IN THE HIGH COURT OF FEDERAL CAPITAL TERRITORY
IN THE FEDERAL CAPITAL TERRITORY JUDICIAL DIVISION
HOLDEN AT JABI FCT ABUJA

BEFORE HIS LORDSHIP: HON. JUSTICE BABANGIDA HASSAN

SUIT NO: CV/1724/2015

BETWEEN:

OLIVER SIMEON OTONYO ____ **PLAINTIFF**

AND

1. **CLOBEK NIGERIA LIMITED**
2. **MR. BERNARD EKWE**

____ **DEFENDANTS**

The court resumes sitting with the same membership.

K. B. Oguru Esq appeared for the plaintiff.

C.J. Aniugbo Esq appeared for the defendants.

CT – PC: The matter was adjourned to today for judgment and it is not ready due to some judicial engagements of the judge within the stipulated period within which the judgment should be delivered, do you have anything to say, whether there is any miscarriage of justice being occasioned on you by the non delivery of the judgment within 90 days?

PC-CT: No.

CT-DC: Do you experience any miscarriage of justice for the non-delivery of the judgment within the stipulated period of 90 days?

DC-CT: No.

CT-PC: Do you agree that we should have another date for the judgment?

PC-CT: Yes.

CT-DC: Do you agree that we should have another date for the judgment?

DC-CT: Yes.

CT-DC: Do you want to address the court further?

DC-CT: We are most grateful. No further address or adoption of address.
CT: A date will be communicated to the all the counsel for the judgment.

Hon. Judge
Signed
9/2/2022

JUDGMENT

The plaintiff, by the further amended statement of claim dated and filed on the 20th day of February, 2020 claims against the defendants jointly and severally as follows:

a. A declaration that the purported revocation of the sale of block C7 Clobek Estate to the plaintiff by the defendants is null and void and of no effect.
b. A declaration that the unilateral sales/purchase agreement prepared by one Barr. Lady Juliet N. Udechukwu on behalf of the defendants without consulting the plaintiff is null and void and of no effect.
c. A declaration that the plaintiff having bought the said House C7, Clobek Crown Estate, Lugbe, Abuja from the defendants, he is entitled to a Deed of Assignment in respect thereof.
d. A declaration that the estate bye-laws, rules and regulations unilaterally prepared by the defendants would sought to be imposed on the plaintiff without any input from the plaintiff or landlord association is null and void and of no effect.
e. A declaration that the 1st defendant has no reversionary rights in respect of the house and property known as and lying and situate at Block C7,

Clobek Crown Estate, Plot 1946, Sabon-Lugbe East Extension, Lugbe, Abuja.

f. An order of perpetual injunction restraining the defendants, their agents, servants, assigns and or privies from imposing and or collecting any money or levy from the plaintiff under any guise, except as may be mutually agreed upon by the House Owners (including the plaintiff) and residents of the said Clobek Crown Estate, plot 1946, Sabon Lugbe East Extension, Lugbe, Abuja.
g. An order of perpetual injunction restraining the defendants, their agents, servants, assigns, privies by whatever name called from disconnecting electricity and water supply to the plaintiff's house (Block C7, Clobek Crown Estate, plot 1946, Sabon-Lugbe East Extension, Lugbe, Abuja.
h. An order of the court restraining the defendants their agents, servants, assigns, privies by whatever names called from disturbing the movement of the plaintiff and his family members in and outside the Clobek Crown Estate.
i. An order restraining the defendants, their agents, servants, assigns, privies by whatever name called from interfering with or preventing the plaintiff and members of his family from the use of their sound proof generating set and the violation of any of their rights in the estate.
j. An order of perpetual injunction restraining the defendants, their agents, servants and or privies from collecting a unilaterally imposed facility management service charge from the plaintiff.
k. An order directing the defendants to instruct their solicitors to prepare a Deed of Conveyance or a

Deed of Assignment for the execution of the plaintiff and the defendants in respect of the sale of the said House C7, Clobek Crown Estate, Lugbe, Abuja to the plaintiff by the defendants and give a duly executed copy thereof to the plaintiff.

l. The sum of N50,000,000.00 (Fifty Million Naira) only as general damages.
m. The sum of N5,000,000.00 (Five Million Naira) only on the plaintiff's counsel professional fees for the prosecution of this suit.
n. The sum of N10,000,000.00 (Ten Million Naira) only as exemplary damages.

In the further amended statement of claim, it is averred that sometime in October, 2012, in Abuja, he ran into the 2nd defendant who at that time had a close friendship with the plaintiff that spanned twelve years, and that the 2nd defendant informed the plaintiff that he was into real estate business in Abuja and had properties for sale, and that the 2nd defendant offered to sell one of his properties in an estate known as Clobek Crown Estate, Lugbe Abuja to the plaintiff.

The plaintiff averred that following his discussion with the 2nd defendant, he saw the offer as an opportunity to own a house in Abuja, and then went to inspect the property in the estate in company of the 2nd defendant, and thereafter decided to buy one of the properties in the estate, and that the 2nd defendant offered to sell a three bedroom apartment which was still at carcass level to the plaintiff at the rate of N15,000,000.00 (Fifteen Million Naira) only per housing unit, along with one bedroom apartment which would serve as a service quarter, and upon his agreement to buy the property, he was told to obtain

application form for a non-refundable fee of N10,000.00 (Ten thousand Naira) only which he did.

The plaintiff averred that he made a complete payment for the three bedroom apartment to the 2nd defendant in the sum of N15,000,000.00 (Fifteen Million Naira) only into two installments through Manager's cheque of UBA Plc and the 19 and 20th of February, 2013 which the plaintiff personally handed the cheques to the 2nd defendant, and upon the receipt of the said sum, the 2nd defendant issued him a Letter of Acknowledgment with the Letter head of the 1st defendant, and he was also issued with the receipt of payment for the said sum of N15,000,000.00 by the 2nd defendant, and that the 2nd defendant issued him with a Letter of Allocation with the letter head of the 1st defendant dated the 14th February, 2013 for the said property.

The plaintiff averred that when the 2nd defendant issued him with the 1st defendant's application form for the purchase of the said house, he noticed that in the first paragraph of page 2 thereof, there is a requirement that the plaintiff was to pay 2.5% legal fees for the preparation of a Deed of Sublease, and he was warned as the defendants offered to sell the house to him and he agreed to buy and not to acquire interest in the said house by way of a sublease. That the plaintiff confronted the 2nd defendant on the issue, and the 2nd defendant explained to him that he should not bother about as the application form was in a standard form that was being issued to all intending purchasers of the houses in the estate, and that the defendants were selling the house absolutely to the plaintiff upon payment of the purchase price and that the defendants will not be entitled to the reversionary and hence no specific term of years was stated in the said

application form. That the 2nd defendant added that the plaintiff was at liberty to even sell the said house without the consent of the defendants once he has fully paid up the purchase price, and the 2nd defendant referred the plaintiff to paragraphs 12 and 13 of the said application form which confirm that the defendants were selling the house to the plaintiff absolutely and not by way of a sublease.

The plaintiff averred that he enquired about the facility management agreement referred to in paragraph 14 of the said application form, and the 2nd defendant, in response, stated that the facility management agreement was not ready and that the plaintiff should not bother about it as there will be nothing therein that will untoward nor detract from the outright sale of the said house to the plaintiff by the defendants, and that 2nd defendant promised to consult the house owners when preparing the facility management agreement in order for them to mutually agree on the terms and conditions, and it was on the foregoing clarifications that the plaintiff signed the said application form and then made a complete payment of the purchase price for the said house.

The plaintiff averred that the defendants in their written acknowledgment of the receipt of the purchase price and also acknowledged in line with the above understanding that the said payment was the purchase price for the said house, and the plaintiff was subsequently issued with an allocation letter which once again mentioned Deed of Sublease as the plaintiff's title, and that the 2nd defendant again assured the plaintiff that it was an outright sale of the said house and that the same is not a sublease and that the allocation letter is a pro forma letter given to all house owners. To confirm that it was an outright sale to the plaintiff, the 2nd defendant stated that the plaintiff was free

to apply for Certificate of Occupancy from the government in his name in line with paragraph 5 of the said letter of allocation. That the 2nd defendant also confirmed that since it is an outright sale, the defendants were not entitled to any reversionary rights as the plaintiff upon complete payment of the purchase price was free to sell or alienate the property without recourse to the defendants in line with paragraph 8 of the said letter.

It is averred that the 2nd defendant allayed the years of the plaintiff by stating that the letter of allocation was just a temporary document, pending the preparation of a proper sales and purchase agreement, and the 2nd defendant on behalf of the defendants then assured the plaintiff that no deed of sublease would be prepared on account of the said house to the plaintiff. That upon the issuance of the said letter of allocation to the plaintiff, the 2nd defendant indicated that, the facility management agreement was not ready but that there will be nothing therein that will untoward nor detract from the outright sale of the said house by the defendants. That in accordance with the understanding between the plaintiff and the 2nd defendant, the defendants in all subsequent written communications with the plaintiff, refrained from using the expression "Deed of sublease" or even "sublease", and the defendants acknowledged that the plaintiff bought the said house and indeed communicated with the plaintiff as the owner of the said house, and these documents include the following:

i. Purported defendants' Letter of Termination;
ii. Defendants' letter dated the 28th January, 2015 titled: "Installation of personal generator in the Estate and violation of Estate Rules" wherein the plaintiff was in paragraph 2 thereof referred to as having applied' to purchase a house in the estate;

iii. The defendants' letter dated 15th January, 2015 titled: 'sales and purchase agreement for House No. C7' wherein the defendants informed the plaintiff that the sales of purchase agreement for the said property was ready and in paragraph 4 thereof, acknowledged the plaintiff as house owner;
iv. Defendants' letter dated 5th March, 2015 titled: 'Re-Estate Service Charge for 2015' wherein the defendants wrote to the plaintiff in his capacity as a house owner.
v. Defendants' letter dated 27th October, 2014 titled: 'Facility Connection Fee' wherein in paragraphs 122, the defendants described the house bought by the plaintiff as the plaintiff's house;
vi. Defendants' letter dated 21st January, 2015 titled: 'Statement of Account for finishing of House C7' wherein the defendants in the second paragraph acknowledged that the plaintiff bought the said house at carcass level and further acknowledged that the plaintiff is the owner of the said house.

The plaintiff averred that upon receipt of the Letter of Allocation for house C7, which was at carcass stage, he took possession of same and the 2nd defendant and the plaintiff agreed orally on the 14th February, 2013 that the 2nd defendant could complete the house for him within 8 months at the rate of N7,060,000.00 (Seven Million, sixty thousand Naira only) and whereupon the plaintiff paid the sum to the 2nd defendant directly in three installments as follows:

i. N2,000,000.00 on the 23rd of February, 2013;
ii. N3,500,000.00 (Three Million, Five Hundred Thousand Naira on the 7th May, 2013; and

iii. N1,560,000.00 on the 3rd of July, 2013; and the 2nd defendant issued the plaintiff with receipts for two of the said payments on behalf of the 1st defendant, and notwithstanding within eight months as agreed and rather started demanding for more funds and the plaintiff was not satisfied with the extent of the work done, hence requested for account of the money already given to the 2nd defendant before any further payment would be made, and the 2nd defendant became angry because of the request and refused to give account of the expenditure and refused further to proceed with the completion of the building, and the plaintiff left with no other option than to take over the completion of the building and he spent about N3,186,000.00 (Three Million, One Hundred and Eighty Six Thousand Naira only to complete the building before moving into same on the 14th of August, 2014, and the expenses include:

i. Electricals (wiring and additional pipings – N396,000.00;
ii. Burglary proofs – N200,000.00;
iii. Screeding (internal & External) – N450,000.00
iv. Compound Interlocking stones – N480,000.00
v. Construction of soak away pits - N298,000.00;
vi. Painting – N350,000.00
vii. Electrical fittings and installation – N35,000.00
viii. Mechanical piping – N246,000.00
ix. House cleanup cost – N85,000.00
x. Water overhead tank, piping and installation – N246,000.
xi. Tiles and labour – N300,000.00

xii. Material including sand and cement N90,000.00, all totaling N3,186,000.00

That it was after a year and 6 months that the 2nd defendant, though one David Agbo, sent a purported unsatisfactory account to the plaintiff with the works which were either not done or inflated out of proportion by the 2nd defendant which the plaintiff pointed out, and the plaintiff was surprised that the 2nd defendant used the 1st defendant to give account when he had no transaction with the 1st defendant with respect to the completion of the building, and it was because of that incident that the defendants both orally and in writing, started raising all sorts of frivolous and unfounded issue and allegations against the plaintiff.

It is averred that he was compelled to make additional payments for the connection of electricity and water to house C7 despite the 2nd defendant's initial commitment to handle utilities as part of the contract for completion of the house, and that on the 19th August, 2014 there was a heavy down pour which resulted in the estate getting flooded, and it left some parts of his house damaged and he had to spend some extra money rectifying the damage brought about by the flood. That after he moved into house C7, the 2nd defendant started treating him like a tenant and withdrew all the incensories that originally drew the plaintiff to invest in the said property, and the 2nd defendant reneged on his commitment to allow the plaintiff and other house owners in the estate, peaceful enjoyment.

It is averred that upon agreement between the 2nd defendant and the house owners in the estate, facilities such as access roads, street lights, perimeter fence for the estate, separate fence for each house, portable water, recreational park, security post etc were paid for by house owners in the estate, however, the plaintiff and other house

owners were not allowed peaceful enjoyment of their facilities, and that after he moved into the estate, he was made to pay a service charge of N48,250.00 from the months of August, to December, 2014, and that the management of the estate wrote him a letter stating that his sales and purchase agreement was ready but that he was to pay a 2.5% charge of the total cost of the house, as legal fees.

The plaintiff further averred that from October, 2014 to January, 2015, the 1st defendant wrote several letters to the plaintiff to wit: letter of contravention, notice of security breach and installation of personal generator in the estate, all of which were not contemplated in the application form. That in January, 2015 the defendants issued the plaintiff with a facility management service charge of N198,000.00 only for 2015 and that on the 3rd day of February, 2015 the 2nd defendant issued him with a letter of introduction of A.G. Emeka & Co. as the new manager of the estate, and that following the appointment of A.G. Emeka & Co as the estate manager and in the letter of introduction of the new manager was a purported modification of the estate service charge fee of 2015. That on the 21st of August, 2014 the 2nd defendant issued him a document titled 'Estate Bye Laws, Rules and Regulations and that he was required to sign the said document and be bound by same. This the plaintiff was taken aback as he was not consulted and given opportunity to make his input thereto before the preparation of the final document as promised by the defendants, and besides the terms and conditions therein were too onerous, and the document was in direct contradiction of the plaintiff's right to peaceful enjoyment of the property and contrary to the assurances earlier given to the plaintiff by the defendants, and the plaintiff refused

to sign the said document, this is because he had no prior knowledge of such a document otherwise he would not have invested in the property.

It is averred that he was issued a purported sales/purchase Agreement which stated among other things that the 1st defendant reserved the reversionary interest in the house, and he declined to append his signature as it was not in consonance with the criteria for sales/purchase of the said house by the plaintiff and same was contrary to the understanding between the plaintiff and the defendants that the transaction with respect to the said house was one of outright purchase and not a sublease.

It is averred that in the course of the trial, the plaintiff shall contend that the 1st defendant sold all of its rights, and interest on the property to the plaintiff, and therefore, the defendants have no reversionary interest in the said property.

The plaintiff averred that on the 23rd February, 2015, the 1st defendant issued him a letter of revocation of allocation of house no. C7, and during the trial, the plaintiff shall contend that the 1st defendant has no legal right to revoke the property sold to him, and shall contend that the purported revocation letter is fundamentally defective as same was not signed or issued by the defendants and neither was same on its face issued upon the authority of the defendants as it was issued by a complete stranger to the transaction and same cannot lawfully terminate or revoke the sale of the said house to the plaintiff by the defendants.

It is averred that he instructed his solicitors to respond to the purported letter of revocation, and the solicitors wrote a letter to the 1st defendant demanding the retraction of the

purported letter of revocation by the defendants, and upon the service of the letter of revocation the 1st and 2nd defendants resorted to threat to life and intimidation of the plaintiff as was as members of his family, and owing to the harassment and intimidation the plaintiff wrote a petition against the 2nd defendant at Divisional Police Headquarters, Lugbe through the law firm of chief Adoga SAN & Co.

It is averred that after the disconnection of his electricity and water supply by the agents of the 1st defendant which lasted for over a year, he had to rely on his sound proof generator to power supply, and on average he spent the sum of N3,500 per day on diesel and N3,000 on water supply.

That while the matter was under investigation at Lugbe Police Station, the 2nd defendant wrote a petition to the office of A.I.G. of police, Wuse Zone 7, Abuja against the plaintiff, and the petition was dismissed for it being frivolous and lacking in merit.

It is averred that upon the institution of this action in 2015, the 1st and 2nd defendants went ahead to constitute several civil and criminal suits against the plaintiff, and those suits were determined in favour of the plaintiff, and the cases are:

a. Francis Mande & 2 Ors V. Oliver Simon Otonyo with suit No. FCT/HC/CV/2333/2016;
b. Commissioner of Police V. Oliver Otonyo & Anor. With No. AB/MC/37/2015;
c. Commissioner of Police V. Oliver Otonyo & Anor. With No. CR/LUG/12/2017.

That the 1st defendant also instituted further action against the plaintiff which are yet to be determined and are:

a. Clobek Nig. Ltd V. Oliver Simon Otonyo with No. FCT/HC/CV/2130/2016; and
b. Bernard Ekwe V. Inspector General of Police & 4 ors with No. HC/ABJ/CV/1382/2017.

That the plaintiff's counsel fees for the prosecution of this matter is N5,000,000.00 (Five Million Naira) only, and the aforesaid actions of the defendants have inflicted severe emotional distress, agony, trauma, pain and anguish on the plaintiff and the members of his family who reside in the said estate.

In their consequential amended statement of defence which was dated the 4th day of June, 2020 the defendants vehemently deny all the paragraphs of the statement of claim except paragraph 49 and therefore put the plaintiff to the strictest proof. The defendants also admitted paragraph 1 of the statement of claim to the extent that the plaintiff resides at Clobek Crown Estate, situate at plot 1946, Sabon-Lugbe East Extension, Lugbe, Abuja, and also admit paragraph 2 of the claims.

The defendants averred that they shall contest the joining of the 2nd defendant as a party to this suit as there is no cause of action made out against the person of the 2nd defendant on this suit, and the facts on paragraphs 4 & 5 of the statement of claim are facts within the personal knowledge of the plaintiff is therefore put to the strictest proof. That the defendants also deny paragraphs 6, 7, 8 and 9 of the statement of claim and put the plaintiff to the strictest proof, and in response the defendants averred that the plaintiff was desirous of securing a house unit in Clobek Crown Estate, and at the time the plaintiff indicated interest in the estate, the estate was under the management of an estate manager/managing agent, Mr. David Agbo whom was contracted by the 1st defendant to manage and run

the estate, and the inquiries were made from Mr. David Agbo who was then the acting Estate Manager, and the plaintiff was then informed by Mr. David Agbo and who was also a Director in the 1st defendant, that:

i. The plaintiff would be required to obtain, fill, sign and return to the 1st defendant, an application form for the non-refundable sum of N10,000.00 applying to purchase an interest in a house unit in the estate, subject to the terms and conditions as contained in the application form.
ii. From the application form, the plaintiff was to identify the type of house unit he desired to purchase an interest in and the application form contained terms and conditions binding on the plaintiff and subject to which the 1st defendant was to convey an interest on the desired house unit to the plaintiff.
iii. Thereafter, the management of the estate would consider the application form and subject to its discretion, an allocation of a house unit in the estate would be offered the plaintiff. The allocation would be communicated by the estate manager to the plaintiff, vide an allocation letter containing terms and conditions subject to which the allocation is made.
iv. If the offer of allocation is accepted by the plaintiff subject to stipulated terms, the plaintiff would proceed to make payments to the 1st defendant for the allocated house unit. Thereafter the plaintiff would be allowed into possession of the allocated house and the necessary documentations of title together with the facility management and the estate bye-laws, Rules and Regulations, will

subsequently be executed by the plaintiff in line with the representations in the application form and allocation letter.

The plaintiff accordingly procured, filled, signed and returned an application form dated the 9th February, 2013 to the 1st defendant through the estate manager, wherein the plaintiff applied to purchase a sublease interest in a three bedroom apartment at the carcass level with one bedroom boys quarters annexed, for the sum of N15,000,000.00, subject to the terms and conditions contained in the application form.

