

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY,
IN THE ABUJA JUDICIAL DIVISION,
HOLDEN AT COURT NO. 7, APO, ABUJA
BEFORE HIS LORDSHIP: HON. JUSTICE O.A. MUSA
SUIT No.: FCT/HC/CV/777/2021**

BETWEEN:

CHIEF IBOROMA K. BROWN

(Suing for and on behalf of Isoma
Community of Kula kingdom)

CLAIMANT

AND

1. J+G GLOBAL & OILFIELD LIMITED

2. JACK-RICH TEIN AID FOUNDATION

DEFENDANTS

JUDGMENT

DELIVERED ON THE 2ND FEBRUARY, 2022

The Claimant filed the instant suit vide originating summons procedure. In the said summons, the following questions were presented for determination:

- a. Whether upon a proper construction and or reading of the Deed of Conveyance purportedly entered into between Kula Kingdom and the Defendants, it can be said that there is a valid contract binding between the parties aforementioned.
- b. Whether in the absence of a clear, proper and unequivocal proof of payment of compensation to the indigenous owners and/or settlers of the entire Kula kingdom, it can be said the Defendants have lawfully acquired the property in Kula Kingdom.
- c. Whether the entire transaction which culminated in the acquisition of the land in Kula kingdom which is devoid of the input, contribution or consent of the indigenous owners and/or settlers is not invalid.

From the above questions, seven reliefs were sought which I reproduce verbatim to wit:

- a. A DECLARATION that upon a proper construction and or reading of the Deed of Conveyance purportedly entered into between Kula Kingdom and the Defendants, it cannot be said that there is a valid contract binding between the parties aforementioned.
- b. A DECLARATION THAT in the absence of a clear, proper and unequivocal proof of payment of compensation to the indigenous owners and/or settlers of the entire Kula kingdom, it cannot be said the Defendants have lawfully acquired the property in Kula Kingdom.
- c. A DECLARATION THAT the entire transaction which culminated in the acquisition of the land in Kula kingdom which is devoid of the input, contribution or consent of the indigenous owners and/or settlers is not invalid.
- d. An Order of this Honourable Court setting aside and/or revoking the Deed of Conveyance executed between the 1st and 2nd Defendants and the Kula Kingdom for being fraudulent.
- e. AN ORDER OF PERPECTUAL INJUNCTION RESTRAINING THE DEFENDANTS from entering, taking possession, or occupying any part, plot or parcel of land in Kula kingdom.
- i. (sic) Award of the sum of N200,000,000.00 (Two Hundred Million Naira) against the Defendants and in favour of the Claimant for financial loss incurred on the account of the attempts to fraudulently take over the land belonging to the Kula kingdom.
- j. (sic) AND FURTHER OR OTHER RELIEF(S) AS THE HONOURABLE COURT MAY DEEM JUST AND EXPEDIENT IN THE CIRCUMSTANCES.

Let me observe at the earliest opportunity, that the reliefs bear what appears to be a misidentification, as it can be noted that, after the numbering of relief (e), the Claimant proceeded to numbering "(i)" and "(j)". I must assume that the proverbial printers devil is responsible for the misidentification; this however in my view, does not affect the substance of the case, this explains why no issue was made from it, by either the Claimant or indeed Defendants' Counsel.

In support of the originating summons, is an affidavit of thirty six (36) paragraphs deposed to by the Claimant himself and there is an exhibit attached thereto, marked exhibit "Brown". There is also a written address in support.

Upon being served with the originating summons, the Defendants filed a counter affidavit of nine (9) paragraphs deposed to by one Abel Jumbo, Esq. the Legal Secretary of the 2nd Defendant. Attached to the counter affidavit are two (2) exhibits marked "Jack 01" and "Jack 02"; in accordance with the rules of this Court, there is also a written address attached to the counter affidavit. I also note that the defendant filed a counter claim, wherein three (3) reliefs were sought. I shall, at a later stage, consider the counter claim.

The above represents the entire processes filed by the parties in this suit.

From the processes filed, the grouse of the Claimant borders on a challenge to a deed of conveyance, which the court has been called upon to interpret regarding contractual obligations between the Claimants and the Defendant. The Claimant alleged that he is a community leader in Isoma community under Akuku-Toru Local

Government Area in Rivers State. He claims that he has the authority of the people in the area to file this suit.

