need to state, again that the sale of Federal Government Houses is a deliberate policy of Government geared towards ensuring Federal Government Staff are given the opportunity to own houses they occupy.

This policy is quite commendable.

The sale of Federal Government Houses in the FCT to Career Public Servants is regulated under the approved guidelines for the sale of Federal

Government Houses, Federal Republic of Nigeria  
Official Gazette No. 82, Vol. 92.

Section 12 of the said Gazette has the following provisions:-

*“All purchasers must complete application forms with receipt of payment of N10, 000 (Ten Thousand Naira) in favour of the Federal Capital Territory Administration, along with the following:*

- *Letter of initial employment into the public service of the Federation.*
- *Letter of last appointment/promotion in the public service of the Federation.*



- *Letter of allocation of quarters by an appropriate authority 4 No. high resolution colour passport photographs, and*
- *Proof of last six (6) months rent deduction.”*

It is the evidence of Defendant that she requested Plaintiff to loan her money so she can pay for the said house and not that Plaintiff contributed in paying for the said house to be jointly owned by both of them. Whereas Defendant said the loan request was verbally made, which presupposes that agreement could be orally made or in writing.

Defendant however denied the fact that they both mutually agreed to contribute and buy the house in question.

Indeed, what is good for the goose, is good for the gander is the correct description of what is playing out here.

Defendant who urge the Court to believe the fact that it was loan she collected from Plaintiff to buy the house in issue does not want the Court to believe the fact that Plaintiff part-paid as owner of the house in the absence of any written agreement.

If the Court is to believe the evidence of Defendant that she requested for money as loan from Plaintiff to pay the said house, why was Plaintiff then been sent to the bank by Defendant to go pay money when she could easily credit Defendant's account with same or handover same to Defendant!

Why was Defendant asking Plaintiff to pay quickly and stop delaying!

What is more... Defendant gave evidence under cross-examination that they both paid for the house i.e herself and Plaintiff.

If Defendant merely collected the said monies from Plaintiff as loan, why did she say they both paid N5,000,000.00 (Five Million Naira) for the house and not that she paid for the house alone.

This was what Defendant said under cross-examination:-

***“Qst:- You said you paid N5,000,000 (Five Million Naira) for the house!***

***Ans:- Yes.***

***Qst:- What is the prove!***

***Ans:- That is the total amount I and Plaintiff paid”..***

This piece of evidence amounts to admission against interest in law which is the best evidence.

It is the law, through settled judicial decisions that for admission against interest to be valid in favour of an adverse party, it must not only vindicate or reflect the material evidence before the Court, it must also reflect the legal position.

Above was echoed by Niki Tobi, JSC (blessed memory) in the case of *ODUTOLA VS. PAPERSACK (NIG) LTD (2006) 11 – 12 SC. 50 at 75 – 76.*

Above position of the law was equally applied and re-echoed in the case of *AGBETU & ANOR VS. AKINBOYO & ANOR (2012) LPELR – 9749 (CA)* *Per KEKERE-EKUN, JCA, as he then was, now J.S.C.*

On the hand, Plaintiff in both her evidence in-chief and cross-examination made the following statements:-

Qst:- You said you mutually agreed to buy the house in the name of the Defendant. Do you have any agreement?

Ans:- We mutually agreed to use her name (Defendant's). I am a level 14 Officer.

Qst:- All the payments you said you made was witnessed by the two of you only?

Ans:- Yes.

Qst:- Did you make the payments to the Defendant in cash or through Bank?

Ans:- Partly cash and bank. She later gave me analysis.

Qst:- You are aware that Defendant sourced for loan through which the house was paid for?

Ans:- Defendant made me pay part of my money into Aso Savings Account and got me to fill a form.

Qst:- Are you aware that Defendant paid for the house vide loan from Aso Savings and Loans?

Ans:- We paid together. It is all before the court.

Qst:- There was loan from Aso Savings?

Ans:- Yes.

Qst:- It was used to buy the house?

Ans:- It wasn't the whole loan. It was after we together paid 10% and another 20%.

Qst:- You said you paid N549,000.00 (Five Hundred and Forty Nine Thousand Naira) to Defendant?

Ans:- Yes.. and she paid into a different account of hers. I initially paid into an account that she had closed unknowingly which was returned to my account. I later raised a cheque in Defendant's favour which she paid into her account.