The defendants deny paragraphs 10 and 11 of the statement of claim and in response averred that after the plaintiff had filled and returned the said application form, the management of the estate (acting on behalf of the 1st defendant) considered the application and offered the plaintiff an allocation of House C7 on the estate, and the offer was made subject to the terms and condition in the application form of 9th February, 2013 and letter of allocation to the plaintiff dated the 14th February, 2013 which was signed by Mr. David Agbo. That the said allocation letter clearly stated that it was a sublease interest that was being conveyed to the plaintiff in the allocated house unit. That the plaintiff upon accepting the allocation and terms and conditions went ahead and paid the sum of N15,000,000.00 to the 1st defendant dated the 19th and 20th February, 2013 in the sum of N10,000,000.00 and N5,000,000.00 and the receipts were issued to the plaintiff by the Estate Manager, on behalf of the 1st defendant. That a letter dated 21st February, 2013, acknowledging payment of the aggregate sum of N15,000,000.00 was also issued to the plaintiff by the 1st defendant through the estate manager and the 2nd defendant only signed the acknowledgment

letter as an officer and on behalf of the 1st defendant as the sign of clearly reads "For: (Clobek Nigeria Limited").

It is averred that in specific denial of paragraph 12 of the claim, the defendants averred that the application form was filled and submitted on 9th February, 2013 while payment, vide the UBA cheques, reflect 19th and 20th February, 2013 which is more than a week after filling and return of the application form.

That paragraph 12 is admitted to the extent that the plaintiff was duely issued a letter of allocation but denied that the said letter was issued to the plaintiff by the 2nd defendant, and further averred that:

a. That the letter of allocation was issued on behalf of the 1st defendant to the plaintiff, by the then estate manager, Mr. David Agbo (acting on behalf of the 1st defendant) who clearly signed the allocation letter issued to the plaintiff after which the plaintiff went on to pay for a sublease interest in the allocated house unit.
b. Upon payment the plaintiff was granted possession of the house unit and was clearly stated in the application form and allocation letter, reminded that the documentation of title, together with the facility management agreement and estate bye-laws, Rules and regulations, will subsequently be issued by the 1st defendant to the plaintiff for examination. At this time, the plaintiff never made any squabbles with the conveying a sublease interest in the allocated house unit.

The defendants deny paragraphs 14, 15, 16, 17, 18 and 19 of the claim and state that the averments on the said paragraphs are signed with falsehood, and in response averred that:

a. That the plaintiff was well aware of the nature of the interest (sublease) he was purchasing in the allocated house unit as this was stipulated in the application form signed by the plaintiff and specifically stated in allocation letter offering house C7 to the plaintiff, and that whenever the plaintiff was referred to as a house owner or the term "purchase price" was used by the defendants, it was based on the agreement that the plaintiff was entitled to sublease interest and that was what he was to own and paid a purchase price for.
b. That the defendant did not at any time whatsoever, offer or suggest the outright sale of the house unit to the plaintiff and the plaintiff is to put to strictest proof of the averment therein.
c. The defendant never gave any assurances, comfort or clearance whatsoever to the plaintiff as alleged as the 1st defendant engaged with the plaintiff and other residents of the estate, through an estate manager, Mr. David Agbo who acted on behalf of the 1st defendant at all times material to this suit.
d. It is the estate manager that issues or enquires relating to the estate were communicated to, and that the plaintiff was well aware of this as this was clearly stated in paragraph 11 of the application form signed by the plaintiff which provides thus:
"The estate shall be managed at all times by an estate management firm appointed by Clobek Nigeria Limited."
e. Nowhere in the application form signed by the plaintiff or correspondence between the plaintiff and the 1st defendant was it agreed that the house owners in the estate could be consulted before

preparation of the Facility Management Agreement, and the plaintiff is put to strictest proof of this unfounded averment in paragraph 17 of the claim.

f. That the terminologies, nomenclatures or expressions used by or on behalf of the 1st defendant to refer to the plaintiff in any correspondence regarding house C7 was based on the agreements in the application form and allocation letter which is that the plaintiff applied, was offered and paid for a sublease interest in the allocated house unit, thus, he became entitled to a sublease interest in the allocated house unit, and does not bestow a different interest on the plaintiff than a sublease interest.

It is averred that the defendants deny paragraphs 24, 25 and 26 of the claim and the plaintiff is put to strictest proof and further averred that:

a. The plaintiff was only granted possession of the allocated House unit after he made full payment for a sublease interest in the house. It was only as a sign of good faith on the part of the 1st defendant to allow allotee to commence improving, working and completing the allocated house unit before full payment is made. As agreed in paragraph 5, clause C of the application form in paragraph 2 of the allocation letter, actual possession of an allocated house unit is given after full payment is made.
b. The plaintiff was granted possession of the house unit (a carcass level) upon making full payment to the 1st defendant for the house unit on 20th February, 2013.
c. That from paragraph 6 of the letter of allocation, it was agreed that the works and empowerments to be done on the allocated house unit, in completing it from carcass level, is to be in accordance with the

standards specified by the 1st defendant and under the supervision of the building engineers/project managers engaged by the 1st defendant. This was to ensure that the house unit allocated to the plaintiff could maintain uniformity with other house units in the estate, which is the agreement in paragraph 7 of the application form.

d. Further to the above, the plaintiff communicated the estate management of his desire to have the 1st defendant's engineers/project managers complete the allocated house unit as that would save him the stress of contracting external builders and would ensure that the allocated house unit maintains the specifications, standards and uniformity of the estate.
e. At that time, it was not the responsibility of completing house units allocated in the estate, so the 1st defendant had no bank account where funds are to be paid into for such purposes. However, the 1st defendant in good faith and it its devotion to consistently please the residents and interest holders in the estate, agreed to carry on the completion of the house unit allocated to the plaintiff and the account number of the Managing Director of the 1st defendant (2nd defendant) was made available to the plaintiff for the purpose of making the necessary payments.
f. The 1st defendant's engineers had 12 months to complete the house unit allocated to the plaintiff, and this is in line with the agreement between the 1st defendant and the plaintiff in paragraph 7 of the allocation letter.

g. Contrary to paragraph 25 and 26 of the claim, the 2nd defendant did not personally enter into any agreement with the plaintiff nor did the 2nd defendant personally collect any sums from the plaintiff. The plaintiff paid the aggregate sum of N7,060,000.00 into the 2nd defendant's account, with the knowledge and understanding that the funds paid by the plaintiff into 2nd defendant's bank account was for the completion of the allocated house unit by the 1st defendant's engineers, and at that time, the 1st defendant did not maintain any bank account designated for payment of funds for completion of allocated house units. It was based on this understanding that the acknowledgement letters dated 11th April, 2013 and 2nd July, 2013 acknowledging receipt of payments from the plaintiff for the completion of the allocated house were issued by the 1st defendant to the plaintiff and the plaintiff never made any complaints about it.

The defendants deny paragraphs 27, 29 and 30 of the output the plaintiff to the strictest proof and also averred that:

a. In line with the agreement between the plaintiff and the 1st defendant in paragraph 7 of the letter of allocation. The 1st defendant's engineers had a period of 12 months to complete the house allocated to the plaintiff which they did without demanding for any extra funds.
b. The plaintiff never complained to the 1st defendant nor to the estate management that he was not satisfied with the works done in completion of the allocated house, neither did he request for any accounts for money spent.

c. That after the engineers of the 1st defendant concluded works, the plaintiff moved into it without having to do any additional works in completing the structure of the allocated house save fixing his furniture and internal decorations.
d. That in specific denial of paragraph 28 of the claim, the 1st defendant without the plaintiff requesting, furnished the plaintiff with the statement of account or breakdown of how the funds given to the 1st defendant were put to use in completing the house unit allocated to the plaintiff and he never complained about the breakdown.
e. That the plaintiff is put to the strictest proof on how the sum of N3,186,000.00 or any additional funds was spent in completing the allocated house.

It is averred by the defendants that they deny paragraph 33 of the claim and state that the completion of the allocated house was carried out by the 1st defendant through its engineers and no commitments were made by the 1st defendant nor estate management to the plaintiff, suggesting or implying that utilities, in their nature of light and water supply connection to the house, was to be covered in the completion of the house. The plaintiff was always aware that the estate manager acted on behalf of the 1st defendant with respect to issues relating to the estate and is thus put to the strictest proof of the averments made therein.

It is averred that the averments in paragraph 34 of the claim is within the knowledge of the plaintiff, and is therefore put at the strictest proof, and so denied paragraph 35 of the claim that the 1st defendant never withdrew any incentives that it had earlier committed to provide to the plaintiff. The 1st defendant always acted in

accordance and strict compliance with the agreement between it and the plaintiff.

It is also averred that the defendants denied paragraph 36 of the claim, and in rebuttal state that the 2nd defendant is not the owner of the estate as it is owned by the 1st defendant and was managed at the time by Mr. David Agbo, and the 2nd defendant is not responsible for committing or assuring the plaintiff or any other interest holder in the estate, of peaceful enjoyment of any house.

The 1st defendant, through its manager, Mr. David Agbo always acted towards the plaintiff in a manner complaint with the agreement between the 1st defendant and the plaintiff, and the peaceful enjoyment of the house was never interfered with by the 1st defendant.

The defendants deny paragraph 37 and further state that the plaintiff had agreed with the 1st defendant to pay annual facility management fees/service charges for the usage and maintenance of the estate facilities including access to water and electric power, and this is contained in paragraphs 11 and 14 of the Application Form which the plaintiff agreed to that under paragraphs 11 and 14 of the application form signed by him, the plaintiff agreed to pay the facility management fee for the usage and maintenance of the estate and the plaintiff paid the sum of N48,250.00. That the plaintiff in the application form agreed to pay legal fees, 2.5% of the entire cost of a sublease interest used for the preparing the Deed of sublease (title document), this is in accordance with the agreement between the 1st defendant and the plaintiff, and he never paid the legal fees.

That in response to paragraph 40, the defendants stated that the plaintiff agreed to be bound by the estate bye-laws, Rules and regulations, but immediately after

taking possession of the house, the plaintiff reneged on that agreement, and they led to writing of letter dated the 21st October, 2014, and the letter also dated the 28th January, 2015 to the plaintiff by the management.

The defendants in response to paragraph 41, 42 and 43 of the claim averred that the plaintiff agreed in paragraphs 11 and 14 of the Application Form signed by him that he would pay facility management fees issued by the 1st defendant, and also agreed in paragraph 16 of the Application Form that the decisions in all issue of allocation and prices by the 1st defendant shall remain discretionary, exclusive and final to the 1st defendant under all circumstances. That the plaintiff agreed in paragraph 11 of the application form that the estate would be managed at all times by an estate manager appointed by the 1st defendant, and that the 1st defendant acted in accordance with its agreement with the plaintiff.

It is averred that they deny paragraphs 44 and 45 of the statement of claim and further stated that the 2nd defendant never issued the plaintiff any Bye-laws, Rules and Regulations on the 21st August, 2014, but that it was Mr. David Agbo, the then estate manager, who issued the Bye-laws, Rules and Regulations which was duely signed by him, and the plaintiff refused to sign the Bye-laws Rules and Regulations.

That the plaintiff by clause I paragraph 11 of the Application Form dated 9th February, 2013, agreed to abide by the Rules guiding residents in the estate, and nothing in the Bye-laws, Rules and Regulations that derogate from the plaintiff's right to peaceful enjoyment of the house or the sublease interest purchased by him; and the 1st defendant and the estate management never agreed to consult the

plaintiff or any other interest holder in the estate, for their input on the Bye-Laws.

It is averred that the defendants deny paragraphs 46 and 47 of the claim and further stated that the plaintiff was issued a Deed of Sublease captioned "Sales/Purchase Agreement" which is in accordance with the agreement between the 1st defendant and plaintiff as contained in the Application Form signed by the plaintiff and allocation letter accepted by the plaintiff, to the effect that a sublease interest is to be confirmed on the plaintiff with respect to the house unit allocated, and the 1st defendant never agreed to an outright sale of the house, and the plaintiff is put to the strictest proof. And that the 1st defendant at all times maintained that the interest to be conferred on the plaintiff was a sublease interest, and there was never in the agreement wherein the 1st defendant agreed to transfer its unexpired interest in the house.

That contrary to paragraph 48 of the statement of claim, the defendants averred that by the agreement between the plaintiff and the 1st defendant as contained in clause C paragraph 17 of the application form signed by the plaintiff and paragraph 9 of the Allocation letter dated 14th February, 2013, the 1st defendant has the power to revoke/withdraw the allocation of the house to the plaintiff without giving any notice to him upon the contravention or failure of the plaintiff to comply with any part of all conditions stated in the Application Form and Allocation Letter. That the Revocation Letter dated 23rd February, 2015 was sent to the plaintiff by the defendant's legal representative and is for the purpose of notifying the plaintiff of the revocation of his allocation of the house allocated to the plaintiff, and notwithstanding the continuous and several breach of the agreement as contained in the

application form and allocation letter the 1st defendant upon revoking the allocation, offered to refund the sum paid, however, the plaintiff refused to accept the sum rather held the allocated house hostage.

The defendants deny paragraph 49 of the statement of claim and stated that by the application form, the plaintiff was ab initio, notified that he would be paying annual service charge/facility management fee for services rendered to the house allocated to him including the supply of water and electric power, this for the unrestrained access to those facilities, and in line with the agreement, the plaintiff paid the sum of N48,250.00 for the months of August, 2014 when he moved into the house to December, 2014 and had full access to the estate facilities. That the plaintiff, in 2015, failed and refused to pay his facility management fees and this was not entitled to water and electric power supply from the estate management, and the staff and agents of the 1st defendant never subjected the plaintiff or any of his family members to untold hardship, undue harassment or any form of abuse whatsoever.

The defendants another paragraph 50 of the statement of claim, only to the extent that it received a letter from the plaintiff's solicitor demanding retraction of the letters of revocation written to the plaintiff.

The defendants deny paragraph 51 of the claim and stated that the defendants never threatened the life nor intimidated the plaintiff or any of his family members. The plaintiff only resorted to cooking up unfounded allegation in his petition against the 2nd defendant dated 24th March, 2015, and the Nigerian Police abandoned the petition because it was grossly unfounded and baseless.

The defendants admit paragraph 53 of the claim to the extent that, the plaintiff had become a terror and was

always harassing the staff and officers of the 1st defendant which necessitated the defendants petitioning the plaintiff before the office of the Assistant Inspector General of Police, Wuse Zone 7, Abuja.

The defendants admit paragraphs 54, 55 and 56 of the claim to the extent that they instituted some legal actions which are still pending and some concluded, against the plaintiff, and in response to paragraphs 57 and 58 of the claim, the defendants stated that it is the plaintiff who has been a menace in the estate and to the defendants, always harassing the officers and members of staff of the 1st defendant and estate management.

The plaintiff denies paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 39, 31, 32, 33, 34 and 35 of the consequential amended statement of defence save for the admissions therein contained; and therefore, joins issues with the defendants upon their defence except for the admissions contained in their said defence.

The plaintiff denies specifically paragraph 4 of the consequential amended statement of defence to the extent that a sufficient cause of action has been made out against the 2nd defendant, and further denied paragraphs 6 and 7 of the consequential amended statement of defence and averred that before he made the payment of the purchase price of N15,000,000.00, and that he inquired from the 2nd defendant as to whether there was any other document or additional charges relating to the sale of the property but the 2nd defendant answered in the negative and stated that there was no other document or charge relating to the transaction. Also in specific response to paragraph 9 of the consequential amended statement of defence which is denied, he averred that after making

payment of the purchase price for the property, he again requested for the estate bye-laws, rules and regulations from the 2nd defendant but was not given any of the said documents until more than one year later.

The plaintiff in specific to paragraph 20 of the consequential amended statement of defence which is denied, the plaintiff averred that on the 11th February, 2020 the 2nd defendant hired unknown labourers to carry on construction work on the plaintiff's fence without the prior knowledge of the plaintiff however, the said labourers altered the character of the plaintiff's fence and this committed a trespass to the plaintiff's land on the instructions of the 2nd defendant.

The plaintiff put in one witness in proof of the claims, and the PW1 adopted his witness statement on oath and tendered some documents which were admitted in evidence to include: those marked as EXH. "A1", "A2", "A3", "A4", "A5", "A6", "A7", "A8", "A9", "A10", "A11", "A12", "A13", "A14", "A15", "A16", "A17", "A18", "A19", "A20", "A21", "A22", "A23", "A24", "A25", "26", "A27", "A28", "A29", "A30" and "A31".

The defendants too put in one witness and in which he adopted his witness statement on oath and tendered the following documents which were admitted: "EXH. D1", "D2", and "D3".

The PW1, during cross-examination told the court he lives in House C7, Clobek Estate, and that he filled the application form having known the developer as a friend for the past twelve years. When asked whether he has applied to the estate developer of Clobek estate, and he answered in the negative that he accosted the developer in those days when the developer came to his office at AGIP Office, and he was shown the filled application form which he

identified as the one he filled. The application form was admitted by the court and marked as EXH. "A8", and the defence counsel, during cross examination sought to tender the copy of the application for which the court also admitted and marked it EXH. "D1".

When asked by the counsel to the defendant whether he has signed the application for m which contains various terms and conditions of the allocation, and he answered that he has signed it after having discussion prior to his signing with the developer, and having seen discrepancies embedded in that form and the developer said it is a Proforma which is being given to a buyer and that he should not bother as a friend. Also when asked whether there is anything before the court which show that such discussion was made with the developer, and the PW1 said that it is there in his statement. When asked whether there is any record which shows that there was such discussion, and the PW1 still maintained that there is that in his statement. The PW1 was further asked whether there is any document or record or proof that there was such a discussion between him and the developer, and he told the court that he referred to the statement of account on work finishing where the developer expressly stated that they are friends.

The PW1 was further asked whether there was any record to show that there was such conversation as per the discrepancies in the form, and the PW1 still referred to the statement of account for work where the developer referred themselves as friends.

The PW1 answered in the affirmative when he was asked whether before making payment for the house unit at Clobek Crown Estate, he was issued with Allocation Letter by the developer. He was asked whether the Allocation letter has various terms and conditions, and the PW1 told

the court that the terms and conditions in the Allocation Letter are the same as embedded in the Application Form.

The PW1 after being given EXH. "A6" being an acknowledgment copy for the payment and he read and confirmed that the payment was made to Clobek Crown Estate. He was further asked whether the payments of N15,000,000.00 were made to Clobek Crown Estate, and he answered in the affirmative.

The PW1 was asked whether in his statement on oath he mentioned that he inspected the houses before obtaining the application form, and he answered in the affirmative, and that he choose one out of the three that are by the left, when he was asked whether there were other occupants as at the time he picked the form, and he answered that he was the second occupant in that estate.

The PW1 was asked during cross examination that he was always aware that the estate has rules and regulations which its residents are bound by, and he answered in the affirmative, but that at that time there were no occupants and the rules and regulations were not provided. He was further asked whether he was aware that there were rules and regulations, and he answered in the affirmative but was given to him a year and six months later.

The PW1 was shown EXH. "A5" to look at it whether it contains rules and regulations, and he answered in the affirmative, but that it was given to him on the 21st August, 2014 after he has packed in.

The PW1 was asked whether he refused to abide by the rules and regulations, and he answered that they are affront on his fundamental right and have contravene the peaceful enjoyment of the property.

The PW1 was asked to look at EXH. "A3" and EXH. "D1" and to show whether they contains that his input would be

required in the estate bye-laws, rules and regulations, and he answered that it is not there but that there are discrepancies that he has pointed out and they discussed. He was also asked to show in the application form EXH. "D1" and EXH. "A3" where it was stated that he would be consulted in the determination of the facility management fee or estate service charge, and he answered that there is no that.

When asked whether, as at the time he applied for the house unit by filling and signing the application form, was informed that the rules of the estate prohibits the use of personal generator as the general generator would be provided, and he answered in the negative. The PW1 was asked to look at EXH. "A15" and to read the first paragraph and the first two lines of the second paragraph, and was asked whether at any time he wrote a reply to that letter denying or disputing such letter, and he answered that he never did, because it was not in the agreement and it was written to him on the 28th January, 2015.

The PW1 was also asked to look at EXH. "A8" and "A3" and to read the first paragraph of the 2nd page and also EXH. "A3" and was asked whether he has paid the agreed fees as contained in those exhibits, and he answered in the negative, and further explained that for the fact that the payment of N2.5m was kept on hold because of the discrepancies that were pointed out to the developer and items 3, 5 and 7 of EXH. "A3" which would tantamount to a fraud.

The PW1 was asked whether he has stated in his witness statement on oath where he mentioned that he made complete payment for the allocation of the house unit, and he answered in the affirmative, he was further asked whether he would confirm that the payment was made

after the allocation letter was issued on the 14th of February, 2013, and he answered also in the affirmative. He was then asked that notwithstanding these developments, he went ahead and made payments, and he answered that it was at the point of payment, the difference of items 3, 5 and 7 were drawn to the attention of the developer and the developer gave go ahead to make payment, and that is he referred the 2nd defendant as the developer. He was asked that after he ran into the 2nd defendant in the month of October, 2012 and the developer offered a house unit of Clobek Crown Estate he went ahead to inspect the house, whether it was the same day he ran into the 2nd defendant and the inspection of the house, and he answered that it was in October, and November, 2012.