According to the Claimant, sometime in 2019, some strangers at the behest of the Defendants visited his community in Isoma Local Government and started measuring lands with sophisticated gadgets. That it was later discovered that some members of the community, without proper authority and without payment of due consultation, had met with the Defendants in the Federal Capital Territory, Abuja wherein over forty four thousand hectares of land had been conceded to the Defendants in several other communities inclusive of Isoma area in what now constitutes Kula Community.

The Claimant posits further that his grouse is not with the ownership of the land, but with the deed of conveyance transacted in the Federal Capital Territory Abuja, which was entered without adequate compensation being paid to the necessary parties. He therefore prays that the transaction be rescinded.

The Claimant relied on the case of AZODO V KAY-KAY CONSTRUCTION LIMITED (2014) LPELR-24150 PAGE 67 PARAS A-B and submitted that the most authentic way of proving that a person received money is by tendering receipt which is an acknowledgment or admission to that fact. He therefore challenged the Defendants to produce such receipt. He further posits that failure to pay purchase price under a contract for sale constitutes a fundamental breach and goes to the root of the contract and any purported agreement signed therefrom. He also submits that, even when part payment is made for a property and there is a default in payment of the balance, there can be no valid sale. The cases of NIDOCCO LIMITED V GBAJABIAMILA (2013) 14 NWLR (pt. 1374) 350

and *ACHONU V OKUWONBI* (2017) 14 NWLR (pt. 1548) 142 were cited in support. The Claimant therefore urged the Court to hold that the Deed of Conveyance cannot validly transfer the land to the Defendants.

The Defendants' reaction to the Claim as gleaned from the processes filed on their behalf, is simply that the suit is misconceived. The Defendants allege that there was a valid contract leading to the Deed of Conveyance duly signed by the relevant parties. That the entire lands which consists of landmars known as Kula, Offoinama, Obia, Ibiame, Opukula, Ariama, Belema, Ngeje, Owuangai, Isoma, Ibiapuma, Otto, King Sara Piri, Mboko/Opukuro and all Kula Sie Kirina and Buna Pirina. The Defendants maintains that an agreement was entered with the constituted authorities wherein monies were specifically paid to each community as detailed in paragraph 7 (k)(i)-(xiv) of the counter affidavit. The Defendants also submitted that upon due execution of the conveyance, they have applied for issuance of certificate of occupancy as shown in Exhibit Jack 02.

The Defendants submitted that all the essential ingredients of an enforceable agreement are present and it culminated into the Deed of Conveyance. The said ingredients according to the Defendants are conjunctive and essential, the case of *BFIG BPE (2008) All FWLR (Pt. 416) 1915* and *ORIENT BANK (NIG) LTD V BILANTE INTERNATIONAL LTD (1997)NWLR (PT. 515) 37* were relied upon.

It is submitted further, on behalf of the Defendants, that though the Claimant presents himself as suing for himself and on behalf of the Isoma Community, he has not presented his authorization to sue for and on behalf of the community. The cases of *WIRI V WUCHE (1980) 1-2 SC PAGE 1* and *OBIODE V OREWE (1982) 1-2 SC PAGE 170* were relied

upon. Further, the Defendant submits that the Claimant who on his case, belongs to one community, cannot urge the agreement entered on behalf of the other communities be nullified. The other communities according to them are fourteen in number. The case of DANTATA V MOHAMMED (2000) 7 NWLR (PT. 664) PAGE 176 was relied upon.

Now, the above represents the position of the parties to this suit, as earlier noted, this Court has been called upon to interpret the Deed of Conveyance which incidentally both parties have attached to their processes. The Defendant has however suggested that the Deed attached by the Claimant is incomplete as the various areas of the signature of the representatives of the community is absent. I have looked at the agreement attached by both parties, I agree with the Defendant that it appears the agreement attached by the Claimant is missing some pages, I will therefore have recourse to the agreement attached by the Defendant which essentially is the same except for the missing pages.