Qst:- Do you have evidence that you two own the house?

Ans:- The evidence that I paid partly for the house is before the Court.

Defendant similarly stated as follows under cross-examination.

The Defendant on her part has this to say under cross – examination:-

Qst:- Look at Exhibit “10” and the figures shown to you.. who paid the sums into your account i.e N505,000.00 (Five Hundred and Five Thousand Naira) and N549,000.00 (Five Hundred and Forty Nine Thousand Naira)?

Ans:- Plaintiff.

Qst:- You said you paid N5,000,000.00 (Five Million Naira) for the house?

Ans:- Yes.

Qst:- What is your prove?

Ans:- That is the total amount I and Plaintiff paid.

Qst:- Out of the money you took from Aso Savings, how much did you pay back?



Ans:- N3,000,000.00 (Three Million Naira).

Qst:- Why would the Plaintiff then be sent to the Bank by you based on part of Exhibit “3” to go pay money and fill forms.. why not she surrender the money to you?

Ans:- She wanted to know what I was using the money for.

Qst:- From part of Exhibit “3” you were asking the Plaintiff to pay quickly and stop delaying?

Ans:- Plaintiff was not paying to Government as owner/occupier, you are expected to show evidence of 6 months payment before you are given allocation paper/letter.

Let me now turn to another revealing document..i.e Exhibit “3” series.

I have seen Exhibit “3” series which are copies of hand – written notes both by Plaintiff and Defendant and print out showing mortgage balance with a typed note attached and, addressed to the Plaintiff by Defendant wherein Defendant was urging the Plaintiff to clear it now if she was ready.

Plaintiff reacted to the said request to clear the mortgage balance by hand – writing to the Defendant.

The said hand – written note dated 16<sup>th</sup> July, 2008 is hereby reproduced:-

***“Mrs. Adeh***

*I saw the print out. If that is what you are referring to. I am sure it is a mortgage I will pay when I am ready so please don't pressure me.*

*As usual, I don't want to loose my sleep over this. Soon by the grace of God.”*

Defendant equally wrote a hand – written note to Plaintiff. I hereby re-produce same which is part of the Exhibit “3” series.

*“Meg*

*This is Aso Savings and Loan Plc. Accounts  
no. 01-3001230391*

*Area 8 Abuja.*

*Name: Mrs. Elizabeth M.E Adeh.*

*Pay your money there and remember to fill their form and add their 1 percent amount, please.*

NB

*Margaret, you can only pay through the Area 8 Aso Savings and Loan Plc., because that was the branch where I obtained the loan and then will give you a form to fill and indicate what is the payment for.”*

Defendant wrote Plaintiff a typed note dated the 15<sup>th</sup> July, 2008. It is hereby re-produced.

*“Meg*

*Last week I dropped the print out mortgage balance, the percentage and the insurance, up till now there is no response..can you please let get rid of this matter and move forward.”*

Let me also mentioned that Defendant from available evidence gave Plaintiff Exhibit “2” i.e Request for Baloon payment which is Aso Saving Bank Plc. Form showing N3,150,000.00 being money Defendant has taken to pay for the said flat in issue.

Why would Defendant give Plaintiff the said Exhibit “2” i.e request for baloon payment showing the N3,150,000,000 (Three Million, One Hundred and Fifty Thousand Naira) Defendant applied from Aso Savings and Loan Plc. as Mortgage!

A community interpretation of the various written documents, oral evidence before this court can only point to the conclusive fact that Plaintiff and Defendant were ad – idem on the issue of payment for the said house which they both were earlier allocated to, and have lived there since 1999 before the said policy of Federal Government on the sale of Federal Government Houses came into being.

Defendant who though has denied such understanding, has left her position on the issue of the house most comprised arising from her answers under cross – examination on the one hand, and the written and typed notes sent to the Plaintiff, on the other hand. The loan document indicating how much Defendant took from Aso Saving and Loan Plc. i.e Exhibit “2” need not be given to Plaintiff were

Plaintiff not part of the transaction to buy the said house.

The tone of the afore – reproduced Exhibit “3” series is most revealing. Defendant cannot run – away from her commitment to Plaintiff despite having the said titled documents in her name.