The PW1 was asked to look at EXH. "A8" particularly the date on the document, and he read it to be 13th February, 2013, and was asked further whether it was the date he filled in the application form, and he answered in the affirmative.

The PW1 was referred to paragraph 47 of his statement on oath wherein he said he was issued with the sales/purchase Agreement, and he answered in the affirmative, and he went further and said it was given to him one year and eleven months after payment and after he has taken possession of the house, and that he has identified the sales/purchase Agreement he was issued with. He then referred to the sales/Purchase Agreement and to confirm whether it was given to him, and he then answered that document was not issued to him at any point in time, as the document that was given to him was sales/purchase Agreement letter dated the 15th of January, 2015.

The counsel to the plaintiff also cross-examined the DW1, and was asked whether he knew one David Agbo, and he answered in the affirmative that David Agbo was the estate manager as at the time of the purchase of the house.

The DW1 was asked whether it was the position of the defendants that it was David Agbo that entered into all transactions in relation to property purchased by the plaintiff, and the DW1 answered in the affirmative, and added that he assisted David Agbo.

The DW1 was asked whether in 2016 when he was employed by the 1st defendant, whether the plaintiff has moved into the property, and he answered that he was not employed in 2016, and that he was employed for over ten years but has forgotten the date. The DW1 told the court that he was not lying when he said that he was employed several years ago as he was employed in 2016.

The counsel to the plaintiff put it to the DW1 that he has never played any role and did not assist David Agbo or any other person in the plaintiff's purchase and completion of the property, and he answered that he was an Admin Staff and he monitored all the transactions made by David Agbo.

The counsel also put it to the DW1 that as per as the transaction on the house is concerned was between the plaintiff and the 2nd defendant, and he has at all the times acted on behalf of the 1st defendant, and the DW1 answered that he was briefed that most of those transactions were handled by David Agbo and not by the 2nd defendant.

The DW1 was referred to paragraph 11 of the Amended Statement of defence and was asked to tell this court whether the statement made by them is correct, and

the DW1 answered in the alternative. He was then asked to show to this court the document with respect to the completion of that property for the plaintiff by the defendants, and the DW1 asked the counsel as to how would he produce the document, and he then asked to be given time to revisit the file, and where it is available he would provide it; and that he is aware that the plaintiff is making claim about the completion of the property.

The counsel then put it to the DW1 that there was no such document with respondent to the completion of the property for the plaintiff by the defendants, and the DW1 maintained that he would need to revisit the file.

The DW1 was asked whether there was a signature of the plaintiff in EXH. "D1" and "D2", and he answered in the affirmative. He was also asked whether David Agbo was part of the company managing the estate or he is a staff of the 1st defendant, and the DW1 answered that David Agbo was an estate manager and the Director of the 1st defendant.

The DW1 was asked to look at EXH. "A3" and "A8" and was asked to tell the court whether such documents contain expiration date or a duration of the sublease which the defendants claim they gave to the plaintiff, and the DW1 told the court that the sublease does not talk about the duration. He was also asked to look at paragraph 8(d) (i) and (ii) and 11(a) and was asked to tell the court whether there is a difference between purchase and sublease, and the DW1 answered that in the context in which they were used, they are different.

The DW1 was asked to look at EXH. "D1" and "D2" and was asked whether they were forwarded to the plaintiff at the same time, and the DW1 told the court that they were forwarded at the same time, but did not know the exact

time. The counsel put it to the DW1 that that was long after the application form and the allocation were issued, and he answered in the affirmative. He was also asked whether the plaintiff has no input to the documents EXH. "D1" and "D2" and he answered that the plaintiff rejected the documents, and the reason for the rejection is best known to the plaintiff.

The DW1 was asked to look at EXH. "A4" and "D1" and the counsel suggested to the DW1 that EXH. "A4" was issued because of the allegation that the plaintiff did not comply with EXH. "D1", and the DW1 then told the court that it was only because of EXH. "D1". He was then asked that part of the reason was that the plaintiff bought a soundproof generator and installed a borehole to supply water for himself only when he was denied electricity and water, and the DW1 answered that it was beyond that.

The counsel put to the DW1 that the later did not know anything about the purchase of the property and the completion of it, and he then answered in the negative.

In his written address, the counsel to the defendants raised three issues for determination, thus:

a. Whether, considering the express provisions of the oath Act, laws of the Federation of Nigeria, 2004, this Honourable Court can rightly rely on the plaintiff's written statement on oath and further witness statement on oath before this court?
b. Whether considering the pleadings and evidence before this Honourable Court, there is privity of contract between, the plaintiff and the 2nd defendant, in respect of the sale of the house unit, to warrant the claims made against the 2nd defendant in the statement of claim in this suit?

c. Whether the plaintiff has satisfactorily proven his case before this Honourable court and is entitled to any of the reliefs as sought in the statement of claim?

On the issue in paragraph (a), the counsel answered in the negative and submitted that this Honourable Court cannot rely on the plaintiff's witness statement on oath and further witness statement on oath dated the 20th day of February, 2020 and 10th June, 2020 as they are not in compliance with the provisions of the Oaths Act. The counsel made reference to Order 2 Rule 2 (2) of the Rules of this court as to the requirements of what should be filed when filing a matter by writ of summons. He submitted that the two witness statements of the plaintiff failed to adhere to the statutory provisions of section 13 of the Oath Act, and he took his time to quote it including the First Schedule to that Act, and therefore, to him, it is a statutory directive and not a mere procedural provisions of the Rules of court, and the implication of not complying with the prescription of a statute is much dire than non-compliance with the procedures provided for by the Rules of court as the statutory provisions are more sacrosanct than the Rules of court, and he cited the case of **Afribank Nig. Plc V. Mr. Chima Akwara (2006) LPELR – 199 SC.** He further submitted that where a statute has prescribed the mode or procedure for doing a particular act, that procedure must be followed, and he referred to the case of **United Bank For Africa V. Ukachukwu (2013) LPELR – 2245** to the effect that where a statute provides a way by which a thing has to be done, it is only that procedure provided by that law or statute that should be followed. The counsel submitted that the word used in section 13 of the Oath Act is "shall" which implies that it is mandatory and has compelling effect and which is not open to discretion, and he cited the cases of **Onochie**

V. Odogwu (2006) LPELR – 2689(SC); and **Amekeodo V. Inspector General of Police & 2 ors (1999) 5 SCNJ 71 at 81-82,** and he then submitted that section 13 of the Act would be construed to mean that for an oath to be lawful or valid, it is mandatory that (a) it must be made before a Commissioner for Oaths, notary public or any other authorised person (b) it must be voluntarily made before the persons in (a) and (c), it must be made in the form set out in the First Schedule to the Oaths Act, and to him, the wordings in section 13 of the Oaths Act are unambiguous and ought to be relied upon, and he cited the case of **Duru V. F.R.N. (2013) LPELR – 19930 (SC).**

The counsel took his time and compared the plaintiff's witness statement on oath, and further witness statement on oath with the prescribed mode of oath as in the Act, and submitted that there is an irreconcilable differences between the specification in the Oaths Act and that of the plaintiff's statements. He then cited the case of **Ugboji V. State (2017) LPELR – 43427 (SC)** to the effect that non-compliance with mandatory provisions of a statute has the consequence of rendering the proceedings or act done pursuant thereto a nullity, and that it is a fundamental defect that is not mere irregularity, but an illegality, and he cited the cases of **Sanmabo V. The State (1967) NWLR 314 at 317; Salami Olonje V. I.G.P. (1999) 6 NWLR (PT 607) 467; G.T.B. V. Barrister Ajiboye Ayodeji Abiodun (2017) LPELR – 42551 (CA)** and submitted that the plaintiff's witness statement on oath and further witness statement on oath cannot be relied upon even it has no substantial compliance with the prescribed oath, and it cannot be rightly said that the plaintiff's witness statement on oath and further witness statement on oath was in substantial compliance with the prescription and it does not bear the

swear words "I do solemnly and sincerely declare…" which is mandatory to conferring an oath status on a statement, and this court cannot rely on the plaintiff's statements, and the material consequence is that they do not have evidential value, and to him, the plaintiff's pleading is left bare, abandoned and of no moment as it is upon the adoption of a valid witness statement on oath that a pleading receives evidential support, and he cited the case of **Aliyu V. Bulaki (2019) LPELR – 46513 (CA)** to the effect that a written deposition that is not adopted or cannot legally be adopted is deemed abandoned and the deponent is incapacitated from testifying; and he also cited the case of **UAC V. McFoy (1962) AC 152** to the effect that something cannot be placed on nothing and expected it to stand. It will collapse and crumble, and so will any evidence, oral or documentary derived from a witness, and he also referred to the case of **Gunduri V. Nyako,** and he urged the court to resolve issue in paragraph (a) in favour of the defendants.

On the issue in paragraph (b), the counsel answered in the negative and submitted that the plaintiff wrongly brought the claims in the statement of claim against the 2nd defendant as there exists no privity of contract between the plaintiff and the 2nd defendant with respect to the sale of the house unit, and that privity of contract exists only between the parties, and he cited the case of **Ogundare & Anor. V. Ogunlowo & ors (1997) LPELR-2326 (SC).** He submitted that it is only the parties who are privy to a contract that can be sued, and he also cited the case of **Makwe V. Nwukor & Anor (2001) LPELR – 1830 (SC).**

The counsel then has this poser: whether the 2nd defendant was a party to the agreement to sell the house unit?

By the statement of claim and the reliefs sought by the plaintiff in this suit to enforce what the alleges to be the terms of the agreement for the sale of the house unit to him, the counsel argued, and that the evidence before this court clearly shows that the agreement for the sale of the house was solely between the plaintiff and the 1st defendant. He submitted further that the application form dated the 9th February, 2013 (EXH. "D1") which the plaintiff filled in applying for the house unit, was addressed to the 1st defendant and makes no reference to the 2nd defendant. The allocation letter dated the 14th February, 2013 EXH. "A3" by which the allocation of the house was offered to the plaintiff was issued by the 1st defendant to the plaintiff and also makes no reference to the defendant. The counsel referred this court to the header of EXH. "A3" which clearly reads **"Clobek Nig. Limited"** and also under **"Declaration/Agreement by Applicant**" on page 2 of EXH. "D1" reads:

> **"That the acceptance of this application does not guarantee that Clobek Nig. Limited will offer me/us any allocation of the house units applied for."**

The counsel also submitted that the bank drafts dated 19th and 20th February, 2013 for the sum of N10,000,000.00 and N5,000,000.00 respectively (EXH. "A6") which are payments for the house, were addressed to the 1st defendant, and the "agreed acknowledgement" dated 21st February, 2013 which is an acknowledgement letter for payment of the sum of N15,000,000.00 for the house was clearly issued by the 1st defendant and was only signed by the 2nd defendant on behalf of the 1st defendant and not in his personal capacity, and therefore, to the counsel, it is

beyond doubt that the 2nd defendant was not a party to the agreement for the sale of the house.

The counsel argued that from the statement of claim, it is clear that the plaintiff sued the 2nd defendant as an executive director/chairman of the 1st defendant and not in his personal capacity, and he referred the court to paragraph 3 of the statement of claim where it was stated that "the 2nd defendant is the Executive Director/chairman and alter ego of the 1st defendant." He argued that by the doctrine of corporate personality, a company once incorporated is seen in law, as a legal personality distinct and independent of its members. To him, even if the 2nd defendant is an executive director/chairman of the 1st defendant, the 1st defendant still has a distinct personality which is independent of, and separate from the 2nd defendant, and he cited the case of **New Nigeria Newspapers Ltd. V. Agbo Mabini (2013) LPELR – 2074 (CA).** He argued that a company is an artificial person and only a creation of law, and it can only act through a natural persons, its directors, members at the general meeting, officers or agents, and the natural persons will not incur any personal liability for actions done on behalf of the company, and he referred to section 87(1) and 89 of the **CAMA, 2020,** and submitted that from the foregoing, the 2nd defendant cannot be sued for actions done in a representative capacity, for an on behalf of the 1st defendant. He further submitted that the plaintiff in paragraph 22 of the statement of claim clearly admits that the 2nd defendant was only acting in a representative capacity where it reads:

> **"That also upon issuance of the said letter of allocation to me, the 2nd defendant who at all**

material times in the sale of the property to me, represented the defendants."

To the counsel, the law is trite that facts admitted need no further proof, and he referred to section 123 of the Evidence Act, 2011, and also the cases of **Din V. African Newspapers of (Nig.) Ltd (1990) LPELR-947 (SC); Chief Okparaeke of Ndrakaeme and Ors. V. Egbuonu & Ors (1941) 7 WACA 53, Chief Nwizu & Ors. V. Eneyok & Ors. (1953) 14 WACA, 354.**

He then urged the court to strike out the name of the 2nd defendant from this suit.

On the issue in paragraph C, the counsel submitted that assuming without conceding that the plaintiff's purported witness statement on oath and further witness statement on oath are valid, the plaintiff is still not able to prove his case and is most certainly not entitled to any of the reliefs sought in the plaintiff's statement of claim. He argued that the law is settled by virtue of section 133 (1) & (2) of the Evidence Act that the onus rests on the plaintiff to first prove its case before this court and such onus is only discharged by cogent and convincing evidence which is satisfactory enough to sway the court into believing that the facts upon which the plaintiff's case is premised, are probable. To him, the testimony of the plaintiff, is rigged with glaring inconsistencies that rids it for every form of credibility.

The counsel submitted that the plaintiff, in a bid to support his case that the N15,000,000.00 paid for the house was based on the agreement that the 1st defendant was selling the entire of its unexpired interest in the house to the plaintiff, and had averred in paragraph 14 of the plaintiff's witness statement on oath dated 20th February, 2020, that at the time he paid for the house, he was not privy to the Letter of Allocation dated 14th February, 2013 (EXH. "A3")

which expressly states a sublease interest as the title being paid for by the plaintiff. The counsel quoted paragraph 14 of the witness statement on oath, and submitted further that the plaintiff went on to contradict his testimony in paragraph 14 of his witness statement on oath in the course of cross-examination when the defendant's counsel asked the plaintiff, thus:

> **DC: "Also before you made any payment for a house unit in Clobek Crown Estate, the estate developer issued you an allocation letter dated the 14th February, 2013 by which House C7 was formally allocated to you, is that correct?**
> **Plaintiff: "Yes"**

The counsel submitted that the plaintiff's testimony in paragraphs 45 and 46 of the witness statement on oath are in contradiction to each other. That in paragraph 46, the plaintiff states:

> **"That I declined to append my signature on the document containing the Estate Bye-Laws, Rules and Regulation as I had no prior knowledge of such a document otherwise I would not have invested in the property…"**

To him, the above averment contradicts what the plaintiff had earlier said in paragraph 45, thus:

> **"That on August, 21st, 2014 the 2nd defendant issued me a document titled" Estate Bye-Laws, Rules and Regulations" and that I was required to sign the said document and be bound by same. I was taken aback as I was not consulted and given opportunity to my input thereto before the preparation of the final document as promised by the defendants…"**

The counsel submitted that from the above, it is seen that in one breath, the plaintiff is saying that he never knew of any document containing the estate bye-laws, rules and regulations, which in another breath is saying that he infact knew of the document containing the estate bye-laws, rules and regulation but was not consulted to make his input in the final copy. He then argued that the law is clear that an inconsistent testimony of a witness casts a doubt on the credibility of the witness and robs the testimony of the witness of probative value, and he cited the cases of **Akanbi and Anor. V. Alatede (Nig.) Ltd & Anor (1999) LPELR – 8108 (CA); Showu V. The Nigeria Navy (2006) LPELR – 11815 (CA); Asanya V. The State (1991) 3 LREN 720 at 725;** and **Ikemson V. The State (1998) 1 ACLR 80 at 85,** and he urged the court not to attach any probative value to the testimony of the plaintiff in this suit.

It is the submission of the counsel that the weight of the evidence before this court is against the case of the plaintiff, and the issue before the court is the issue of contract. To him, it is the case of the plaintiff that the 2nd defendant, on behalf of the 1st defendant had oral understandings/agreement with the plaintiff with respect to the sale of the house, and the plaintiff, by the reliefs sought, seeks to enforce that agreement, and the counsel referred to paragraphs 6, 7, 14, 15, 16, 17, 20, 21 and 44 of the statement of claim, and went further to reproduce them, and further submitted that the plaintiff tendered no evidence to support his assertion of an oral agreement with the 1st defendant. What was however, tendered before the court are: an application form dated 9th February, 2013 with which the plaintiff applied to the 1st defendant for the allocation of the house and the letter of allocation dated 14th February, 2013 with which the 1st defendant offered the

allocation of the house to the plaintiff. The counsel then submitted that the law is clear that where the terms of an agreement of a contract have been reduced into writing in a document or series of documents, no other evidence can be given on that agreement except for the documents. Also, oral evidence cannot be given to contradict, alter or vary the contents of the document, and he referred to section 128 (1) of the Evidence Act, and also relied on the case of **Ezemba V. Ibeneme & Anor. (2004) LPELR-1205 (SC)** to the effect that when a transaction has been reduced to, or recorded in writing, either by requirement of law, or agreement of the parties, extrinsic evidence is in general not admissible to contradict, vary, add into or subtract from the terms of the document, and also cited the case of **Atiba Iyalamu Savings & Loans Ltd. V. Suberu & Anor (2018) LPELR – 44069 (SC),** and he then urged the court to discard any oral explanations regarding what the plaintiff was thinking or imagining, and he cited the case of **Wema Bank Plc V. Osilaru (2007) LPELR – 8960 (CA)** to the effect that a court of law can only interpret the agreement strictly in its legal content and arrive at a conclusion in the law and the law alone in respect of it.

The counsel then submitted that the terms of the sale of the house to the plaintiff were expressly stated in writing in the application form and the allocation letter EXH. "D1" and "A3", and the court must restrict itself to the contents of the contract and nothing more, and he took his time to reproduce the relevant parts of the contract (EXH. "D1" and "A3" between the plaintiff and the 1st defendant. The counsel also cited the case of **Desemyof (Nig.) Ltd V. Kwara State Govt. & Ors (2018) LPELR – 45705 CA,** and with respect to EXH. "D1", he referred the court to "Declaration/Agreement by Applicant" on the 2nd and 3rd

page. To him, this portion in the declaration and agreement by the plaintiff. To him also importantly EXH. "D1" has the signature of the plaintiff, and the importance of the plaintiff's signature on EXH. "D1" is exposed in the case of **Adefarasin V. Dayekh & Anor. (2006) LPELR – 7678(CA)** to the effect that the importance of a signature on a document, not under seal, signifies an authentication of that document that such a person holds himself out as bound or responsible for the contents of such a document.

He submitted that the plaintiff, in this instant case, by signing EXH. "D1" the implication is that he held himself out to be bound by it, and the court must interpret the relationship, regarding the plaintiff and the 1st defendant strictly in line with EXH. "D1", and he cited the case of **UBN Ltd & Anor. V. Nwaokolo (1995) LPELR – 3385 (SC).** He then argued that for the court to re-write or input any other agreement or term, would amount to the court re-writing the understanding and agreement of the parties which the court is forbidden from doing, and cited the case of **Nuhu & Anor. V. Benneth (2017) LPELR – 42634 (CA).**

The counsel deduced from the above and submitted that the interpretation of the contract entered between the plaintiff and the 1st defendant shows that:

a. The plaintiff paid N15,000,000.00 for the sale of a sublease interest in the house unit and not the sale of the unexpired residue of the 1st defendants interest in the house unit;
b. Outside the purchase price of a sublease interest in the house unit, the plaintiff was also to make other payments including: 2.5% of the purchase price as legal fees for the preparation of a Deed of sublease, the requisite government fees/service charge of which the plaintiff must pay for him to have access

to the necessary facilities in the estate including water and electric power supply;

c. The plaintiff is to be bound by the pre-determined estate bye laws, rules and regulations guiding residents of the estate;
d. The 1st defendant is to unilaterally and exclusively determine the price/amount for the annual facility management fees to be paid by the plaintiff;
e. The 1st defendant has the power to revoke the allocation/sale of the house unit if the plaintiff fails to comply with the terms in EXH. "D1" and "A3"; and
f. The plaintiff failed to comply with the terms and conditions in EXH. "D1" and "A3" and the 1st defendant rightly revoked the allocation of the house unit to the plaintiff.