To my mind, paragraphs 18-23 of the affidavit in support of the originating summons surmises the grouse of the Claimants. I shall at the risk of being prolix, reproduce the said paragraphs thusly:

18. That my further investigation revealed that the 1st and 2nd Defendants have set machinery in place to acquire a total landmass of about Forty-Four Thousand hectares of land in several other communities comprising Kula kingdom.
19. That the other communities where the 1st and 2nd Defendants have said to have acquire the land include Offoinama, Obia, Ibiame, Opu-Kula, Ariama, Belema, Ngeje, Owuangai, Isoma, Ibiapuama, Otto, Abaji-Okolo, King Sara-

Piri, Mboko/Opukuro and within all Kula Kingdom lands, Rivers and Sea area in Kula Kingdom in Akuku-Toru Local Government Area of Rivers State.

20. That I also discovered that the 1st and 2nd Defendants had purportedly executed a Deed of Conveyance with the aforementioned communities in Kula kingdom. The said Deed of Conveyance was signed in the office of the 1st and 2nd Defendant which is, 3rd Floor, Rivers State House, Plot 8, Ralph Shodeinde Street, Central Business district, Abuja. The executed Deed of Conveyance is hereby exhibited and marked as **Exhibit Brown**.

21. That I also found out that the total sum of Two Hundred and Sixty-Six Million (N266,000,000.00) Naira was allegedly paid by the 1st and 2nd Defendants to some of the communities to perfect the said acquisition of the said land.

22. That I know that no stakeholder, the High Chief or any of the chiefs of the community negotiated any fee/ or purchase price payable for the vast mass land with the 1st and 2nd Defendants or their representatives.

23. That my further investigation revealed that no money was paid to any member of Isoma community as fee/ or purchase price for the acquisition of the said land.

The Defendants reaction to the above deposition is equally important, I therefore will also reproduce paragraphs 7(j)-(q) where it was deposed as follows:

(j) That upon conclusion of negotiation between the defendants and the people of Kula represented by the recognized constituted authorities, an amount of

266,000,000.00 (two hundred and sixty six million naira) only amongst other consideration was agreed by them hence lead to the execution of a deed of conveyance.

(k) That payment of the said consideration was split into percentage in accordance with the number and size of each plot hence paid into the designated bank accounts of the recognized constituted authorities of Kula Kingdom. For reference purposes, below is how payment was made severally to the respective communities.

(i) PAYMENT FOR AND BEHALF OF KULA COMMUNITY

Bank name: Zenith Bank Plc

Bank account name: Kula community

Bank account number: 1016046275

Percentage Share: 33% + 54,000,000.0

Amount received: 66,000,000.00 (Sixty six million naira) and an additional N54,000,000.00 (fifty four million naira)

Total amount received: 120,000,000.00 (One hundred and twenty thousand naira only).

PAYMENT FOR AND BEHALF OF OFFOIN-NAMA COMMUNITY

Bank name: First Bank Plc

Bank account name: OffoinnamacommunityBank

account number: 2033763165

Percentage Share: 9%

Amount received: N18,000,000.00 (Eighteen million naira) only.

(ii) PAYMENT FOR AND BEHALF OF OBIA
COMMUNITY

Bank name: First Bank Plc

Bank account name: Obia Community

Bank account number: 2033719746

Percentage Share: 6%

Amount received: N12,000,000.00 (Twelve
million naira) only.

(iii) PAYMENT FOR AND BEHALF OF IBIAME
COMMUNITY

Bank name: FCMB

Bank account name: Ibiame Community

Bank account number: 5036546015

Percentage Share: 9%

Amount received: N18,000,000.00 (Eighteen
million naira) only.

(iv) PAYMENT FOR AND ON BEHALF OF OPUKULA
COMMUNITY:

Cash payment of 3% of N6,000,000.00 (six
million naira) only.

(v) PAYMENT FOR AND ON BEHALF OF ARIAMA
COMMUNITY:

Bank name: Union Bank

Bank account name: Ariame Community

Bank account number: 0029957881

Percentage Share: 3%

Amount received: N6,000,000.00 (Six Million
naira) only.

(vi) PAYMENT FOR AND ON BEHALF OF BELEMA
COMMUNITY

Bank name: First Bank

Bank account name: King Oko royal house

Bank account number: 2030404878

Percentage Share: 6%

Amount received: N12,000,000.00 (twelve million
naira) only.