Defendant similarly gave Plaintiff her Aso Saving and Loans statement of payment dated the 22<sup>nd</sup> January, 2008, showing a mortgage balance of N1,115,974.90 (One Million, One Hundred and Fifteen Thousand, Nine Hundred and Seventy-Four Naira, Ninety Kobo) as at January 17<sup>th</sup>, 2008.

Defendant in her evidence before the court particularly, paragraph 6 stated that she sought for financial assistance to pay for the house and Plaintiff obliged her the following sum of money:-

N225,000.00 - 25<sup>th</sup> October, 2005

N450,000.00 - 21<sup>st</sup> July, 2006

N500,000.00 - 2<sup>nd</sup> March, 2007

N500,000.00 - 26<sup>th</sup> November, 2007

N86,084.98 - Between February, December, 2007.

Defendant again in her paragraph 9 of the same witness statement on oath said that the total sum of monies she collected from Plaintiff cumulatively N1,996,054.98 (One Million, Nine Hundred and Ninety Six Thousand, Fifty-Four Naira, Ninety Eight Kobo) was for consideration for Plaintiff's occupation of the said flat which was far below the prevailing rent in the area.



Defendant clearly seem to speaking from both sides of her mouth. Her evidence is indeed most inconsistent.

How did Plaintiff come about being Defendant's tenant that Defendant is warming up to devilishly appropriate monies variously paid by Plaintiff as her contribution toward paying for the mortgage Defendant collected to pay for the house!

The conduct of Defendant is most reprehensible, morally and religiously condemnable.

It can be easily gleaned from the evidence before the court that Defendant who used Plaintiff to contribute money and pay for the flat in issue on the understanding that they shall co-own the house, has turned – around to deny such arrangement all

because she now has the house in her name. This is most sad.

The entire constructions of the relationship between Plaintiff and Defendant with particular relation to the subject matter in issue has established a case of resulting trust as held by SC in ***GRACE MADU VS DR. BETRAM MADU (2008) ALL FWLR (Pt. 414) 1604 at Page 1623, Paragraphs E-H.***

It was held in that case that where “A” makes a voluntary payment to “B” or pays (wholly or in part) for the purchase of property which is vested either in B alone or in joint names of “A” and “B”, there is a presumption that “A” did not intend to make gift to “B”; the money or property is held in trust for “A” (if he is the sole provider of the money) or in the

case of a joint purchase by “A” and “B”, in shares proportionate to their contributions.

See also the case of ***OZOMARO & ORS VS OZOMARO & ANOR (2014) LPELR – 22663 (CA)***

Section 107 (C) of Evidence Act 2011 provides;

*The court may presume the existence of any fact which it deems likely to have happened, regard shall be had to the common course of natural events, human conduct and public and private business, in their relationship to the facts of the particular case, and in particular the court may presume – (c) the common course of business has been followed in particular cases.*

I am convinced by the evidence before me that both Plaintiff and Defendant meant to jointly purchase and vest title in block 2 flat 2 Gonder Street,

WuseZone 1, Abuja on both parties. I resolve issue 1 in favour of the Plaintiff.

I have read the argument of learned counsel for the Defendant on the said issue 2.

I need say that once Federal Government divests her interest on a house or property to a civil servant, it is not the business of Government who paid for the house as insinuated by learned counsel for the Defendant.

It is not a wrong for Plaintiff and Defendant to pull resources together to buy the house in the name of one of them as done in this case from the abundant evidence.

The argument of learned counsel Johnbull Esq. is laughable.

I am certain and most convinced that had the policy of Government not come into existence, both Defendant and Plaintiff who are now retirees, fighting over house, would have long left the said house for new civil servants occupants.

The devil is always a human being.

The richer we have become materially, the poorer we have become morally and spiritually.

We have learned to fly the air like birds and swim the sea like fish, but we have not learned the simple art of living together as brothers and sisters.

Defendant who stated that the monies Plaintiff were for rent of the space being occupied by Plaintiff, caused a letter i.e Exhibit "7" to be written by Lawyers to Plaintiff whereof Plaintiff's said

contribution was being proposed to be returned to her. The letter is herein also reproduced in part:

*“We have the instructions of our client, Mrs. Elizabeth Adeh, to forward a banker’s cheque No. 04224119 in the sum of N1,996,054.98 (One Million, Nine Hundred and Ninety-Six Thousand, Fifty Four Naira, Ninety Eight Kobo) as repayment of the sum you advanced her in her bid to purchase flat No. 2 Block 2 Wuse Zone 1, Abuja.*

*Consequently, we forward herewith a photocopy of the said Banker’s cheque and request to indicate your acceptance to enable use forward the original copy to your good self.”*

Why is Defendant returning back the so called “rent” paid by a “tenant”!