The counsel then urged the court to refuse the reliefs sought by the plaintiff as the court holding otherwise would tantamount to the court re-drafting the contract between the two parties, and which the court is not allowed, and cited the case of **Atiba Iyalamu Savings & Loans Ltd. V. Suberu & Anor (supra).**

The counsel submitted that for the court to grant reliefs in paragraphs (a) (b) and (c) is tantamount to re-writing the contract between the two parties. That for the court to grant the reliefs in paragraph (d) of the reliefs sought is contrary to clause 11 under "Declaration/Agreement by Applicant" and the 3rd page of EXH. "D1" and is tantamount to re-writing the contract between the two parties. That granting the relief in paragraph (e) of the reliefs sought, will be contrary to clause 1 under "NB" on the 2nd page of EXH. "A3" and will be tantamount to the court re-writing the contract between the two parties. That for the court to grant the relief in paragraph (f) of the reliefs sought will be

contrary to clause 1 under "NB" clause 9 and 10 under "Declaration/Agreement by Applicant" all on the 2nd page of EXH. "D1" and clause 3 on the 1st page of EXH. "A3" and will be tantamount to the court re-writing the contract between the two parties. That for the court to grant the relief in paragraph (g) of the reliefs sought will be contrary to clause 11 and 14 under "Declaration/Agreement by Applicant" all on the 3rd page of EXH. "D1", be tantamount to the court re-writing the contract between the two parties. That for the court to grant the relief in paragraph (i) of the reliefs sought, it will be contrary to clause 11 under "Declaration/Agreement by Applicant" on the 3rd page of EXH. D1 and be tantamount to the court re-writing the contract between the two parties. That for the court to grant the relief in paragraph (j) of the reliefs sought, would be contrary to clause 11, 14 and 16 under "Declaration/Agreement by Applicant" all on the 3rd page of EXH. "D1" and be tantamount to the court re-writing the contract between the two parties. And that for the court to grant the relief in paragraph (k) of the reliefs sought would be contrary to clause 1 under "NB" on the 2nd page of EXH. "D1" and clause (v) of the 1st page of EXH. "A3" and would be tantamount to the court re-writing the contract between the two parties.

The counsel drew the attention of the court to the contents of EXH. "D1" and "A3" which he underlined and emboldened as follows:

a. I/we agree to be bound by the rules guiding residents of the estate.
b. …agree to sign the facility management agreement with Clobek Nig. Limited.

c. A payment of 2.5% of the purchase price shall be made for legal fees for the preparation of the Deed of Sublease.

To the counsel that the above are the conditions precedent which must be satisfied before the agreement to sell a sublease interest becomes binding and until they are satisfied, the contract between the two parties is conditional and will fail if those conditions are not satisfied, and he cited the case of **Tsokwa Oil Marketing Co. Nig. Ltd. V. Bank of the North Ltd (2002) LPELR – 3268 (SC)** to the effect that in a conditional contract, the condition precedent must happen before either party becomes bound by the contract, and he also cited the case of **Niger Classic Investment Ltd. V. Valn Property Development Co. Plc & Anor (2016) LPELR – 41426 (CA)** to the effect that where a contract is made subject to the fulfillment of a certain specific terms and conditions, the contract is not formed and not binding unless and until those terms and conditions are complied with or fulfilled, and therefore to the counsel, since the plaintiff has failed (a) to execute the facility management agreement which is embedded in the sale/purchase agreement that was issued to the plaintiff, EXH. "D2", (b) to execute the estate bye-laws, rules and regulations "EXH. D1" and be bound by same, and (c) to pay 2.5% of the purchase price of the house as legal fees, the plaintiff had failed to comply with the conditions precedent for the sale of the sublease interest on the house as contained in EXH. "D1" and "A3", and as the plaintiff failed to comply with those terms and conditions, the 1st defendant validly revoked the allocation of the house, and the plaintiff is at best entitled to the amount paid for the house and not any reliefs sought in the statement of claim.

The counsel submitted that the claim of damages cannot be granted in a vacuum, and he cited the case of **Bolanta & Anor. V. Tosin Novel Firms Ltd. (2020) LPELR – 52507 (CA),** and he further submitted that the plaintiff is not entitled to general damages as it can only be awarded to a person who has sufficiently established that he suffered a wrong, and he cited the case of **Sabon-Gida & Anor. V. Dan-Namashi & Ors. (2016) LPELR – 41207 (CA).**

On the claim for professional fees, the counsel submitted that charges for conducting litigation must be borne and paid by the person incurring them; and that an attempt to pass on the burden of the litigation process or solicitor's fees to the other party is unethical and an affront to public policy, and he cited the case of **Guinness Nigeria Plc V. Emmanuel Nwore (2001) FWLR (pt 36) 981 at 998; SUFFOLK Petroleum Services Ltd V. Adnan Mansoor Nig. Ltd and the Barge De Dolphin (2019) 2 NWLR (pt 1655) p. 8 at 33** which the Court of Appeal relying on the case of **Nwanji V. Coastal Services (Nig.) Ltd (2004) 11 NWLR (pt 885) p. 522** where the Supreme Court held that there was no basis for the award of N2,000,000.00 as professional fees allegedly paid by the respondent in respect of the case.

On the claim for exemplary damages, the counsel submitted that the plaintiff is not entitled to it, and he cited the case of **Eloichin (Nig.) Ltd & Ors V. Mbadiwe (1986) 1 NWLR (pt 14) p. 47,** and further submitted that there is no evidence before the court which shows that the defendants' conduct is sufficiently outrageous to merit the punishment as the actions of the defendants have been in line with the agreements as clearly encapsulated on EXH. "D1" and "A3", and he finally urged the court to refuse to grant the reliefs sought.

The counsel to the plaintiff in his final written address formulated the following issues for determination, thus:

1. **Whether the witness statement on oath and further witness statement on oath of the plaintiff ought to be relied upon by this Honourable Court?**
2. **Whether the plaintiff has proved his case on the balance of probabilities as required by law?**
3. **Whether the plaintiff is entitled to the sum of N50,000,000.00 (Fifty Million Naira) only as general damages?**
4. **Whether the plaintiff is entitled to the award of N5,000,000.00 (Five Million Naira) only as exemplary damages?**
5. **Whether the plaintiff is entitled to the sum of N5,000,000.00 (Five Million Naira) only as cost for the persecution of this suit?**

The counsel to the plaintiff urged the court to discountenance the argument of the counsel to the defendants as there is nowhere in the Rules of this court was the word "WSO" nor "FWSO" used, and to him, assuming the court decides to countenance the argument, he submitted that the case of **GTB V. Barr. Ajiboye Ayodeji Abiodun (2017) LPELR-42551** relied upon by the 1st and 2nd defendants does not in any way apply to the instant case before the court, this is because on that case, paragraph 35 of the written statement on oath of the report filed on the 5th day of June, 2012 and paragraph 30 of the additional written statement on oath in support of reply to the statement of defence filed on the 8th day of October, 2013 stated thus:

> **"That I swear to this affidavit in truth and in good faith" and**

That I swear to this affidavit in truth and in good faith".

The counsel argued that it is worthy of note that it is the foregoing statements that the Court of Appeal in the said case that held not to be in full compliance with the provisions of the Oath Act as to qualify as written statement on oath. To him, it is equally worthy of note that the court went further at page 31, paras. B – D to hold that where there is no statement in on oath stating that it is made solemnly, conscientiously believing the contents to be true and correct and by virtue of the Oaths Act, it is not an oath or affidavit properly so called. The counsel posed this question: Having regard to the above holding, whether the plaintiff's witness statement on oath and further witness statement on oath rightly captured the fact that the depositions contained therein was made "solemnly, conscientiously believing the contents to be true and correct and by virtue of the Oaths Act?

The counsel answered the above question in the affirmative, and further submitted that a cursory look at the witness statement on oath and further witness statement on oath of the plaintiff in this instant case, clearly reveals that the said depositions of the plaintiff are in substantial compliance with section 13 and the First Schedule of the Oaths Act, and the above case cited by the counsel to the defendants rather lend support to the case of the plaintiff. The counsel took his time to reproduce the statement on oath of the plaintiff.

The counsel further argued that the counsel to the defendants also relied on the case of **Cora Farms & Resources Ltd. V. Union Bank (supra)** to the effect that the witness statement on oath and further witness statement on oath of the plaintiff dated the 20th February, 2020 and 10th

June, 2020 respectively do not comply with section 13 of the Oath Act, and to him, the above cited case does not support the argument of the counsel to the defendants as depicts a case where there was a total non-compliance with the provisions of section 13 of the Oath Act, that is to say, it is not to be followed rigidly, but that there should be substantial compliance with the prescribed format, and submitted further that the witness statement on oath and further witness statement on oath of the plaintiff comply substantially with the Oath Act, and he cited the case of **A.G. Akwa-Ibom State & Anor. V. Akadiaha 2 Ors (2019) LPELR – 46845 (CA) Page 6 – 12,** to the effect that where there is a substantial compliance with the Oaths Act, the failure to use the form strictly words for words does not render it defective and liable to be struck out.

The counsel also urged the court to discountenance the case, cited by the counsel to the defendants, of **Aliyu V. Bulaki (supra)** as it does not apply to the instant case. To him, the issue before that court was that the witness statement on oath of PW1 and PW2 were sworn to in the office of their counsel and not witness statement on oath bothering on contents or words being used in the said witness statement on oath, and he urged the court to discountenance the argument of the counsel to the defendants.

The counsel further argued that by the doctrine of substantial compliance, it is his contention that the plaintiff's witness statement on oath and further witness statement on oath have in no doubt substantially complied with requirements under section 13 of the Oaths Act, and he cited the case of **Buhari V. INEC & Ors (2008) LPELR – 814(SC) p. 202-202 para. D** to the effect that substantial compliance in a situation like this means actual compliance in respect to

the substance essential to every reasonable objective of the statute. The doctrine of substantial compliance permit the overlooking of technical failure that does not amount or constitute a substantial deviation from the intendment of the statute. He argued that the Court of Appeal has put to rest every argument that bothers on section 13 of the Oaths Act touching on witness statement on oath the compliance or non-compliance thereof, in the case of **Onwufuju V. Orohwedor (2020) LPELR – 50767 CA at pp. 35-39, paras. F – E** to the effect that where the written statement on oath is to be adopted again on oath by the maker before his cross-examination on it, whatever defects in the original oath in respect of the witness statement has been cured by the second oath made in court before the Judex prior to the adoption of the witness statement by the maker and his subsequent cross-examination. The counsel cited the case of **Amasike V. Registrar General, CAC & Anor. (2010) LPELR – 456 SC at pp. 107-108, paras. F to C** to the effect that when making the interpretation of a statute an issue, it becomes the duty of the court to examine the act complained of and to compare it with the relevant statutory provision and to resolve appropriately whether there was a breach, non-compliance or substantial compliance with the land in question, and he urged the court to adopt the interpretation of section 13 of the Oaths Act by the courts and to adopt same. He further cited the provisions of section 4 of the Oaths Act to the effect that no irregularity in the form in which an oath or allocation is administered or taken shall not invalidate proceedings in any court, and failure to take on oath or make an affirmation, and any irregularity as to the form of Oath or affirmation shall in the case be construed to affect the liability of a witness to state the truth, and he then urged the court to discountenance

the argument of the counsel to the defendants, and resolve this issue in favour of the plaintiff.

On the issue No. 2, the counsel answered in the affirmative and submitted that upon close perusal of the documents before the court, particularly the application form filled by the plaintiff (EXH. A8), the acknowledgment dated the 21st February, 2013 (EXH. A6) and letter of allocation dated 14th February, 2014 (EXH. "A3") clearly reveals that the interest in the said property should pass to the plaintiff by reason of an outright sale. The counsel referred the court to EXH. "A8" paragraphs 12 and 13 which clearly revealed or evinced the intention of the parties in respect of the property, which is that the property was being purchased by the plaintiff, and was further made clear by the defendants that the property could be transferred once full payment has been made by the plaintiff, and the interest in the said property had moved from the defendants to the plaintiff immediately, leaving no reversionary interest on the defendants.

The counsel also invited this court to consider the written acknowledgment by the defendants EXH. "A6" after the plaintiff had paid the full purchase price especially the phrase "for a purchase price of Fifteen Million (N15,000,000) naira only" and the plaintiff signed as a purchaser. He further referred to the allocation letter EXH. "AB", paragraph 8, and to him, the clear interpretation and the implication is that the defendants were not entitled to any reversionary rights after the plaintiff makes full payment in respect of the said property, and the plaintiff has the right to alienate by sale, assignment, or mortgage the said property.

A question that agitates in the word of the counsel to the plaintiff which, to him, the defendants have not been able to provide an answer is:

Whether the agreement and or transaction between the plaintiff and the defendants is one that can be rightly referred to as a sublease?

He went ahead to submit that having considered EXH. "A8", "A6" and "A3", he contends that the said transaction is nothing close to a sublease, and he urged the court to so hold; and he cited the case of **Tanko V. Echendu (2010) LPELR – 3135 SC.**

As to what a valid lease entails, the counsel cited the case of **Star Finance & Property Ltd & Anor. V. N.D.I.C. (2012) LPELR – 8394 CA** to the effect that for a lease to be complete and enforceable, the parties, properties, length of the term, rent and date of its commencement must be defined, and there must be a certain ending otherwise it is not a perfect lease. He further cited the case of **Samelo Invt. Ltd. V. Nig. Interbank Settlement Plc (2019) LPELR – 48852 (CA)** to the effect that the commencement and duration of the term of lease must also be clearly stated. To him, on the strength of the foregoing authorities, he conferred that the purported sale of a sublease interest of the property to the plaintiff by the defendants does not in any way fall within the realm or contemplation of what a valid lease is. He then argued that looking at EXH. "A3", that is the allocation letter, it is obvious that there is the exclusion of the commencement and an ending date which makes whatever transaction the defendants had with the plaintiff, fall short to the requirement of a lease or sublease, and he cited the case of **Chung V. Plateau Express Services Ltd (2018) LPELR – 45391 (CA)** to the effect the object of interpretation under construction of documents is to discover the intention of the parties which is deducible from the language used. It is further submitted that defendants have in series of letters written to the plaintiff,

acknowledged the plaintiff as the owner of the said property and in the language used in the letters, they refrained from using the expression "Deed of Sublease" and he referred to paragraph 2 line 3 – 6 of the Letter dated 5th of March, 2015 titled Estate Service Charge for 2015 (EXH. 17); paragraph 4 lines 1 – 3 EXH. A17; paragraph 5, line 1 of EXH. A17 to the effect that, the expression "house owner" was used.

It is argued that in paragraphs 1 and 2 of the Letter titled: Facility Connection Fee (EXH. A11" where the expression "your house" was used. Further in the letter titled: Installation of personal Generator in the Estate and violation of Estate Rules (EXH. "A15" paragraph 2, the expression "applying to purchase a house in the estate" was used; all the above extracts are from the letters and every words points to the irresistible conclusion that the intention of the parties in respect of every transaction that took place with regard to the property was for the outright purchase of the property, and he cited the case of **Adelabu & Anor V. Saka & Ors. (2015) LPELR – 26024 (CA)** to the effect that in consideration of a relationship where series of correspondences have been written, it is the duty of the court to consider all the correspondences in order to decipher the relationship, and where more than one document govern a relationship, no single document should be considered in isolation or be the sole determinant, and he urged the court to consider EXH. "A17", "A18" and "A15" and to hold that the intention of the parties right from the onset was for an outright sale of the property.

The counsel submitted that the plaintiff refused to append his signature on the document titled: Estate Bye-Laws, Rules and Regulations ("EXH. A5") as the rules and regulations were too onerous and in direct contravention of

the plaintiff's right to peaceful enjoyment of his property which is non-negotiable having fully purchased the property, and he cited the case of **A.G. Lagos State V. A.G. Federation (2003) LPELR – 620 (SC)** where the court defined the word "enjoyment" in relation to property that a collection of rights to use and enjoy property, that the exclusive right of possession, enjoyment and disposal, involving as an essential attribute the right to control, handle and dispose, and he submitted how the plaintiff having the right to peaceful enjoyment of his property with the honest belief that he had fully purchased the property decided to exercise control and enjoy same as his property by installing a noiseless personal sound-proof generator.

The counsel submitted that the document (EXH. A28) stated among other terms contained that the defendants reserved the reversionary interest in the house bought by the plaintiff which was contrary to the said understanding between the plaintiff and the defendants that the transaction was an outright purchase and not a sublease, and the plaintiff declined to append his signature in the said document; and the plaintiff having failed to execute the document, the defendant unlawfully resorted to the exercise of powers they did not have by purporting to revoke the sale of the said property by issuing EXH. "A4" and this letter is fundamentally defective as it was issued by a complete stranger to the transaction between the parties, and he urged the court to disregard such document; and he referred to the case of **Rebold Industries Ltd V. Magreoca & Ors (2015) LPELR – 24612 (SC)** to the effect that it is only parties to a contract who must stand or fall, benefit or lose from the provisions of their contract.

The second reason given by the counsel that the revocation letter is defective is that it is in complete disparity

with paragraph 6 of the application from (EXH. "A8" which provides condition for the revocation of the said allocation, and the defendants having received the full payment cannot revoke the allocation. He opined that one of the reasons the allocation was revoked by the defendants was because of the installation of a personal generator sound-proof, and he referred to paragraph 4.5 of EXH. "A5" wherein the defendants rightly stated that sources of energy that are noiseless are acceptable. He also referred the court to paragraph 4.5 of the Estate Bye-Laws, Rules and Regulations EXH. "A5" to the effect that sources of energy that are noiseless such as solar energy, windmills, and inverters are acceptable.

The counsel referred to paragraph 6.5 of the defendants' final written address and canvassed argument that the plaintiff in the course of cross-examination, contradicted his testimony in paragraph 14 of his witness statement on oath, and submitted that there is no contradiction in the course of the plaintiff, and where there is such contradiction, it is not every contradiction that leads to the rejection of the evidence of a witness and he cited the case of **Wachokwu & Anor. V. Onwunwanne & Anor (2011) LPELR – 3466 SC** to the effect that it is not all contradiction that result in the rejection of the evidence of a witness. It is only those that are material and result in miscarriage of justice that will warrant such rejection. To him, the said contradiction does not in any way affect the case of the plaintiff.

The counsel urged the court to consider the totality of all the evidence of the plaintiff and to hold that the said alleged contradictory statements are not material and substantial as to cast doubts on the credibility of the witness, and he referred to the cases of **Ogogovie V. State (2016)**

LPELR – 40501 (SC); Akinkumi V. Bakare (2013) LPELR-20479 (CA) to the effect that a trial judge evaluates the evidence of a witness not through the narrow prism of a particular or range of evidence placed before him.

It is the submission of the counsel that the plaintiff's statements in paragraphs 45 and 46 of the plaintiff's witness statement on oath are not contradictory in any way whatsoever as the said paragraphs of the witness statement on oath flow from paragraph 45 and 46.

On the issue No. 3, the counsel cited the case of **Union Bank of Nig. Plc V. Chimaeze (2014) LPELR-22699 SC,** to the effect that damages are the sum of money which a person wronged is entitled to receive from the wrong doer as compensation for the wrong, and that recoverable damages by a plaintiff must be attributable to the breach of some duty by the defendant, and he submitted that on the strength of the foregoing case, the wrong doers are the defendants who are in breach of the agreements they have with the plaintiff and have failed and or refused to take any step to right the wrong perpetuated against the plaintiff. They have woefully failed to perform their obligation in the said agreement, and he urged the court to consider **EXH. "A8", "A6"** and **"A3"** which, to him, clearly evidenced such breach; and this entitles the plaintiff to damages, and urged the court to grant the relief. The counsel submitted that the defendants have continued to harass the plaintiff by writing a frivolous petition EXH. "A24" against the plaintiff, and the said petition EXH. "A24" germinated from the transaction between the plaintiff and the defendants with respect to the property, and the suits instituted against the plaintiff were all determined in favour of the plaintiff, and the unwarranted and unlawful actions

of the defendants have this caused the plaintiff psychological and emotional disturbances.

The counsel submitted that the courts have held consistently on the needlessness of a party to specifically plead general damages, and he cited the case of **Union Bank of Nig. Plc V. Chimaeze (supra)** to the effect that they are presumed by law to be the direct and probable consequence of the act of the defendant complained of. He also cited the case of **Ojo V. Akinsanoye (2014) LPELR – 22736** to the effect that general damages may be awarded to assuage such loss which flows naturally from the defendant's act, and it needs not be pleaded, and he submitted that the plaintiff has presented before this court credible evidence to prove that the defendants are in breach of the agreement entered between the two parties for an outright sale of the property, and he urged the court to resolve the issue No. 3 in favour of the plaintiff.

On the issue No. 4, the counsel referred to the argument canvassed in dealing with issue No. 2 and he adopt same, and further cited the case of **Sun Publishing Ltd. V. Aladinma Medicare Ltd (2016) 9 NWLR (pt 1518) 557 at 606 – 607, paras. F – B** where the court held that the principles guiding the award of exemplary damages are as follows:

a. **The acts of the defendant was oppressive, arbitrary and showed willful disregard of the law;**
b. **The defendants conduct had been calculated by him to profit or benefit himself which ought exceed the compensation payable to the plaintiff; and**
c. **The award would serve to assuage or as a solace to the plaintiff for the aggravated wrong done to him.**

The counsel also cited the case of **Igwe V. Amaru & Anor. (2014) LPELR – 24204 (CA)** to the effect that exemplary

damages are usually awarded whenever the defendant's conduct is sufficiently outrageous to merit punishment, as in cases where it discloses malice, fraud, cruelty and insolence, flagrant disregard of the law and the like.