(vii) PAYMENT FOR AND ON BEHALF OF NGEJE
COMMUNITY

Bank name: First Bank

Bank account name: Chief Ibinabo Daniel Kiliya

Bank account number: 3022631933

Percentage Share: 3%

Amount received: N6,000,000.00 (Six million
naira) only.

(viii) PAYMENT FOR AND ON BEHALF OF OWUANGAI
COMMUNITY

Bank name: First Bank

Bank account name: Owuंगai Community

Bank account number: 3133067818

Percentage Share: 6%

Amount received: N12,000,000.00 (Twelve
million naira) only.

(ix) PAYMENT FOR AND ON BEHALF OF ISIOMA
COMMUNITY

Bank name: First Bank

Bank account name: IgbikisAlapaye

Bank account number: 2002287243

Percentage Share: 8%

Amount received: N16,000,000.00 (Sixteen million naira) only.

(x) PAYMENT FOR AND ON BEHALF OF IBIPUAMA COMMUNITY

Bank name: U.B.A PLC

Bank account name: Ibiapuama community

Bank account number: 2119217009

Percentage Share: 3%

Amount received: N6,000,000.00 (Six million naira) only.

(xi) PAYMENT FOR AND ON BEHALF OF OTTO COMMUNITY

Bank name: U.B.A PLC

Bank account name: Otto group of houses.

Bank account number: 1015108156

Percentage Share: 3%

Amount received: N6,000,000.00 (Six million naira) only.

(xii) PAYMENT FOR AND ON BEHALF OF KING SARA-PIRI FAMILY IN KULA COMMUNITY

Bank name: Zenith Bank

Bank account name: Ndik Slink Technical Nigeria Limited

Bank account number: 1013351536

Percentage Share: 3%

Amount received: N6,000,000.00 (Six million naira) only.

(xiii) PAYMENT FOR AND ON BEHALF OF
MBOKO/OPUKURO FAMILY IN KULA.

Bank name: First Bank

Bank account name: Mboko Group of Houses

Bank account number: 3133320975

Percentage Share: 3%

Amount received: N6,000,000.00 (Six million naira) only.

- (l) That the consent and approval of each and every person having interest over the said lands was sought and obtained before the deed of conveyance was executed.
- (m) The recognized constituted authorities that executed the deed of conveyance on behalf of themselves and the indigenous people of Kula kingdom in respect of the lands sold, have the locus and authority to do so.
- (n) That on the 25th day of February 2019, a deed of conveyance in respect of the said lands was executed between the defendants and the people of Kula Kingdom as represented by their respective recognized constituted authorities. A copy of the said deed of conveyance is attached hereunto as exhibit JACK 01.
- (o) That the execution of the deed of conveyance was prepared and executed voluntarily by the recognized constituted authorities of Kula for themselves and on behalf of the people of Kula Kingdom.
- (p) That the recognized constituted authorities of Kula Kingdom that executed the said deed of conveyance on

behalf of themselves and the people of Kula were in sound mind during the execution of the contract.

(q) That the said deed of conveyance executed was properly signed and duly attested to by competent witnesses.

As I noted earlier, the common denominator between parties, is the Deed of Conveyance and whether it can be said to be binding and valid, I have also stated that having studied the Deed which was attached to the process of both parties, I believe the document attached by the Claimant is missing some pages and I shall rely on what has been attached by the Defendant which is more detailed. The agreement to my mind and by a litany of authorities constitutes the intention of parties. On this point, I shall rely on the case of INCORPORATED TRUSTEES OF NIGERIAN BAPTIST CONVENTION & ORS V GOVERNOR OGUN STATE & ORS (2016) LPELR-41134 (CA) PAGE 56 PARA, where it was held thus:

"The essence of an agreement is that the parties to it should be bound by it - *pacta sunt servanda* (agreements must be kept).