Is the conduct of Defendant, which I dare say, is tainted with inhuman coloration not sad for our generation!

Why would Defendant wish to throw-out the Plaintiff who has lived with her for over 20 years, all because of a worldly house!

The material contradictions made by Defendant are most destabilizing and destructive..the case of the Defendant cannot be helped on account of the contradiction, in law.

See *DAREGO VS. AG LEVENSIS (NIG) LTD (2015) LPELR 25009 (CA) 14 – 15 E.*

Defendant maintained her stance that Plaintiff loaned her monies on the one hand and on another breathe that Plaintiff various payments was for rent accommodation.

Which of the evidence of Defendant is the Court to believe!

Were the various payments made by Plaintiff loan for purchase of house by Defendant or payments for rent!

This is the problem with desperation.

If the payments made by Plaintiff were for rent, why did Defendant forward a cheque vide her Solicitor's letter (Exhibit 7) dated 13<sup>th</sup> October, 2014 to the Plaintiff as refund of Plaintiff's so called **“loaned” money”!**



The conduct of the Defendant is most embarrassing. On the preponderance of evidence before the Court, Plaintiff has been able to lead abundant evidence in prove of her relief “A” which is for a declaratory relief.

The whole and entire exercise is relation with meaning and significance of proof to discover the truth of the point in issue. And truth is not discovered by a majority vote, by counting hands or heads. No. One witness who is believed will have more Judgments than ten witnesses who are disbelieved or whose testimonies do not induce belief. Although belief is subjective, yet still the judge before believing will subject the evidence to the objective test of probability. Where the facts, deposed to by a witness, look probable when considered in relation to all the surrounding

circumstances of the case, they induce belief. Probability is always a safe guide to the sanctuary where truth resides. As Aristotle once put it – “Probability has never been detected bearing a false testimony”.

Defendant’s evidence is a carefully packaged agglomeration of lies, all prepared to deceive this Court and score a cheap goal.

The evidence of the Defendant before me has induced disbelief in view of the revealing inconsistencies.

The said relief “A” succeeds, accordingly.

Reliefs “B” and “C” are for;

- b. An Order directing the sale of Block 2, Flat 2, Gonda Street, Wuse Zone1, Abuja reason being

that the duo can no longer cohabit as co-owners due to hostility exhibited by the Defendant towards the Plaintiff. The proceeds of sale to be shared by the Plaintiff and Defendant after valuation by a Registered Estate valuer or Estate valuers mutually or independently appointed by them as the case may be.

- c. An Order directing the Defendant to lodge the certificate of occupancy of Block 2, Flat 2, Gonda Street, Wuse Zone 1, Abuja, in her possession with the Registrar of the Court pending the proposed sale of same.

From the abundant evidence, these reliefs are also bound to succeed since their success is predicated upon the success of relief “A” which has been granted.

I hereby grant both reliefs “B” and “C”, respectively.

On relief “D” is for damages for trauma and distress.

General damages are the kind of damages which the law presumes to be the consequence of the act complained of which need not specifically plead and specifically proved.

***See EFCC VS. KAWA & ANOR (2014) LPELR – 23597 (CA).***

Plaintiff clearly from the evidence before me has been put through unnecessary and inhuman trauma and distress..this is so because Defendant had even caused quit notice to be served on Plaintiff to vacate a house she lived in for more than 20 years and which she had contributed in purchasing and co-owns... she is entitled to damages.

I hereby award the sum of N3,000,000.00 (Three Million Naira) against the Defendant. The cost of this suit is assessed at N250,000.00 (Two Hundred and Fifty Thousand Naira).

I have considered the counter claim of Defendant. It is baseless and clear caricature of humanity and God.

It is refused and dismissed.

*Justice Y. Halilu  
Hon. Judge  
16<sup>th</sup> December, 2021*

**APPEARANCES**

**O.S OYAKHIRE-IFIJEH, Esq.** – for the Plaintiff.

**JOHNBULL A., Esq.** – for the Defendant.