The counsel submitted that the plaintiff upon receipt of the letter of Allocation EXH. "A3", took possession of the said property, and the 2nd defendant told the plaintiff that he can assist in completing the house within eight (8) months in the sum of N7,060,000.00 which the said sum was paid into the account of the 2nd defendant, and the defendants refused to testify to deny, and thereby admitting same, and the statement of account of the plaintiff was admitted in evidence and was marked as EXH. "A26" paid the 2nd defendant refused to complete the building within eight months.

The counsel submitted that the plaintiff expended the sum of N3,186,000.00 to complete the said building. That the defendants have gone ahead to compel the plaintiff to make expenses nor contemplated within the agreement of the parties in term of a service charge of N48,250.00 only paid by the plaintiff from the month of August to December, 2014. That the defendants also disconnected electricity and water supply to the house of the plaintiff and he had to spend the sum of N3,500.00 per day for diesel, and the receipts were admitted as EXH. "A1", and to him, all those facts show that the defendants' conduct conveniently fit into all the circumstances in which the court ought to award exemplary damages as the act of the defendants were oppressive, arbitrary and showed a willful disregard of the law. He submitted that the revocation of the sale by the defendants shows that there is arbitrariness and willful disregard of the law. He went further to cite the cases of **G.K. F. Investment Ltd V. Nitel Plc (2009) 13 NWLR (pt 1164)**

229 at 337; and **Mitini Nyavwaro V. Ogegede & Ors (1971) NSCL 206 at 210,** and urged the court to resolve the issue No. 4 in favour of the plaintiff.

On the issue No. 5, the counsel submitted that the court compensates litigants for expenses incurred on services of a counsel, and he cited the case of **Int'l Offshore Const. Ltd V. S.L.N. Ltd (2003) 16 NWLR (pt 845) 157 at 179** where the Court held that the trial court was perfectly right in the award if made in respect of expenses incurred by the respondent for services of solicitors. He also referred to the case of **Navde & Ors V. Simon (2013) LPELR -20491 (CA)** to the effect that a successful party is entitled to be indemnified for costs of litigation which includes charges incurred by the parties in the prosecution of their cases. It is alien to claim for special damages, and he also cited the case of **Unipetrol Nig. Plc V. Adireje (WA) Ltd (2005) 14 NWLR (pt 946) 563 at 621** to the effect that although tendering receipts could be good mode of proof, it is however not exclusive means of proof of special damages. He then urged the court to resolve the issue No. 5 in favour of the plaintiff and to award the cost of prosecuting this suit.

The counsel to the defendants in reply to the claimant's final written address submitted that the argument of counsel to the plaintiff that the witness statement on oath and further witness statement on oath are in substantial compliance holds no water, and re-iterated further that the extant position of the court is that a witness deposition is to be in full compliance with the requirement of the Oaths Act otherwise, the entire statement would be left bare and inconsequential, and he referred to the case of **Oyekanmi & Anor. V. MTN (2020) LPELR – 50168 (CA).** The counsel argued that the case of **Buhari V. INEC** cited by the counsel to the plaintiff on the doctrine of substantial compliance is

not relevant as the issue dealt with in that case surrounds section 146 of the Electoral Act and not the Oaths Act. He also argued that the case of **Onwufuju V. Orohwedor (supra)** particularly the dictum of **Ogunwumiju JCA** (as he then was) does not help his case as the issue in that case was not of non-compliance of the witness statement on oath with the Oaths Act but on the propriety of the trial court basing its reasoning on an old witness statement on oath which was not adopted by the witness even when there was a further witness statement on oath which was later in time adopted before the court. He opined that failure of the plaintiff to file a valid witness statement on oath is a clear violation of the express provisions of the rules of this court, especially Order 2 Rule 2 (e) of the Rules of this court, and he cited the cases of **Hart V. Hart (1990) 1 NWLR (pt 126) 276; Tom Ikimi V. Godwin Omanli (1995) 3 NWLR (pt 383); Ibrahim V. Col. Gletus Emein & Ors (1996) 2 NWLR (pt 430) 322; Tehat A-O. Sule V. Nigeria Cocoa Board (1985) All NLR 257;** and **Odu V. Jolaoso (2002) 37 WRN 115** all to the effect that the rules of court are meant to be obeyed; and he urged the court to discountenance the argument of the counsel to the plaintiff in its entirety and to uphold the defendants' contention that the plaintiff's witness statement on oath and further witness statement on oath fall short of the mandatory requirement of the Oath Act, 2007, and should be disregarded.

On the plaintiff's argument in paragraph 5.2 to 5.7 in paragraph 14, 15 and 20 of the further amended statement of claim dated the 20th February, 2020 unequivocally admitted that upon receipt of the Application Form and Letter of Allocation (EXH. "A8" and "A3") the plaintiff clearly understood that the 1st defendant intended to sell a sublease interest in the house to him. The counsel referred to

what the plaintiff stated in paragraphs 15, 16 and 21 of the witness statement on oath of the plaintiff sworn to on 20th February, 2020 which he gave evidence in that regard, and for avoidance of doubt, the counsel to the defendants refer to paragraphs 15, 16 and 21 of the plaintiff's witness statement on oath. He submitted that the plaintiff, having admitted to the fact that EXH. "A8" and "A3" expressed the defendants' intention to sell a sublease interest in the house unit to the plaintiff and that the plaintiff clearly understood that to be the intendment of EXH. "A8" and "A3", settle the issue on the ground that fact admitted are no longer in issue, and he cited the cases of **Ajibulu V. Ajayi (2013) LPELR – 21860(SC);** and **Ikyaanenge & Ors V. Utsaha & Ors. (2021) LPELR – 54765(CA).** He opined that the counsel to the plaintiff's address, with respect to the intendments of EXH. "A8" and "A3" is inconsistent with and not supported by any evidence led by the plaintiff, and he cited the case of **NIPOST V. Musa (2013) LPELR – 20780 (CA)** to the effect that address of a counsel cannot take the place of evidence, and he urged the court to discard the submissions in paragraphs 5.2 to 5.7 of the plaintiff's address as they have no legs to stand.

The counsel also argued that even if the facts and evidence presented by the plaintiff before this court are consistent with the submission of the counsel to the plaintiff in paragraphs 5.2 to 5.7, it will not avail the plaintiff's argument as they are grossly defective, unmeritorious and at odds with the intendments of the provisions of the Land Use Act, 1978. He cited sections 1 and 5 (1) (a) of the Land Use Act, which to him, landed properties in Nigeria are vested and owned by the state Governments or the Minister of the Federal Capital Territory, Abuja, in the case of land in the FCT, and individuals and corporate entities can only

purchase a right to occupy land for a number of specified years (usually 99 years, and to him, this is referred to as statutory right of occupancy". He also cited section 22(1) of the Land Use Act which provides that the holder of a statutory right of occupancy can alienate/sell a part or all his interest in a land which can be done by sublease, subject to obtaining consent of the Minister, and he reproduce the provisions of sections 1, 5(1) (a) and 22(1) of the Land Use Act.

The counsel submitted that in a transaction for the sale of a house, the seller could either be offering his entire interest in the property, or a sublease interest in the property, and the fact that words referencing the sale were used in the transaction does not automatically imply that the seller intends selling its entire interest in a house, and where on a contract or sale, the seller expressly mention sublease as the interest being offered to the buyer, it leaves no room for conjuncture in respect of the intendment of the seller to convey a sublease interest to the buyer, and he opined that in construing a contract, where words used therein are plain and clear, the words should be given their simple and ordinary grammatical meaning and nothing more, and he cited the case of **Afro Construction Co. Ltd V. Minister of Works & Anor. (2018) LPELR-46711 (CA),** and to him, in this instant case, the Application Form signed by the plaintiff and the Letter of Allocation issued to the plaintiff clearly mentioned the nature of the interest being offered to the plaintiff particularly in paragraph v of the Letter of Allocation EXH. "A3" which provides:

> **"(v) Your title: Deed of Sublease derivable from the root title",**

and he urged the court to give these operative words their simple and ordinary meaning. He submitted further that

nothing in paragraphs 12 and 13 of the Application Form EXH. "A8", the written Acknowledgement dated the 21st February, 2013 EXH. "A6" and paragraph 8 of the Letter of Allocation EXH. "A3" derogates from the expressly mentioned sublease interest offered by the 1st defendant to the plaintiff, and he urged the court to discard the submissions of the counsel to the plaintiff in paragraphs 5.2 to 5.7 of the plaintiff's address.

In response to the submission of the counsel to the plaintiff in paragraphs 5.8 to 5.13 that EXH. "A8", "A6" and "A3" do not contain the essential requirements of a sublease and therefore the defendants had failed to establish the existence of a sublease between the two parties owing to the absence of date of commencement and termination of the lease, the counsel to the defendants reproduce paragraphs 5.11 of the plaintiff's address, and he submitted that the case of the defendants is that the agreement that existed between the plaintiff and the 1st defendant has an agreement to convey a sublease interest to the plaintiff, and then suggests that a sublease had crystallized between the defendants and the plaintiff over the house unit, and this is by the EXH. "A8" and "A3", and he cited the case of **Mohammed V. Mohammed & Anor (2011) LPELR – 3729 (CA)** which the Court of Appeal clearly identified the distinction between an agreement to convey interest in land and the instrument or deed of transfer of interest in land, and he then submitted that EXH. "A8" and "A3" simply constitute the 1st defendant's proposed intention to convey a sublease interest to the plaintiff, and need not to comply with the requirement for creating a valid lease or sublease as they are not deed of sublease, and he cited the cases of **Tanko V. Echendu (2010) LPELR – 3135 (SC); Star Finance & Property Ltd & Anor. V. N.D.I.C.**

(2012) LPELR -8394 (CA); **Samelo Invt. Ltd V. Nig. Interbank Settlement Plc (2019) LPELR – 48852 (CA)**; **Chung V. Plateau Express Services Ltd (2018) LPELR-45391 (CA)**; and **Unilife Dev. Co. Ltd V. Adeshigbin & Ors (2001) LPELR – 3382 (SC)**, and that these cases cited by the counsel to the plaintiff in paragraphs 5.8 to 5.13 of the plaintiff's address are irrelevant.

The counsel submitted that paragraphs 5.14 to 5.18 of the plaintiff's address in which the plaintiff in construing the intention of the parties under EXH. "A8" and "A3" made reference to the correspondences between the plaintiff and the 1st defendant, those are the "Estate Service Charge for 2015" dated 5th March, 2015, EXH. "A17"; letter captured "Installation of Personal Generator in the Estate and violation of the Estate Rules" dated 28th January, 2015 (EXH. 15); and Letter captioned "Facility Connection Fee (EXH. A11), and submitted that those documents are extraneous to the written contract between the plaintiff and the 1st defendant in EXH. "A8" and "A3", and he cited the case of **Kaydee Ventures Ltd V. Hon. Minister FCT & Ors (2010) LPELR – 1681 (SC)** to the effect that in construing an agreement between parties, which is in writing, the court must confine itself to the Letters of the written agreement and must not go outside in deciphering the intention of the parties to the agreement, and to him, from the headings and contents of EXH. "A11", "A15" and "A17", it is apparent that parties never intended those documents to form part of the agreement, and further submitted that the case of **Adelabu & Anor. V. Saka & Ors. (supra)** does not apply in the instant case, as the decision of Superior Court is only an authority to subsequent cases with similar facts and issues; and he cited the case of **Maitatagaran & Anor. V. Dankoli & Anor (2020)**

LPELR – 52025 (CA), and he urged the court to disregard them accordingly.

In paragraph 5.19 of the plaintiff's address, it is the plaintiff's contention that he refused to append his signature on the Estate Bye-laws, Rules and Regulations (EXH. "A5" Issued to him by the defendants because it contents are onerous and in direct contravention with the right to peaceful enjoyment of the house unit, and the counsel to the defendants submitted that the plaintiff failed to lead evidence or even analize the contents of the EXH. "A5" with a view to show how the contents are onerous and reticulated to deprive the plaintiff of his right to peaceful enjoyment of the house unit, and he opined that judicial authorities are abound to the effect that documents that are simply dumped in the court without efforts to vary its contents with the case of the party relying on it, will have no weight in establishing the facts for which it is tendered, and he cited the case of **A.P.G.A. V. Al-Makura & Ors (2016) LPELR – 47053 (SC)** to the effect that it is trite that a document cannot serve any useful purpose in the absence of oral evidence explaining its essence; and it is the duty of the party tendering it to relate each document tendered to that part of the case he intends to prove.

In paragraphs 5.23 to 5.24 of the plaintiff's address, it is the plaintiff's submission that the revocation of the plaintiff's allocation of the property by the defendants is defective and invalid because the defendants did not have the power to do so, the letter of revocation was not signed or issued by the defendants, and that the revocation is inconsistent with paragraph 6 of the Application Form signed by the plaintiff (EXH. "A8"); and in response the counsel to the defendants submitted, at the 1st defendant's power to revoke the allocation of the property to the

plaintiff, and referred to paragraph 17 of EXH. "A8" and paragraph 9 of EXH. "A3" which clearly provide for the 1st defendant's power to revoke the plaintiff's allocation upon the plaintiff's failure to comply with any of the terms contained in EXH. "A8" and "A3", and he took his time to reproduce paragraphs 17 and 9 of the EXH. "A8" and "A3" respectively. He submitted further that it is not in contention that the plaintiff did not comply with various terms and conditions in the Application Form and the Allocation Letter EXH. ""A8" and "A3" including to pay 2.5% of the purchase price of the property as legal fees for preparation of the deed of sublease and to abide by the Estate Bye-Laws and Rules and Regulations. He submitted that the Letter of revocation simply sought to notify the plaintiff of the revocation, and the validity of the revocation is not dependent on proper or any notification of the plaintiff, and that the plaintiff was properly notified of the revocation as he knew undoubtedly that it was written on behalf of the defendants by the legal representatives of the defendants as the letter was signed by the legal representative as franked the sales/Purchase Agreement earlier issued to the plaintiff (EXH. "D2" by the defendants, and the plaintiff cannot therefore deny that the revocation letter was not issued on behalf of the defendants.

The counsel submitted that from the content of the letter dated 20th March, 2015 (EXH. "A20" written on behalf of the plaintiff by one Chief Charles Adogah SAN & Co. in response to the letter of revocation, the plaintiff was clearly not misled as to who the revocation letter came from and its intention, and the counsel reproduced the 3rd paragraph of EXH. "A20".

The counsel further submitted that this court cannot declare EXH. "A4" defective as the plaintiff has not

demonstrated that he was misled by any of those reasons canvassed by him, and he cited the case of **CBN V. Okefe (2015) LPELR – 24825 (CA)** to the effect that any omission or error which has not misled a party or resulted in the miscarriage of justice would not be held to prejudice the party in error. As to whether there is a disparity between paragraph 6 of EXH. "A8" and the power of revocation exercised by the 1st defendant, the counsel submitted that paragraphs 17 and 9 of the EXH. "A8" and "A3" clearly show the 1st defendant's power to revoke the allocation of the property is not only limited to when the plaintiff has failed to complete payments for the property, and he then urged the court to disregard the submission and those paragraphs 5.23 and 5.24 of the plaintiff's address and uphold the revocation of the plaintiff's allocation of the property.

In paragraph 2.25 of the plaintiff's address, the plaintiff attempts to justify his installation of personal generator in the property on the bases that the generator is sound proof, and he goes ahead to refer to paragraph 4.5 of the Estate Bye-Laws, Rules and Regulation EXH. "A5" in support of his argument, and the counsel to the defendants submitted that paragraph 4.5 of EXH. "A5" relied upon by the plaintiff commences with: "Personal Power Generators in the Estate are at all times prohibited", and in paragraph 2 of the letter EXH. "A15" titled: Installation of Personal Generator in the Estate and violation of Estate Rules" clearly states that the plaintiff was informed at the point of applying for allocation of the property that personal generators are not allowed in the estate, and the counsel took his time to reproduce paragraph 2 of EXH. "A15" for ease or references, and he submitted that it is not in contest that the plaintiff was always aware that as part of the condition for the allocation

of the house, the plaintiff was not to install a personal generator in the property, and is therefore in consequential that the generator installed by the plaintiff was sound proof and does not derogate from it being a breach of the terms of the allocation, and he urged the court to so hold.

The counsel submitted that in paragraph 14 of the plaintiff's witness statement on oath dated the 20th February, 2020, he testified that the letter of allocation dated 14th February, 2013 EXH. "A3" was issued to him after he already paid N15,000,000.00, and during cross-examination, the plaintiff gave an inconsistent testimony when he said that the letter of allocation was given to him before he paid N15,000,000.00 for the property, and to counsel to the defendants, the contradiction is apparent, obvious and incontrovertible.

On the argument of the counsel to the plaintiff that the contradiction above is not material and should not render the plaintiff's testimony unreliable, he commend the holding of the court in the case of **Ogogovie V. State (2016) LPELR – 40501 (SC)** to the effect that whether contradiction in the evidence of a witness affects the quality of the evidence is primarily for the trial court to determine having regard to the rest of the evidence of the witness and fact or facts in respect of which such contradictory evidence has been given, and he then submitted that the plaintiff's contradiction, during cross-examination, of paragraph 14 of the plaintiff's witness statement on oath dated 20th February, 2020 is fundamental and material to the entire testimony and case of the plaintiff, and the court should not rely on testimony that is manifestly incredulous and unreliable, and he urged the court to so hold.

The plaintiff relied on paragraphs 6.1 to 6.4 of the plaintiff's address, and relying on EXH. "A8", "A6" and "A3"

and contends that he is entitled to general damages, and the counsel to the defendants submitted that before an entitlement of general damages become an issue, the plaintiff must first establish that by the terms of EXH. "A8" and "A3" that it was agreed that the 1st defendant was outrightly selling his unexpired interest in the property, and he then submitted that on both paragraphs 6.1 to 6.33 and paragraphs 2.16 to 2.28 of his final written address and reply written address, the counsel demonstrated that the agreement between the plaintiff and the defendants was not for an outright sale of the 1st defendant's unexpired interest on the property, and to him, the plaintiff is not entitled to general damages.

The counsel submitted that even if the agreement was for an outright sale of the property, it would not be appropriate for this court to grant general damages to the plaintiff on the ground that the plaintiff is praying for an order of court directing the defendants to execute a deed of conveyance or assignment in his favour, is seeking for specific performance of the agreement as it is the law that the court, in contract of sale of land, will not award damages where an order for specific performance has been awarded, and he cited the case of **Enwelu V. Givmex Investment Ltd (2017) LPELR – 42777 (CA)** to the effect that a party has a third option which is to sue for specific performance or for damages in the alternative but not for both at the same time, and he then submitted that the plaintiff has not established breach of contract on the part of the defendants to entitled him to any remedy for special damages.

On the claim for exemplary damages made by the plaintiff, the counsel to the defendants submitted that the acts of malice, were not established as it was vehemently

controverted by the documentary evidence before the court.

The counsel submitted that the plaintiff alleged that he entered into a contract with the 2nd defendant to complete the house within a period of 8 months for the sum of N7,060,000.00 but that the 2nd defendant failed to complete the house within the agreed time, and further the 2nd defendant began to demand for additional funds from the plaintiff, and the counsel to the defendants submitted that this assertion was controverted in paragraphs 13(c), (d), (e) and (f) of the defendants statement of defence wherein it was brought to light engaged the 1st defendant to, through its engineers, complete the house within 12 months, and he took his time to reproduce the paragraphs, and submitted further that the completion of the house was contracted to the 1st defendant and not the 2nd defendant and this is supported by EXH. "A9" and "D3" which are the acknowledgment of receipt of the sum paid for the completion of the house EXH. "A2" and "A7" sent by the 1st defendant to the plaintiff accounting for works done, therefore, the allegation of a personal contract between the plaintiff and the 2nd defendant is whittled down by the documents EXH. "A2", "A7", "A9" and "D3" and they are supportive of the averments in paragraph 13(c), (d), (e) and (f) of the statement of defence.

Also the allegation of the plaintiff that the agreement was for the house to be completed within 8 months is controverted by paragraph 7 of EXH. "A3" which clearly provides for the period of 12 months as the time frame for the completion of the house unit, now to him, the law is that oral testimony cannot alter, amend nor controvert an agreement that has been expressed in writing, and he cited the cases of **Are V. Owoeye (2014) LPELR – 41096 (CA);**

Fojule V. Fed. Mortgage Bank of Nig. (2001) 2 NWLR (pt 697) 384 at 395.