In the same vein, it was also held in the MINAJ HOLDINGS LIMITED V AMCON (2015) LPELR-24650 Pp. 29-30 paras. C, Per NIMPAR ,J.C.A thus:

"I wish to add my voice to the issue of sanctity of contract agreement. It is trite that parties are bound by the terms of agreement in a contract document and none can vary such terms, see the judgment of the apex court in the case of ARJAY v. A.M.S. LTD (2003) 7 NWLR (Pt. 820) 577 where it held thus: "It is elementary law that where parties have entered into a contract or an agreement, they are bound by the provisions of the contract or agreement. This is because a party cannot ordinarily resile from a contract or agreement just because he later found the conditions

of the contract or agreement are not favourable to him. This is the whole essence of the doctrine of sanctity of contract or agreement. The court is bound to construe the terms of the contract or agreement and the terms only in the event of an action arising therefrom." The appellant is therefore bound by the agreement between it and the respondent. It cannot midstream want to alter the terms and thus the holding of the lower court and the judgment of this Court."

Now, a careful study of the Deed of Conveyance shows that it was entered into between the Defendant and Kula Kingdom, as seen on the agreement, the Kula Kingdom consists of several communities whose names are conspicuously stated. It is also noteworthy that, a survey plan showing the bounds of the land is also contained in the agreement. At the execution page of the agreement, there is a detailed signature of several persons community by community who signed the agreement. Furthermore, there is pictorial evidence of the persons who signed and who they represented in the agreement. The signatures of Secretary of Kula Council of Chiefs, Chairman Kula Community Development Committee, Kula Youth President, and Chairmen of each of the Community Development Committee including Isioma Community is contained therein.

What is more, the Claimant, who is in receipt of the counter affidavit to his originating summons, wherein the above facts are not only furnished by virtue of the agreement but the facts deposed to paragraphs 7(a)-(u), was mum on the grave allegations; no attempt was made to deny this profound facts or deny its existence even as it relates to Isioma Kingdom where he claims to represent and hail from. The only conclusion that can be legally drawn from this abstinence, must be that

such facts are deemed admitted and can be relied upon by a court of law.

In the case of AKITI V OYEKUNLE (2018) LPELR-43721 PAGE 7-8 PARA F, the Supreme Court held thus:

"I must state that depositions in affidavit on material facts resolve applications in Court. Where depositions on material facts in an affidavit in support of an application are not denied by the adverse party filing a counter-affidavit, such facts not denied in the affidavit in support remain the correct position and the Court acts on them except they are moonshine. Material facts in a counter-affidavit not denied by a reply affidavit are the true position. It is only when the affidavits cannot resolve facts that parties are invited to lead evidence in proof of the facts they deposed to see *Akinsete v. Akindutire* (1966) 4 NSCC p. 157 ;*Eboh v. Oki* (1974) 9 NSCC p. 29; *National Bank (Nig) Ltd v. They are Brothers Nig Ltd* (1977) 11 NSCC p. 382; *Alagbe v. Abimbola* 1978 2SC p. 39."

I therefore find no reason, not to treat as correct, the depositions in paragraph 7(a)-(u) of the Defendants' counter affidavit and I so hold.

Now the nucleus of this suit is whether it can be said that the agreement conveying the land to the Defendants is valid and enforceable. The answer to my mind, in the light of the state of the facts before the Court is not farfetched; one only has to reel out the elementary essentials of a valid contract and see if they fit in the presence circumstance. I agree with the Defendants that shorn of embellishments, they are 5 major ingredients that guides a valid contract viz: (1) Offer, (2) Acceptance, (3) consideration, (4) capacity to enter contract and (5) intention to enter legal relations. These conditions are not mutually exclusive, in

other words they are conjunctive. See EMEMCHUKWU V OKOYE & ANOR (2016) LPELR-40027 (CA) PAGE 12 PARA C.

It is clear from Exhibit Brown and Exhibit Jack 01 attached to the processes of the Claimant and Defendants respectfully that the above ingredients are existent. The offer made by the Defendants became accepted by the signing of the agreements by the various heads in the community; it is beyond contest that consideration passed between the parties; there is not indication that any of the parties was bereft of capacity to enter contract and it is a given that parties did intend to enter legal relations. I so hold.