On the allegation by the plaintiff that the house was not completed at all by the 2nd defendant and additional sums were demanded and expended by the plaintiff in completing the house, the counsel to the defendants submitted that this was not established by any scintilla of evidence, and he relied on section 131 (1) of the Evidence Act to the effect that a party who wants the court to believe the existence of a fact must establish that known fact with cogent and convincing evidence, and he referred to the cases of **Ogwuche V. Benue State Civil Service Commission & Ors (2013) LPELR – 22748 (CA)**; and **Onigbinde V. S.B. Olatunji Global Nig. Ltd (2015) LPELR – 25943 (CA).**

On the allegations of the plaintiff that he incurred additional cost by way of service charge that may not contemplated in the agreement between the plaintiff and the defendants and the cost for procuring water and diesel due to the disconnection of the plaintiff's house from accessing house facilities, and the counsel to the defendants submitted that in paragraphs 11, 14 and 16 of EXH. "A8" which the plaintiff recognizes to form part of the contract between him and the 1st defendant collectively provides for the plaintiff's payment of service/facility charge discretionarily fixed by the 1st defendant, for access to estate facilities, and he reproduced paragraphs 11, 14 and 16 of EXH. "A8" for ease of reference, and further submitted that the plaintiff failed to bring to the fore that it was due to plaintiff's failure to pay for the facility charge fixed for the year 2015 that resulted in the disconnection of the plaintiff from access to the facilities of the estate in the way of water and electric power supply, and in line with paragraphs 11, 14 and 16 of the EXH. "A8" the plaintiff was not entitled to

access those facilities, and to him, considering the above, this court cannot rightly award exemplary damages to the plaintiff, and he urged the court to disregard paragraphs 7.1 to 7.14 of the plaintiff's address.

On the submission of professional fees made by the plaintiff in paragraphs 8.1 to 8.7 to the effect that he is entitled to it paid to his legal representative for the prosecution of this suit, the counsel cited the cases of **Nwanji V. Coastal Services Nig. Ltd (2004) LPELR-2106 (SC)**; and **First Bank & Ors V. Eromosele (2019) LPELR – 47823 CA** all to the effect that claim for professional fees is an unusual claim and difficult to accept in this counter of things today. He then urged that the plaintiff is not entitled to professional fees and he urged the court to disregard paragraphs 8.1 to 8.7 of the plaintiff's address and accordingly refuse the relief, and he, on the whole, urged the court to dismiss the plaintiff's case with adequate cost in favour of the defendants.

Now, having reviewed the cases of both parties and the submissions of both counsel, let me formulate the following issues for determination, thus:

1. **Whether the Witness Statement on Oath and Further Witness Statement on Oath filed by the plaintiff are in compliance with provisions of section 13 of the Oaths Act?**
2. **Whether there are terms and conditions in the application form for the allocation of the property?**
3. **Whether the interest in the house in issue, being the subject of the transaction, is a total sale/purchase or a sublease?**
4. **Whether the Letter of Revocation issued to the plaintiff is invalid or is fundamentally**

defective having not been issued or signed by the defendants?

5. **Whether, having regard to the pleadings and evidence before this court, the 2nd defendant is a necessary party in this suit?**
6. **Whether the plaintiff is entitled to the reliefs sought?**

Thus, it is pertinent, at this juncture, to evaluate the evidence of both parties with a view to ascribe a probative to the one that is credible. See the cases of **Kanu V. A.G, Imo State (2020) All FWLR (pt 1058) p. 994 at pp. 1028-1029; paras. G-B;** and **F.R.N. V. Oduah (2020) All FWLR (pt 1062)p. 568 at 580; paras. F-G.**

The PW1, during cross-examination, told the court that he has filled the application form having known the developer as his friend for the past twelve years. When he was asked whether to have applied to the estate developer at Clobek Estate, and he answered in the negative, however, when shown the form already filled for him to identify whether it is the same form, and he answered in the affirmative that he identified it as the application form he filled. It is to be noted that both the plaintiff and the defendants have tendered the already filled application form in evidence, which were admitted and were marked as EXH. "A8" and "D1". By these pieces of evidence, it can be inferred that the PW1 was challenged.

The PW1 was asked by the counsel to the defendants whether he has signed the application form which contains various terms and conditions, and he answered that he signed it after having discussion prior to his signing with the developer in which he later said it was a pro forma which is being given to a buyer and that he should not bother as a friend. But when asked whether there is anything before the

court any record or document to show that there was such a discussion, and the PW1 maintained that it was in his statements, and he also referred to the statement of account on work finishing where the developer stated that they are friends. Now, what was asked was whether there is any evidence showing that they have had such discussion that the application form is a mere pro forma, and not whether they have been friends. By this, it could be inferred to mean that the evidence is being challenged.

The PW1 when asked as to whether before making payment for the house unit at Clobek Crown Estate, he was issued with the Allocation Letter by the developer, and he answered in the affirmative.

He was also asked whether the Allocation Letter contains terms and conditions, and he answered that there are terms and conditions same as embedded in the Application Form.

The PW1 was given the acknowledgment copy, EXH. "A6", to confirm whether the payment was made to Clobek Crown Estate, and he answered in the affirmative. He was asked whether he inspected the houses before obtaining the application form, and he answered in the affirmative, and that he choose one of the three that are on the left hand side. He was then asked whether there were other occupants as at the time he picked the form, and he answered that he was the second occupants in that estate.

The PW1 was asked during cross-examination that he was always aware that the estate has rules and regulations which its residents are bound by, and he answered that in the affirmative, to him, at that time there were no occupants, and the rules and regulations were not provided. He was shown EXH. "A5" and to look at it, and

was asked whether it contains rules and regulations, and he answered in the affirmative.

The PW1 was asked whether he refused to abide by the rules and regulations, and he answered that they are affront on his fundamental right and have contravened the peaceful enjoyment of the property.

The PW1 was asked to have a look at EXH. "A5" and to read the first paragraph and the first two lines of the second paragraph, and was asked whether at any time he wrote a reply to that letter, denying or disputing such letter, and he answered that he never did, because it was not in the agreement and it was written to him on the 28th January, 2015.

The PW1 was asked to look at EXH. "A3" and "D1" and to show whether they contain that his input could be required in the estate bye-law, rules and regulations, and he answered that it is not there but that there are discrepancies that have been pointed out and they discussed, and he was also asked to show in those two documents where it was stated that he would be consulted in the determination of the facility management fee or estate service charge, and he answered that there is no that.

The PW1was asked whether he would confirm that the payment was made after the allocation letter was issued on the 14th February, 2013, and he answered in the affirmative, and that it was at the point of payment, the difference in items 3.5 and 7 were drawn to the attention of the developer and the developer gave a go ahead to make payment in which he referred the developer to be the 2nd defendant.

The PW1 told the court that he ran into the 2nd defendant in the month of October, 2012 and the

developer offered a house unit at Clobek Crown Estate and that the date of inspection of the house were in October, and November, 2012, while earlier on he told the court that it was on the same date he ran into the developer, and on the same date he inspected the house.

In the circumstances, the PW1 was challenged during cross-examination as there are contradictions.

The PW1 was referred to paragraph 47 of his statement on oath wherein he said he was issued with the sales/purchase Agreement, and he answered in the affirmative, and he went further and said it was given to him one year, eleven months after payment and after he has taken possession of the house, and he also went ahead to identify the sales/Purchase Agreement he was issued with. He was then referred to the sales/purchase Agreement to confirm whether it was given to him, and he answered it was not given to him at any point in time, to him, however, the document that was given to him was the sales/purchase Agreement dated the 15th January, 2015.

By the above, it can be inferred that there were contradictions.

The DW1, during cross-examination, told the court that it was the position of the defendants that it was David Agbo that entered into all transactions in relation to the property purchased by the plaintiff. The DW1, for the first time told the court that he was not employed in 2016, but was employed several years ago, however later he told the court that he was not lying if he said he was employed several years ago as he was employed in 2016. He even told the court that he assisted David Agbo and he monitored all the transactions made by David Agbo being an Admin Staff. He also told the court that he was briefed that most of those

transactions were handled by David Agbo and not by the 2nd defendant.

Thus, by the above answers given by the DW1, it could be inferred that there was a contradiction in the evidence of the DW1.

When the DW1 was asked whether the witness statement made by him was correct, and he answered in the affirmative, however, he was then asked to show the document with respect to the completion of that property, and he consistently told the court that he should be given time to revisit the file, and that he is aware that the plaintiff is making claim about the completion of the property. By the above answer given by the DW1, certainly he was not in the picture of the completion of the house for the plaintiff by the defendants.

The DW1 told the court that there is no expiration date or a duration of the sublease contained in EXH. "A3" and "A8", and was also asked whether there is a difference between purchase and sublease, and he answered that they are different in the context in which they were used. He was also asked whether EXH. "D1" and "D2" were forwarded to the plaintiff at the same time, and he answered in the affirmative but that he did not know the exact time, and it was put to him that that was long ago after the application form and the allocation were issued, and he answered in the affirmative, and that the documents were rejected by the plaintiff.

When the DW1 was asked that he did not know anything about the purchase of the property by the plaintiff and the completion of same, and he answered that in the negative. By the above answers given during cross-examination by the DW1, it could be inferred that there were some contradictions.

Thus, it is the contention of the counsel to the defendants that the testimony of the plaintiff is rigged with glaring inconsistencies that rids it of every form of credibility. He contends that the plaintiff in a bid to support his case that the sum of N15,000,000.00 paid for the house, was based upon the agreement that the 1st defendant was selling the entire of its unexpired interest in the house, and where he had averred in paragraph 14 of his witness statement on oath dated the 20th February, 2020, that at the time he paid for the house unit, he was not privy to the letter of allocation dated 14th February, 2013 which expressly states a sublease interest as the title being paid for by the plaintiff, and this when he stated;

> **"That after I made payment for the house, the 2nd defendant issued me a Letter of Allocation with the letter head of the 1st Defendant dated 14th February 2013 for the house known as House C7."**

while during cross-examination the plaintiff stated the contrary when he was asked:

> **"Also before you made any payment for a house unit on Clobek Crown Estate, the estate developer issued you an allocation letter dated the 14th February, 2013 by which house C7 was formally allocated to you, is that correct?"** and the plaintiff answered "Yes".

The contradiction the counsel to the defendants wants to draw the attention of the court to is that the plaintiff said in his witness statement on oath that it was after he has made payment, and during cross-examination, he said it was before he made payment.

Also, the counsel to the defendants drew the attention of this court to the testimony of the plaintiff in his witness

statement on oath that the plaintiff contradicted himself in paragraphs 45 and 46. To him, the plaintiff stated in paragraph 46 that he declined to append his signature on the document containing the estate bye-laws, rules and regulations as he had no prior knowledge of such a document, otherwise he would not have invested in the property, while earlier in paragraph 45 he stated that on the 21st day of August, 2014 the 2nd defendant issued him a document titled Estate Bye-laws, rules and Regulations and that he was required to sign the said document and be bound by same, and he was taken aback as he was not consulted and given an opportunity to make his input thereto before the preparation of the final document as provided by the defendants. The counsel drew the attention of the court to the inconsistency in the two paragraphs to the effect that the plaintiff said he never knew of any document containing the estate bye-law, Rules and regulations, and in another breath he said he infact knew of the document containing the estate bye-laws, rules and regulations but was not consulted for him to make his input, and he submitted that these inconsistencies cast a doubt on the credibility of the witness and therefore robs the testimony of probative value, and he cited the case of **Akanbi & Anor V. Alatede Nig. Ltd & Anor (supra)**

The counsel to the plaintiff contends that there is contradiction in the case of the plaintiff as alleged by the defendants, and assuming without conceding that there is such a contradiction, he contends that it is not every contradiction that leads to the rejection of the evidence of a witness and he relied on the case of **Wachukwu & Anor. V. Owunwanne & Anor. (supra)** to the effect that it is only those that are material and result in a miscarriage of justice that would warrant such a rejection of evidence. To him, the said

contradiction does not affect the substance of the plaintiff's case before this Honourable Court, and he then submitted that the nature of the transaction that took place between the plaintiff and the defendants is whether the sale of House C7 is one of an outright sale or a sublease interest. He then urged the court to consider the totality of all the evidence of the plaintiff and to arrive at that the alleged contradictory statements are not material and substantial as to cast doubts on the credibility of the witness, and cited the case of **Akinkumi V. Bakare (supra)** to the effect that a trial judge evaluates the evidence of a witness not through the narrow prism of a particular piece of evidence but from the gamut or range of evidence placed before him. Also a good judge should be able to tell the difference between a witness who is being economical with the truth and one who merely slips on the proverbial banana peel under the fire of cross-examination. The counsel then contents that paragraphs 45 and 46 are not contradictory in any way whatsoever. While in his reply address, the counsel to the defendants relied on the case of **Ogogovie V. State (supra)** to the effect that whether contradiction in the evidence of a witness affects the quality of the evidence is primarily for the trial court to determine having regard to the rest of the evidence of the witness and fact or facts in respect of which such contradictory evidence has been given. He then contends that looking at the testimony of the plaintiff, it is the narrative of the plaintiff that his understanding with the defendants is that he was purchasing the entire and unexpired interest of the 1st defendant in the House unit and it was based on that understanding that he paid the sum of N15,000,000.00, otherwise he would not have invested in the property. To him, the letter of allocation EXH. "A3" clearly states in paragraph (v), that the interest which the

defendants are selling to the plaintiff is a sublease interest, therefore, the narrative that he made payment without any knowledge that a sublease interest was being offered to him, and this would be defeated by the fact that he was aware of EXH. "A3" even before he made payment for the house, and to the counsel, paragraph 14 of the plaintiff's witness statement on oath is fundamental to the plaintiff's testimony, and he then submitted that the contradiction in paragraph 14 of the plaintiff's witness statement on oath dated the 20th February, 2020 is fundamental and material to the case of the plaintiff and does not fall within the proverbial ship as a banana peel that can be overlooked.

Thus, the two counsel of both sides agreed that for a contradiction in the testimony of a witness to affect the case of the party, it has to be fundamental, material. I agree with the submission of the both counsel that one of the issues in the case of the plaintiff is that the defendants sold the house unit to him as an outright sale with no reversionary right to the defendants and not a sublease. If this is the position the court has to look into the documents creating the contract and the testimony of the witness to the plaintiff, and where there is a contradiction in the testimony of the witness, certainly it will affect the case of the plaintiff. See the case of **Mamuda V. State (2019) All FWLR (pt 1023) p. 3 at p. 28; paras. F-G** where the Supreme Court held that only material or glave contradictions in the evidence of a party which goes to the root of the case weakens the case of the party who relies on the evidence so bedeviled. In the instant case, both counsel agreed that the issue on this case, which touches the root of the case, is whether the sale of the house to the plaintiff by the defendant is an outright sale or a sublease, and that it is the contention of the counsel to the defendants, which I agree

with him that the knowledge of the plaintiff of the intendment of the defendants from the initial stage of the transaction the type of the sale, is also relevant and material, and therefore for all intent and purpose, the contradiction is so material and fundamental which affects the credibility of the evidence, and to this, I therefore, so hold that the contradictions weakens the evidence of the plaintiff.

Now, on the issue No. 1 as to whether the Witness Statement on Oath and the Further Witness Statement on Oath filed by the plaintiff are in compliance with the provisions of section 13 of the Oaths Act? It is the contention of the counsel to the defendants that the plaintiff's witness statement on oath and the further witness on oath failed to adhere to the statutory provisions of section 13 of the Oaths Act, LFN, 2004 and the First schedule to the Act. He argued that the prescription in the first schedule to the Act is a statutory directive and not a mere procedural provision by the Rules of court, and the statutory provisions are more sacrosanct than the Rules of court, and to him, where a statute has prescribed the mode or procedure for doing a particular act, that procedure must be followed, and he cited the case of **United Bank Plc V. Ukachukwu (supra).** He further argued that the word use in section 13 of the Oath Act is "shall" which is mandatory and has a compelling effect and not open to discretion. He further contents that for an oath or witness statement on oath to be lawful or valid, it is mandatory that (a) it must be made before a Commissioner for Oath, notary public or any other authorised person (b) it must be voluntarily made before the persons in (a) above, (c) it must be made in the form set out on the first schedule to the Oath Act.

To the counsel to the defendants, there is a difference between the specifications in schedule 1 of section 13 of the Oath Act and what is contained in the witness statement on Oath and Further Witness statement on Oath of the plaintiff. He also argued that non-compliance with the mandatory provisions of a statute has the consequence of rendering the proceedings or the act done pursuant thereto a nullity, and it is a fundamental defect that is not a mere irregularity, but an illegality and he cited the cases of **Ugboji V. State (supra)** and **Sanmabo V. The State (supra).** The counsel relied on the case of **GTB V. Barrister Ajiboye Ayodeji Abiodun (supra)** where the Court specifically pronounced on the sale of witness statement on oath that is not in compliance with the prescriptions of the First schedule to section 13 of the Oaths Act, to the effect that, any written statement, therefore, which does not bear the first schedule to section 13 of the Oaths Act, cannot be said to be a written statement on oath, and cited a host other judicial authorities where the courts held that where there is no statement in the oath stating that it is made solemnly, conscientiously believing the contents to be true and correct and by virtue of the Oath Act, it is not an oath or affidavit properly so called. To him, in the recent case of **Cora Farms & Resources Ltd. V. Union Bank Plc (supra)** re-echoed the decision in the case of **GTB V. Barrister Ajiboye Ayodeji Abiodun** with approval, and he added that even if it was in substantial compliance with prescription of the First Schedule to section 13 of the Oaths Act, it cannot be said the plaintiff's witness statement on oath and further witness statement on oath was in substantial compliance with the prescribed oath, and he then conclude that the plaintiff's pleading is left bare, abandoned and of no moment as it is upon the adoption of a valid witness statement on oath

that a pleading receives evidential support, and he cited the case of **Aliyu V. Bulaki (supra)** while it is the contention of the plaintiff that the case of **GTB V. Barrister Ajiboye Ayodeji Abiodun (supra)** which was relied upon by the counsel to the defendants does not apply to in the instant case, this is because the oath in that case reads:

> **"That I swear to this affidavit in truth and in good faith."**

It is the foregoing statement that the Court of Appeal in the said case that held to be not in full compliance with the provisions of the Oaths Act as to qualify as written statement on oath. The counsel went further to quote the holding of the Court of Appeal in the case of **GTB V. Barrister Ajiboye Ayodeji Abiodun (supra)** that where there is no statement in an oath stating that it is made solemnly, conscientiously believing the contents to be true and correct and by virtue of the Oaths Act, it is not an oath or affidavit properly so called, and he submitted that the plaintiff's witness statement on oath and further witness statement on oath captured the fact that the depositions contained therein was made solemnly, conscientiously believing the content to be true and correct and by virtue of the Oaths Act, and to him, by this, the said depositions of the plaintiff are in substantial compliance.

The counsel further contends that the case of **Cora Farms & Resources Ltd V. Union Bank Plc (supra)** cited by the counsel to the defendants, does not in any way support the case of the defendants as the case depicts a case where there was a total non-compliance with the provisions of section 13 of the Oaths Act when the Court of Appeal held thus:

"Having examined carefully the statement on oath filed by the plaintiff, it is clear that it did not state the residence and nationality of the deponent at the head of the statement on oath…it is the law that concluding part of a deposition must be clear as to the fact that it is an oath or affirmation.

Although the guide or form laid down in the 1st schedule to the Oaths Act is expected to be followed, it has been held that it is not to be followed rigidly, but that there should be substantial compliance with the prescribed format. In this case, there is complete and absolute non-compliance."

The counsel then submitted that the said witness depositions comply substantially with the Oath Act, and he cited the case of **A.G. Akwa Ibom State & Anor V. Akadiaha & Ors (supra)** to the effect that where there is a total non-compliance with the Oaths Act, such Oaths are defective but where there is substantial compliance with the Oath Act, the failure to use the form strictly words for words does not render it defective and liable to be struck out, and he cited the cases of **Buhari V. INEC (supra);** and **Onwufuju V. Orohwedor (supra)** to the effect that where the written statement is to be adopted again on oath by the maker before his cross-examination on it, whatever defect in the original oath in respect of the witness statement has been cured by the second oath made in court before the Judex prior to the adoption of the witness statement by the maker and in subsequent cross-examination, the counsel submitted that, the plaintiff having adopted the said witness statements in the witness box without objection from the defendants, whatever defects on the original Oath in respect of the witness statement on oath has been cured

by the second oath. The counsel invited the court to look at section 4 of the Oath Act. However, in his written reply to the submission of the counsel to the plaintiff, the counsel to the defendants cited the case of **Oyekanmi & Anor V. MTN (supra)** which to him, is the most recent decision and is the extant position of the law in Nigeria. He further contends that there is no nexus whatsoever between the dictum of the Supreme Court in the case of **Buhari V. INEC (supra)** with the question of non-compliance with the Oaths Act, as the question before the Supreme Court was whether the result of an election should be voided even when the conduct of the election was substantially in compliance with the provisions of Electoral Act particularly section 146 of the Electoral act, 2016. He also contends that having a cursory reading of the case of **Onwufuju V. Orohwedor (supra)** which was relied upon by the counsel to the plaintiff, it will reveal that the dictum was indeed made by **Ogunwumiju JCA** (as she then was) in the 2010 case of **Kalu Igu Uduma V. Prince Ama Arunsi & 14 Ors. (2010) LPELR-9133 (CA),** and the question that the Court of Appeal was called upon to decide bothered on whether the witness statement on oath in that case was sworn before a person duly authorised to receive oath, and not incompliance with the first schedule to the Oath Act, and he maintains that the failure of the plaintiff's witness's witness statement on oath and for their witness statement on oath to fully satisfy the mandatory requirement of the Oaths Act simply means that the plaintiff had no witness statement on oath worthy of even being considered by this Honourable Court in the first place.