The Claimant has alleged that the agreement be nullified because in his view, consideration was not paid and the consent of the proper authorities were not sought. But who is the proper authority? I ask further, how in the face of the documents revealing monies paid; the description of the account paid and the signature of named persons, is the court to arrive at a decision that consideration did not pass? Is it not the duty of the Claimant who alleges these facts to present cogent materials in support of same? The position of the law is that, courts of law do not vista into the domain of speculation, but act on concrete evidence, the courts is not an oracle, to gaze into a crystal ball and determine happenings not properly brought to its attention. See ILORI V TELLA (2007) ALL FWLR PT. 393 PAGE 122 AT 139 PARAS E-G where their Lordships at the Court of Appeal held thus:

It is not the duty of a court to embark upon cloistered justice by making enquiry into the case outside the court, not even by examination of documents which were in evidence when same had not been examined in the open court. A judge is

not an investigator. He should conduct a case based on pleadings and evidence adduced in open court. He should not speculate.

In the light of the above, it cannot be said that the Claimant who seeks to invalidate the agreement has offered any cogent evidence to gain the imprimatur of the Court, to nullify same and I so hold. Consequently, the seven reliefs sought by the Claimants are hereby refused and I so hold.

I mentioned earlier in the course of this judgment, that the Defendant had filed a counter claim. The counter claimants in adopting the depositions in the counter affidavit sought the following reliefs from the Court to wit:

1. A declaration that upon a proper reading of the complete deed of conveyance between kula kingdom and the defendants marked exhibit Jack 1, there is a valid contract for the transfer of ownership of the property described therein.
2. A declaration that the defendants having complied with all relevant requirements including obtaining necessary consent from the authorities is the valid owner of the property described in Exhibit Jack 01.
3. An order restraining the plaintiff and or any other person from interfering with the peaceful possession of the property in Kula Kingdom, same having been validly transferred to them through Exhibit Jack 1.

Now, I have already examined the said Exhibit Jack 01 and arrived at a conclusion that same is believable and contains the essentials of a valid contract. Corollary to that is the settled position of the law that parties are bound by their agreements, and once an

agreement is devoid of any vitiating factor as in the present case; the courts are enjoined to enforce them.

IN AZUBUIKE & ANOR V GOVERNMENT OF ENUGU STATE (2013) LPELR-203812 (CA) PAGE 51 PARA B-B it was held thus:

"It is trite law that parties to a contract are bound by the terms of that contract, the duty of the Court is to give effect to such terms to protect the sanctity and the autonomy of contracts in the public interest."

I am also fortified by the decision of the Supreme Court in BABATUNDE & ANOR V BANK OF THE NORTH LTD & ORS (2011) LPELR-8249 (SC) PAGE 21 PARA B where their Lordships held:

"The law is that written contract agreement freely entered into by the parties is binding on them. A Court of law is equally bound by the terms of any written contract entered into by the parties. Where the intention of the parties to a contract is clearly expressed in a document, a contract agreement; the Court cannot go outside that document to give effect to the intention of the parties. The general principle is that where the parties have embodied the terms of their contract in a written document, extrinsic evidence is not admissible to add to, vary, subtract from or contradict the terms of the written instrument, Okonkwo v. C.C.B. (Nig.) Plc. (1997) 6 NWLR (pt.507) pg.48 Dalek (Nig) v. OMPADEC (2007) 7 NWLR (pt.1033) pg.402. U.B.N. Ltd. v. Ozigi (1994) 3 NWLR (pt.333) pg.385 at pg.404. Nneji v. Zakhem Con. (Nig) Ltd. (2006) 12 NWLR (pt.994) pg.297 SC. U.B.N. Ltd. v. Sax (1994) 8 NWLR (pt.361) pg.402." Per ADEKEYE ,J.S.C (Pp. 21 paras. B)

I therefore hold that the counter claim succeeds and the reliefs contained therein are granted. For avoidance of doubt, I hold as follows:

1. That upon a proper reading of the complete deed of conveyance between kula kingdom and the defendants marked exhibit Jack 01, there is a valid contract for the transfer of ownership of the property described therein.
2. That the defendants having complied with all relevant requirements including obtaining necessary consent from the authorities is the valid owner of the property described in Exhibit Jack 01.
3. Consequently, an order is made, restraining the Claimant and or any other person from interfering with the peaceful possession of the property in Kula Kingdom, same having been validly transferred to them through Exhibit Jack 01.

This is the Judgment of the Court and I so hold. Parties are to bear their cost.

APPEARANCE

M.S Ibrahim, Esq. for the Claimant. with me S.S. Adukke Esq.

Kachollom G. Petter Esq. for the Defendants.

Sign

Hon. Judge

02/02/2022