Thus, section 13 of the Oaths Act provides:

> **"It shall be lawful for any Commissioner for Oaths, notary public or any other person authorised by this Act to administer on an oath, to take and**

receive the declaration of any person voluntarily making the same before him in the form set out in the first schedule to this Act"

While the first schedule to the Act under statutory declaration set out thus:

"I (name to be supplied) do solemnly and sincerely declare that (set out in numbered paragraphs if more than one maker) I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the Oaths Act".

By the above quoted provisions and relying upon long line of judicial authorities, it can be inferred that for every oath to be legitimate, it must comply with the provisions of the Oaths Act and the First Schedule to the Act. See the case of **Obumneke V. Sylvester (2010) All FWLR (pt 506) p. 1946 at 1960; paras. C-D.** See the case of **GTB V. Barrister Ajiboye Ayodeji Abiodun (supra).** In the instant case, the argument of the learned counsel to the plaintiff is that looking at the witness statement on oath and further witness statement on oath of the plaintiff clearly reveals that the said depositions are in substantial compliance with section 13 of the Oaths Act and the First Schedule thereto. He further contends that the case of **GTB V. Barrister Ajiboye Ayodeji Abiodun (supra)** relied upon by the learned counsel to the 1st and 2nd defendants in advancing their arguments lends support to the case of the plaintiff, and cited the case of **A.G., Akwa Ibom State & Anor V. Akadiana (supra)**, while the counsel to the defendants contends that the cases of **Buhari V. INEC (supra); and Onwufuju V. Orohwedor (supra)** as relied upon by the counsel to the plaintiff are not applicable in the instant case as they are not all tours with it. However, both counsel in their addresses made reference

to the case of **GTB V. Barrister Ajiboye Ayodeji Abiodun (supra).** In addition to that, the counsel to the defendants later relied on the case of **Oyekanmi & Anor V. MTN (supra)** which he said is the latest decision and is the extant position of the law in Nigeria with respect to witness statement on oath that is not fully compliant with the form set out in the Oaths Act. In the circumstances, I hold the view that the decisions in the two cases of **Buhari V. INEC (supra);** and **Onwufuju V. Orohwedor (supra)** are not applicable as the question in the first case was of non-compliance with in relation to the conduct of an election in accordance with section 146 of the Electoral Act, the later was in relation to an adoption of a written statement on oath, and therefore, they are not on all tours with the instant case.

Let me look at the two cases of **GTB V. Barrister Ajiboye Ayodeji Abiodun (supra)** and the case of **Oyekanmi & Anor V. MTN (supra)** with a view to see which is on all tours with the instant case.

In the case of **GTB V. Barrister Ajiboye Ayodeji Abiodun (supra),** it was that in paragraph 35 of the written statement on oath of the respondent filed on the 5th day of June, 2012 and paragraph 30 of the additional written statement on oath in support of the reply to the statement of defence filed on the 8th of October, 2013, respondent as witness stated thus:

> **"That I swear to this affidavit in truth and good faith" and**
>
> **"That I swear to this affidavit in truth and in good faith."**

So the above depositions in the alleged written statement are not in full compliance with the positions of the Oaths Act as to qualify as written statement on oath as prescribed by order 3 Rule 2(1) (c) of the Rules of the Lower

Court. The said Order 3 Rule 2 (1) (c) of the Rules of Ekiti State High Court mandatorily directs a claimant to file written statement on oath of the witnesses among other documents along with his originating process, and the word used in the Rule is "Shall" which means mandatory. So by section 13 of the Oaths Act and the first schedule to the Act, a valid oath must be in the following form "I do solemnly and sincerely declare……" Therefore any written statement, which does not bear the first schedule cannot be said to be written statement on oath. The Court of Appeal in that case held that the grouse expressed by the appellant's counsel against both written depositions bother on both their form and substance. It went further to hold that any written statement which does not bear the 1st schedule to section 13 of the Oaths Act, cannot be said to be a written statement on oath, and it is this vital aspect of the oath that is missing in the written statement of the respondent's sole witness in that case, and that non-compliance with the provisions of the Oaths Act is a breach of the Oaths Act, and the consequence is that the entire statement of the respondent's sole witness is left bare as the Rules of Court are not made for fun. They are made to be obeyed. The court then resolved the issue in favour of the appellant.

Now, to my understanding of the above case of **GTB V. Abiodun (supra),** the Rules of the High Court of Ekiti State makes it mandatory, under Order 3 Rule 2 (1) (c), and directs a claimant to file "a written statement on oath of the witnesses among other documents along with the originating process as the word used in the Rule is "shall", however, and a valid Oath must be in the form prescribed by the first schedule to the section 13 of the Oath Act, which is "I do solemnly and sincerely declare…" However,

the respondent in that case stated thus: "That I swear to this affidavit in truth and in good faith" on both the written statement on oath filed on the 5th June, 2012 and additional written statement on oath in support of the reply to the statement of defence filed on the 8th day of October, 2013.

The respondent instead put and referred to an affidavit instead of written statement on oath in the two written statements, and by this, the grouse of the appellant bothers on substance and form.

If my understanding is correct, a distinction has to be drawn between a deposition on oath that bothers on form and that bothers on substance. So, a deposition on oath that bothers on form is the one which did not comply with form set out in the 1st schedule to the Oaths Act, while that of substance bothers on lack of due compliance with the Rules of the court which makes it mandatory to file along with other documents in the originating process a written statement on oath, and not an affidavit. To my mind, that was why the Court of Appeal drew a distinction between an affidavit and a written statement on oath. So, in that referred case, the grouse bothers in both form and substance, hence the court resolved the issue in favour of the appellant. Let me refer to the paragraph 61 of the plaintiff's witness statement on oath which states, thus:

> **"I make this deposition in good faith and conscientiously believing that its contents are true and correct and in accordance with the Oaths Act, laws of the Federation of Nigeria, 2004."**

While in paragraph 8 of the Further Witness Statement on Oath dated the 10th day of June, 2020 which states, thus:

> **"That I make this deposition in good faith, conscientiously believing that its contents are**

true and correct and in accordance with the Oaths Act, Laws of the Federation of Nigeria, 2004."

Thus, looking at the two oaths, it can be seen that they bother on form only and to this I so hold. If also, this is the correct position, then the case of **GTB V. Barrister Abiodun (supra)** is not on all tours with the instant case, and to this, I so hold.

Coming to the case of **Oyekanmi V. MTN (supra)** which was relied upon by the counsel to the defendants is almost on the same issue, that is to say, for every oath to be legitimate must comply with the provisions of the Oaths Act and the 1st schedule to that Act, and where there is no statement in an oath stating that it is made solemnly, conscientiously believing the contents to be true and correct and by virtue of the Oaths Act, it is not an oath or affidavit properly to called. The grouse in the above case also bothers on both the form and substance. To my mind, the case of **Oyekanmi & Anor. V. MTN (supra)** is also not on all tours with the instant case, this is because looking at the oath administered in the instant case was in substantial compliance with the Oaths Act and the first schedule to the Act as per the form and not substance; and to this, I so hold.

The counsel to the plaintiff invited the court to consider section 4(2) (b) and (c) of the Oaths Act which provides:

"(2) No irregularity in the form in which an oath or affirmation is administered or taken shall:
(b) invalidate proceedings in any court; or
(c) render inadmissible evidence in or in respect of which irregularity took place in any proceedings"

Taking a further look at the oath administered in this instant case, it can be seen that what is not in the statement is the word "solemnly, however, the word "conscientiously"

and the expression" believing that the contents are true and correct and in accordance with the Oaths Act, are all have been mentioned. See the case of **Ghraizi V. Ghraizi (2017) All FWLR (pt 893) p. 1345 at pp. 1360 – 1361; paras. H-C** where the Court of Appeal, Abuja Division held that the exact wording of this format need not be used. It suffices if the declaration is to the effect that the deponent has sworn to the affidavit in good faith, no matter how couched or the semantics employed. See also the case of **Obumneke V. Sylvester (supra)** where the court held that failure to comply with the form set out in the 1st schedule to the Oaths Act in taking an oath does not render the document defective in form.

Thus, by the above quoted section 4 of the Oaths Act and the cases cited above, and for the fact that the irregularity in administering the Oath bothers on form, that will not render inadmissible evidence in or in respect of which an irregularity took place in this proceedings, and to this, I so hold.

It is pertinent to note that the counsel to the defendants did not respond to the argument of the counsel to the plaintiff in considering the provisions of section 4 (2) (a) and (b) of the Oaths Act, and the implication is that he accepts the argument of the counsel to the plaintiff as correct and unassailable.

In the circumstances, I resolve issue No. 1 in favour of the plaintiff.

On the issue No. 2, as to **whether there are terms and conditions in the Application for EXH. "A8", EXH. "A3" and Allocation Letter for the allocation of the property?**

In the determination of the above question, recourse has to be had to the documents (EXH. "A8"/"D1" and "A3". See the case of **Eromosele V. FRN (2019) All FWLR (pt. 994) p.**

543 at pp. 553 – 554; paras. G-A where the Supreme Court held that when a document is in the record of the court, it cannot be a new issue on which a court is precluded from looking at. A court of law is entitled to look into its record and make use of any document it considers relevant in determining issues before it.

I have gone through the documents EXH. "A8"/"D1", and have discovered that in EXH. "A8"/"D1", there are declarations or rather agreement made by the plaintiff dated the 9th February, 2013 of eighteen paragraphs, while EXH. "A3" contains some terms and conditions of nine paragraphs. To my mind, the Application Form (EXH. "A8"/"D1" contains some declarations or rather the plaintiff has agreed to certain terms and conditions as are contained in the Application Form, while there are terms and conditions contained in the Letter of Allocation dated the 14th February, 2013. Therefore, the answer to the above question is in the alternative.

On the issue No. 3, as to whether the interest in the house in issue, being the subject of the transaction, is a total sale/purchase or a sublease, the counsel to the defendants contends that it is the case of the plaintiff before this court that the transaction is for a total sale/purchase of the property and not a sublease, and it is on this, the counsel further made reference to paragraphs 6, 7, 14, 15, 16, 17, 20, 21 and 44 of the statement of claim of the plaintiff, wherein the plaintiff made reference to the discussion held between him and the 2nd defendant, and that discussion he saw it as an opportunity to own a house, and that when the plaintiff saw and noticed in the first paragraph of the Application Form (EXH. "A8"/"D1" at page 2, that there is a requirement that the plaintiff was to pay 2.5% legal fees for the preparation of a Deed of a sublease, and that according to

the plaintiff, the 2nd defendant explained to him that he should not bother about what is contained in the Application Form as it was a standard Form that was being used to all intending purchasers of houses in the estate, and that the defendants were selling the house absolutely to him upon payment of the purchase price and that the defendants will not be entitled to the reversionary right, hence no specific terms of years was slated on the said Application Form. It is also the case of the plaintiff by the statement of claim that he enquired about the facility management agreement referred to as paragraph 14 of the said Application Form, and the 2nd defendant in response stated that the plaintiff should not bother about as there will be nothing therein that will be untoward nor detract from the outright sale of the house to the plaintiff by the defendants, and the 2nd defendant promised to consult the house owners when preparing the said facility management agreement in order for the house owners and the defendants to mutually agree, and that the 2nd defendant again assured the plaintiff that it was an outright sale of the said house and is not a sublease and the allocation letter is a pro forma, and that he was also assured by the 2nd defendant that no Deed of sublease would be prepared on account of the sale of the said house. The counsel to the defendants then submitted that the plaintiff has not tendered any evidence to support his assertion of an oral agreement with the 1st defendant, and what was tendered was an application form dated the 9th February, 2013 with which the plaintiff applied to the 1st defendant for the allocation of the house EXH. "D1" or "A8" and the Allocation Letter dated the 14th February, 2013, EXH. "A3", with which the 1st defendant was offered the allocation of the house to the plaintiff, and he further submitted that

where the terms of an agreement have been reduced into writing in a document, no other evidence can be given on that agreement except for the documents, and oral evidence cannot be given to contradict, alter, add or vary the contents of the documents, and he referred to section 128 (1) of the Evidence Act, 2011 and the cases of **Ezemba V. Ibeneme & Anor. (supra);** and **Atiba Iyalamu Savings & Loans Ltd. & Anor. V. Suberu (supra),** and he urged the court to discard the oral explanations regarding what the plaintiff was imagining on the strength of the case of **WEMA Bank Plc V. Osilaru (supra)** to the effect that a court can only interpret the agreement strictly in its legal content and arrive at a conclusion on the law and the law alone in respect of it. The counsel submitted that the terms of sale of the house unit to the plaintiff were expressly stated in writing in the Application Form and the Allocation Letter. The counsel reproduced the portions of the contract (EXH. "D1" and "A3" for ease of reference, and to him, it is the duty of this court to interpret the contents of the Application Form and the Allocation Letter, and he cited the cases of **Desemyof Nig. Ltd V. Kwara State Govt. & Ors (supra);** and **Adefarasin V. Dayekh & Anor. (supra)** to the effect the plaintiff, by signing EXH. "D1" or "A8", holds himself out as bound or responsible for the content of such a document.

The counsel to the defendants submitted that the interpretation of the agreement entered into between the plaintiff and the 1st defendant shows that:

a. The plaintiff paid N15,000,000.00 for the sale of a sublease interest on the house unit and not the sale of the unexpired residue of the 1st defendant's interest in the house unit;
b. Outside the purchase price of a sublease interest, the plaintiff was also to make other payments including

2.5% of the purchase price as legal fees for the preparation of a Deed of Sublease.

The counsel urged the court to refuse to grant the reliefs on paragraphs (a) (b) (c) (d) (e) (f) (g) (h) (i) (j) and (k), and to hold otherwise would be tantamount to this court redrafting the contracts between the plaintiff and the 1st defendant.

The counsel to the defendants also contended that the terms and conditions contained in EXH. "D1" or "A8" and "A3" are conditions which must be fulfilled before the agreement to sell a sublease interest in the house unit becomes binding, and until they are satisfied the agreement between the plaintiff and the 1st defendant is conditional and will fail if these conditions are not satisfied, and he cited the cases of **Tsokwa Oil Marketing Co. (Nig.) Ltd V. UACN Property Development Co. Plc & Anor. (supra)** all to the effect that where a contract is made subject to the fulfillment of certain specific terms and conditions, the contract is not formed and not binding unless these terms are complied and fulfilled.

Thus, it is the contention of the plaintiff that a close perusal of the documents, EXH. "A8", "A6" and "A3", clearly reveal that the intention of the parties is that interest in the said property should pass to the plaintiff by reason of an outright sale. He invited the court to look at EXH. "A8" which is the Application Form, particularly paragraphs 12 and 13, and these reveal that the house was purchased and could be transferred once full and final payment has been made by the plaintiff, and it means that the whole interest in the said property had moved from the defendants to the plaintiff immediately the full purchase price of N15,000,000.00 was paid. The counsel also invited the court to consider EXH. "A6" which is the written Acknowledgment

of receipts dated the 21st February, 2013 where the expression "for a purchase price of Fifteen Million (N15,000,000.00) Naira only", and he also urged the court to look at EXH. "A3" paragraph 8, and to him, by paragraph 8 of EXH. "A3" the defendants were not entitled to any reversionary rights after the plaintiff makes full payment of the purchase price, he has the right to alienate by sale, assignment, or mortgage the said property.

The counsel asked this question:

> **Whether the agreement and or transaction between the plaintiff and the defendants is one that can be rightly referred to as a sublease?**

The counsel contended that the said transaction is nothing close to a sublease, and he referred the court to the cases of **Tanko V. Echendu (supra); Star Finance & Property Ltd & Anor. V. N.D.I.C. (supra); Samelo Invt. Ltd. V. Nig. Interbank Settlement Plc; Chung V. Plateau Express Services Ltd (supra)** all to the effect that a valid lease must contain the following:

1. **Words of demise;**
2. **Complete agreement leaving no ambiguity as to its purport;**
3. **The identification of the parties to the agreement;**
4. **The premises must be clearly identified; and**
5. **Commencement and the duration of the agreement.**

The counsel to the plaintiff also urged the court to consider the case of **Unilife Development Co. Ltd. V. Adeshigbin & Ors (supra)** to the effect that the main object of interpretation or construction of documents is to discover the intention of the parties which is deducible from the language used; and he submitted further the defendants have vide series of letters written to the plaintiff,

acknowledged the plaintiff as the owner of the said property and in the language used in the said letters, refrained from using the expression "Deed of Sublease' and he referred to paragraph 2 line 3 – 6 of the letter dated 5th March, 2015, and also paragraph 4, line 1 – 3 of EXH. "A17"; paragraph 5, line c of EXH. "A17"; paragraphs 1 and 2 of the letter titled facility connection Fees (EXH. A11) and paragraph 2 of EXH. "A15" all to the effect that the phrases" house owners", "your house" and "applying to purchase a house in the estate" point to the irresistible conclusion that the intention of the parties in respect of any transaction that took place with regards to the property was for outright sale for the plaintiff by the defendants, and he cited the case of **Adelabu & Anor. V. Saka & Ors. (supra)** to the effect that it is the duty of the court to consider all the correspondences in order to decipher the relationship. He then urged the court to consider EXH. "A17", "A11" and "A15" to hold that, the intention of the parties from the onset was for outright sale of the property.

The counsel to the defendants in his reply on points of law contended that the plaintiff, having admitted in paragraphs 14, 15 and 20 of the statement of claim, to the fact that EXH. "A8" and "A3" expressed the defendants' intention to sell a sublease interest in the property, that settles the issue, as facts admitted need no further proof, and he cited the cases of **Ajibulu V. Ajayi (supra); Ikyaanenge & Ors. V. Utsaha & Ors (supra),** and so to him, the law is that the argument of a counsel cannot take the place of evidence, and he referred to the case of **NIPOST V. Musa (supra),** and he urged the court to disregard the submission of the counsel to the plaintiff as they have no legs to stand.

The counsel cited sections 1 & 5(a) and 22(1) of the Land Use Act wherein interest in land is vested in the state government or the Minister of the Federal Capital Territory, Abuja and it is for the individuals and corporate bodies to purchase a right to occupy land for a member of specified years, (usually 99 years), and that the holder of a statutory right of occupancy can alienate/sell a part or all his interest in all land, which can be done by assignment, transfer, mortgage, possession or sublease, subject to obtaining the consent of the Minister. He further contends that in a contract of sale, the seller expressly mentioned a sublease as the interest being offered to the buyer, it leaves no room for conjecture in respect of the intendments of the seller to convey a sublease interest to the buyer, and he cited the case of **Afro Construction Co. Ltd. V. Minister of Works & Anor (supra)** to the effect that in construing a contract, where the words used therein are plain, and clear, the operative words should be given their simple and ordinary grammatical meaning. He opined that the Application Form signed by the plaintiff and the Letter of Allocation issued to the plaintiff clearly mentioned the nature of interest being offered to the plaintiff. The counsel also submitted that a cursory look at the sales/purchase Agreement (EXH. "D2"), it clearly contains all the requirements of a valid sublease, and this includes the commencement and duration of the terms of the sublease, but the plaintiff refused to execute same and refused to pay the 2.5% of the price of the property.

Contrary to the submission of the counsel to the plaintiff, the counsel to the defendants contends that it is settled law that the court in construing an agreement between parties, which has been expressed in writing, the court must confine itself to the letters of the agreement and

must not go outside of its scope in deciphering the intention of the parties to the agreement, and he cited the case of **Kaydee Ventures Ltd V. Hon. Minister FCT & Ors (supra),** and he submitted that from the headings and contents of EXH. "A11", "A15" and "A17" it is apparent that parties never intended those documents to form part of the agreement between them or to govern their relationship, and the court cannot make reference to any of the above mentioned exhibits.

The counsel tried to distinguish the case of **Adelabu & Anor. V. Saka & Ors (supra)** with the instant case, and he submitted that the decision of a superior court is only an authority to subsequent cases with similar facts and issues, and he cited the case of **Maitangaran & Anor. V. Dankoli & Anor (supra),** and he urged the court to discard the argument of the counsel to the plaintiff.

Thus, on this issue, both the plaintiff and the defendants made reference to EXH. "A8"/"D1", EXH. "A3" and EXH. "A6", and "a11", "A15" and "A17" in trying to convince this court as to the intention of the parties. See the case of **Cannitel Int'l Co. Ltd V. Solel Boneh Nig. Ltd. (2017) All FWLR (pt 891) p. 905 at pp. 920 – 921; paras. G – A** where the Supreme Court held that the meaning to be imposed on a contract is that which is plain, clear and the obvious results of the terms used when construing documents in a dispute between the two parties, the proper course is to discover the intention or contemplation of the parties and not to input into the contract ideas not potent on the face of the document. In the instant case, it is on the above premise that I have to look at the exhibits referred to in this issue with a view to look at the wordings and to decipher the intention of the parties.

EXH. "A8" was tendered by the plaintiff, while EXH. "D1" was tendered by the defendants, and both documents are the same, which is an Application Form filled by the plaintiff while expressing his willingness to purchase 3 bedroom detached bungalow with Guest Room (carcass Building, known as House No. C7, Clobek Crown Estate, Airport Road, plot 1946, Sabon-Lugbe East Extension, Lugbe, FCT, Abuja at the rate of N15,000,000.00 (Fifteen Million Naira).

The Form was filled on the 9th day of February, 2013 by the plaintiff and particularly sections A, B and C of it. Section (A) contains the personal data of the plaintiff, section (B) contains the type of house and the price and section (C) contains the declaration or rather the agreement of the plaintiff and the Form was duely signed and dated by the plaintiff, and his passport photograph was affixed in EXH. "D1".

Under section (B) of the document, and under NB in paragraph 1, it reads:

> **"The 2.5% Legal Fees is for the preparation of the Deed of Sublease".**

By the above, it can be construed to mean that the plaintiff being the applicant should note that he would pay 2.5% of the purchase price for the preparation of the Deed of sublease.

More so, under section (C) with the caption "**DECLARATION/AGREEMENT BY APPLICANT** at paragraph 10, it reads:

> **"I/we agree to pay the Government Official fees and all other fees leading to the engrossing and registration of the Deed of Sub-lease and the issuance of Certificate of Occupancy."**

By the above paragraph, it can be construed to mean that the plaintiff being the applicant has agreed to pay the Government official fee and all other fee leading to the registration of the Deed of Sub-lease and the issuance of the Certificate of Occupancy.

Now, from the above, it can be inferred that the plaintiff has noted paragraph 1 under NB in section (B) of the Application Form, and the legal fees is for the payment for the preparation of the Deed of sub-lease. The plaintiff has also agreed to pay government official fee and all other fees leading to the registration of the Deed of sub-lease; this is because he signed the document.

The plaintiff in trying to convince the court and to discard the content of the Application Form averred in paragraphs 6, 7, 14, 15, 16, 17, 20, 21 and 41 of his statement of claim, in paragraphs 7, 8, 15, 16, 17, 18, 21, 22 and 42 of his witness statement on oath stated that there were discussions between him and the 2nd defendant that when he was issued with the Application Form by the 2nd defendant for the purchase of the house, he noticed that in the first paragraph of page 2 thereof, there is a requirement that he was to pay 2.5% Legal fees for the preparation of a Deed of Sub-lease, and he was alarmed that he agreed to buy the said house and not to acquire interest in the said house by way of a sub-lease.

It is also the case of the plaintiff that the 2nd defendant explained to him that he should not bother about it as the Application Form (EXH. "A8"/"D1") was in a standard form that was being issued to all intending purchases of houses in the estate. That the 2nd defendant explained to the plaintiff that the defendants were selling the house absolutely to him upon payment of the price and that the defendant will not

be entitled to the reversion hence no specific term of years was stated in the said Application Form.

The plaintiff was challenged during cross-examination, when he was asked to produce any record or document showing that there were such discussions with the 2nd defendant, and he could not produce any.

Deducing from the above, the plaintiff knowing fully well the content of the Application Form, he went ahead and signed it. In the circumstances, he is estopped by his signature to a document or rather the Application Form, whether he reads or understands it or not. See the case of **Enemchukwu V. Okoye (2018) All FWLR (pt 929) p. 231 at 249; paras. C-F** where the Court of Appeal, Enugu Division held that in the absence of fraud, duress or plea of non est factum, the signature of a person on a document is evidence of fact that he is either the author of contents of the document that are above his signature or that the contents have been brought to his attention. It does not matter that he did not read the contents of the document before signing it. A party is estopped by his signature to a document whether he reads or understands it or not. It is only a party that has been mislead into executing a deed or signing a document essentially different from what he intended to execute or sign that can plead non est factum as a defence in action against him. See the case of **Kano V. Galeon (2012) All FWLR (pt 613) p. 1969 at 1984; paras. A-G,** where the court held that a person's signature signifies an authentication of that document that such person holds himself out as bound or responsible for the contents of such a document. See the cases of **Fari V. Federal Mortgage Finance Ltd (2004) All FWLR (pt 235) p. 33 at pp. 55 – 56, paras. F-A; Zein V. Geidam (2004) All FWLR (pt 237) p. 461 at 481, paras. G-H; GTB Ltd V. Interdrill Nig. Ltd. (2007) All FWLR**

(pt 366) p. 763 at 773; paras. D-E; and **Okoli V. Morecab Finance (Nig.) Ltd. (2007) All FWLR (pt 369) p. 1172 at 1193, paras. F-G.**

In the instant case, the plaintiff did not allege fraud, duress or misrepresentation in his statement of claim. See the case of **Zein V. Geidam (supra)** where the court held that where fraud is alleged in a civil suit, proof is beyond reasonable doubt. Fraud must be distinctly alleged and distinctly proved, it is not allowed to leave fraud to be inferred from facts. In the instant case, the plaintiff did not distinctly allege or prove fraud. So, to my mind, misrepresentation itself amounts to fraud, however, no allegation of fraud is made against the 2nd defendant by the plaintiff.

The plaintiff gave evidence by filing his Witness Statement on Oath and in which he adopted same. He wanted to vary the contents of the Application Form by alleging that he has had an oral discussions with the 2nd defendant in making him to believe that the purchase of the house is not based upon sub-lease. See the case of **Bongo v. Gov., Adamawa State (2012) All FWLR (pt 633) p. 1912 at 1942; para. B,** where the Court of Appeal, Yola Division held that, oral evidence is inadmissible either to add or subtract from the contents of a document. In the instant case, the attempt by the plaintiff to vary the contents of the Application Form which he signed will not be condoned by this court.

On the document EXH. "A3" which is the Letter of Allocation, and in it, there are terms and conditions and it reads:

> **"This Allocation is subject to the following terms and conditions:**

3. A payment of 2.5% of the purchase price shall be made for Legal Fees for the preparation of the Deed of Sublease.

5. The buyer shall be responsible for the payment of all Government official fees and all other fees and expenses leading to the engrossing and registration of the Deed of sub-lease and the issuance of Certificate of Occupancy."

From the above, it can be inferred that it is made known to the plaintiff that the allocation letter is subject to the fulfillment of certain conditions including those in paragraphs 3 and 5, which categorically point at that the plaintiff would be responsible for the payment of 2.5% as legal fees and other fees and expenses for the registration of the Deed of sublease.

It is also in the Allocation Letter EXH. "A3" that the plaintiff was asked to signify his acceptance of the offer by signing and returning the attached duplicate letter within three (3) days from the date of the letter of allocation. However, I looked at EXH. "A3" and I have not seen the duplicate copy of the allocation letter in which the plaintiff would sign and return within three days. In essence, no document as duplicate copy of the allocation letter was attached to EXH. "A3", and by that it can be inferred that the plaintiff has not accepted the offer.

In the circumstances, I am of the firm view that the plaintiff was issued with the allocation letter dated the 14th day of February, 2013 but does not accept the offer, and to this, I therefore hold.

EXH. "A6" is an agreed acknowledgment dated the 21st February, 2013 wherein it is stated that the sum of N15,000,000.00 was received by the 1st defendant as the purchase price. The plaintiff now contends that the 1st

defendant acknowledged that he purchased the property in issue and not a sublease.

EXH. "A11" is the Facility Connection Fee which is a memo written by the 1st defendant to the plaintiff, and in it, the expression used is "your house".

EXH. "A15" is a letter written by the 1st defendant to the plaintiff captioned "Installation of Personal Generator in the Estate and violation of Estate Rules dated 28th January, 2015 wherein it is stated and the expression used is "your house".

EXH. "A17" is a letter from the 1st defendant to the plaintiff and is captioned:

"**RE-ESTATE SERVICE CHARGE FOR 2015"** dated 5th March, 2015 and in it the plaintiff is referred to as "house owner"

According to the plaintiff, those documents confirmed that it was an outright sale and not a sublease, as the 1st defendant ceased using the word sub-lease, which the defendants contended that those documents EXH. "A6", "A11", "A15" and "A17" are not contract documents or rather documents forming the contract.

It is pertinent to note that in the Application Form (EXH. "A8"/"D1") and more particularly in paragraph 2 under "Declaration/Agreement by Applicant", the plaintiff agreed that if an allocation is given to him, full payment of the purchase price shall be made within 30 days of the date of the offer. The plaintiff in satisfaction of this condition paid the sum of N15,000,000.00 and was acknowledged by the 1st defendant in EXH. "A6", and therefore, to my mind, EXH. "A6" forms part of the contract documents, and I therefore so hold.

It is also in the Application Form (EXH. "A8/"D1") that the plaintiff agreed to pay the facility management fees as and when due, and EXH. "A11" is a memo written by the 1st

defendant to the plaintiff which is a demand for payment of the sum of N75,000.00 for water connection fee and electricity connection fee. By the above, it can be inferred that EXH. "A11" forms part of the contract documents, and to this, I so hold.

It is also in EXH. "A8"/"D1" in paragraph 11 wherein the plaintiff agreed to be bound by the rules guiding residents of the estate, and EXH. "A15" is a letter by the 1st defendant drawing the attention of the plaintiff that it was against the rules for the plaintiff to have installed a generator in the property, and it is a demand for the generator to be uninstalled by the plaintiff. To my mind, this is also part of the contract documents, and to this, I so hold.

It is also in EXH. "A8"/"D1" that the plaintiff agreed to bear payment of charges, and in furtherance to that a letter dated the 5th March, 2015, was written to the plaintiff by the 1st defendant urging him to pay the service charge, and to my mind, EXH. "A17" forms part of the contract documents. So the case of **Co-operative Development Bank Plc V. Ekanem (2010) All FWLR (pt 511) p. 834 at 845; paras. G-H** where the Court of Appeal, Calabar Division held that in the interpretation of contracts involving several documents, the trial court can only determine the issues before it on the basis of the documents including letters relating to the contract and the conduct of the parties. See also the case of **Udeagu V. B.L.C. Plc (2005) All FWLR (pt 276) p.** In the instant case the letters written by the 1st defendant to the plaintiff and the conduct of the plaintiff is taken into consideration in arriving that EXH. "A6", "A11", "A15" and "A17" form part of the contract documents, and therefore, the argument of the counsel to the defendants is discountenanced.

Now, from the contents of EXH. "A8"/"D1", "A3", "A6", "11", "A15" and "A17", it can be inferred that the 1st defendant had used the words "Purchase and Sublease". In determination of the intention of the 1st defendant, I refer to paragraph 5 of EXH. "A8"/"D1", which reads:

> **"That physical possession of the house shall be only on completion of full payment".**

The plaintiff in paragraph 36 of his witness statement on oath told the court that he moved into the house in question, and therefore, it is certain that the plaintiff is in possession of the property after payment of the purchase price, and by EXH. "A6" it is evident that he has paid the purchase price of N15,000,000.00.

The plaintiff having paid the purchase price of N15,000,000.00 and moved into the property, I hold the view that he has acquired an equitable interest in the property. See the case of **Ali V. Ugwu (2012) All FWLR (pt 619) p. 1082 at 1106; paras. E-F** where the Court of Appeal, Yola Division held that where a purchaser of land or leasee is in possession of the land and has paid the purchase price/money to the vendor or lessor, then in either case, the purchaser or leasee has acquired an equitable interest in the land which is as good as a legal estate. In that case, the court held that the plaintiff was able to prove that he paid the purchase price for the land in dispute to the vendor, therefore, the trial court granted his claim for declaration of ownership.

So, taking into consideration EXH. "A6", "A11", "A15" and "A17" and in line with the case of **Ali V. Ugwu (supra)** I hold the view that the intention of the parties, as at now, is to confer an equitable interest in the property to the plaintiff. see the cases of **Gbadamosi V. Akinloye (2015) All FWLR (pt 783) 1927 at 1944, paras. C-D; Akaniyene V. Etim**

(2013) All FWLR (pt 209) p. 1169 at pp. 1180 – 1181, paras. G-B; Nsiege V. Mgbemena (2007) All FWLR (pt 372) p. 1274 at pp. 1792 – 1793, paras. E-D Per Oguntade JSC; and **Ugwunze V. Adeleke (2008) All FWLR (pt 408) p. 330 at 347, paras. E-F.** In the instant case, the plaintiff has fully paid the purchase price and has already moved into the property with the consent of the 1st defendant. See the case of **Shobanjo V. Ikotun (2003) FWLR (pt 172) p. 1753 at 1764; para. G** where the Court of Appeal, Lagos Division held that where a person pays the purchase price for land and obtains a purchase receipts with covenant to execute a conveyance on demand, coupled with possession, an agreement for sale is created. In the instant case the fear of the plaintiff in the use of the word – sub-lease by the defendants in the Application Form, and inspite of the word used in the Form, it only stopped at that and the payment of the purchase price was affected and the receipt of such sum was acknowledged by the defendants and that the plaintiff has moved in.

The defendants relied on section 22(1) of the Land Use Act Cap. L5 LFN 2004 which provides:

> **"(1) It shall not be lawful for the holder a statutory right of occupancy granted by the Governor to alienate his right of occupancy or any part thereof by assignment, mortgage, transfer of possession, sub-lease or otherwise howsoever without the consent of the governor first had and obtained."**

By the above quoted provision of the Land Use Act no holder of statutory right of occupancy granted by the Governor can alienate by way of sublease or otherwise howsoever without the consent of the Governor first had and obtained, which means with the consent of the Government the defendant can sublease. In the instant

case, the land or property is said to have been granted by the minister, and by virtue of sections 297(2), 299 (a) and 301 (a) of the constitution of the Federal Republic of Nigeria, 1999 (as amended) to the effect that the executive powers of a governor can be exercised by the president, and the ownership of all lands in the FCT is vested in the Federal Government and reference to the Governor in section 22(1) of the Land Use Act is also reference to the president of the Federation. Also by sections 147 and 302 of the Constitution the Minister of the Federal Capital Territory, Abuja shall perform the powers and such functions as may be delegated by the president, and the Minister grants statutory right of occupancy.

To go further, the provisions of section 23 of the Land Use Act provides in essence that a sublease of a statutory right of occupancy may, with the prior consent of the Governor and with the approval of the holder of the statutory Right of Occupancy, demise by way of sub-under lease to another person the land comprised of in the sublease held by him or any portion of the land, and by section 23(2) of the Land Use Act it applies mutatis mutandis to any transaction under subsection (1) of section 23 as if it were a sublease granted under section 22 of the Act. By this, it could be inferred that by the use of the word sublease by the defendant is not fatal to the transaction between the two parties this is because, the law makes provision under section 22(1) that the holder of the statutory right of occupancy, like the 1st defendant in this case, can lawfully alienate his right of occupancy or any part thereof by sub-lease, but with the consent of the Minister of the Federal Capital Territory. By this also, it can be inferred that the payment of the purchase price and the taking possession of the property a contract of sale has been created which

confers equitable interest on the plaintiff. Let me refer to the definition of the word sublease which means or denotes a lease by a leasee to a third party, conveying some or all of the leased property for a shorter term than that of the lease, who retains a reversion in the lease. By the above definition of the term sublease, even though, no statutory right of occupancy is attached by the defendants, it will be taken that the statutory right of occupancy, if granted to the 1st defendant, will cover the period of 99 years, and the lessor will retain a reversion in the lease. In the instant case the, Deed of Conveyance of the sublease has not been executed by the parties, which according to the counsel to the defendants, the duration is encapsulated in. see the case of **Saad V. Kwala Inv. & Prop. Dev. Co. Ltd (2019) All FWLR (pt 999) p. 454 at 475; paras. D-F.**

Thus, the plaintiff having an equitable interest in the property means he has all or any part of a legal or equitable claim or right in the property in issue, and that right is not absolute, and to this, I so hold.

On the whole, I have come to the conclusion that the plaintiff has an equitable right over the property issue and not absolute one, and to this, I so hold. The issue No. 3 is resolved in favour of the defendants.

On the issue no. 4, it is the contention of the plaintiff that the defendants, having failed to force the plaintiff to execute their unilaterally prepared documents, unlawfully resorted to revoke the sale of the said property vide their letter of revocation dated 23rd February, 2015 (EXH. "A4" which they contend is fundamentally defective for the reasons that:

(a) The said Letter of Revocation was not signed or issued by the defendants and neither was same on its face issued upon the authority of the defendants

as it was issued by a complete stranger to the transaction between the parties and urged the court to disregard it.

The counsel referred the court to the case of **Rebold Industries Ltd. V. Magreola & Ors (supra)** to the effect that it is always the parties who must stand or fall, benefit or lose from the provisions of the contract.

(b) The said revocation is incomplete disparity with paragraph 6 of the Application Form (EXH. "A8"), and contends that the defendants, having received full payment for the said house C7, Clobek Crown Estate, Lugbe, Abuja wherein they acknowledged the said payments, they cannot revoke the allocation of the said property.

While, it is the contention of the defendants that paragraph 17 of EXH. "A8" and paragraph 9 of the EXH. "A3" clearly provide for the defendants' power to revoke the plaintiff's application of the house in issue upon failure of the plaintiff to comply with any of the terms contained in EXH. "A8" and "A3", and they further contend that out of the various conditions which the plaintiff failed to comply include to pay 2.5% of the purchase price of the house in issue as legal fees for the preparation of the deed of sub-lease and to also abide by the Bye-Laws, Rules and Regulations. The counsel to the defendants contents that the Letter of Revocation was written by the legal representatives of the defendants and was signed by that legal representative of the defendants on behalf of the defendants. The counsel called for the court to consider EXH. "D2" which is the response of the letter made for the revocation of the allocation in which the expression "and for aiding Clobek Nig. Limited to perpetrate fraud against unsuspecting members of the public" and he urged the

court not to declare EXH. "A4" defective because the plaintiff has not demonstrated that he was misled by any of those reasons, and he cited the case of **CBN V. Okefe (2015) LPELR – 24825 (CA).**

Thus, a company or corporate body not being a human being cannot act on its own and so carries out activities through human beings who are the operators or managers of the corporate body and so the manager or operators do not become personally liable for acts carried out for and on behalf of the company and in the course of the management or day to day business of the company. The follow up is that the company is an abstraction and operates through living persons and so an officer of the company takes an action in furtherance of the affairs of the company who is the principal and it is that principal that is liable for any infraction occasioned by those acts and not the official or employee. Above is the decision of the Supreme Court in the case of **Julius Berger Nig. Plc V. T.R.C. Bank Plc (2019) All FWLR (pt 1024) p. 246 at pp. 291 – 292; paras. H-C.** In the instant case the counsel to the defendants who wrote EXH. "A4" being a letter captioned "Revocation of Allocation House NO. C7" has never been an officer or employee of the 1st defendant, and by the letter it is shown that a legal practitioner by name Barr. Lady N. Udechukwu said "consequently, the Allocation issued to you for House No. C7 in Clobek Crown Estate, plot 1946 Sabon Lugbe East Extension Layout, FCT, is hereby revoked". It is not shown whether Barr. Lady N. Udechukwu was acting on behalf of the 1st defendant. It is also not shown whether Barr. Lady N. Udechukwu is an employee manager or operator in the 1st defendant. It is on the above premise that I have to declare EXH. "A4", that is the Revocation of Allocation House No. C7 dated the 23rd day of February,

2015 as defective, and it can no longer stand, having not made by the 1st defendant.

On whether the 2nd defendant is a necessary party, issue No. 5 I still refer to the case of **Julius Berger Nig. Plc V. T.R.C. Bank Plc (supra)** and to hold that the 2nd defendant being the Executive Director/Chairman and alter ego of the 1st defendant has become an agent to the 1st defendant, and in the event of any liability, the 1st defendant bears it and not the 2nd defendant. See the case of **Ogboyaga Ltd. V. Nnebe (2016) All FWLR (pt 820) p. 1313 at 1325; paras. A-D.**

In resolving the issue No. 5, I hold the view that is pertinent to look at the pleadings and the evidence with a view to see whether the 2nd defendant is not a necessary party in this case; this is because where the matter cannot be effectually and effectively be determined without his involvement, then he is a necessary party.

Now looking at the documents relied upon by the plaintiff, all are in the name of the 1st defendant, Clobek Crown Estate and not in the name of the 2nd defendant, and therefore for the fact that the 2nd defendant acted on behalf of the 1st defendant does not make him a necessary party; and to this, I therefore so hold that the 2nd defendant is not a necessary party since the principal has been disclosed, that is Clobek Crown Estate which is a limited liability company duly registered in Nigeria and carries on the business of real estate. See the case of **Amadiume V. Ibok (2006) All FWLR (pt 321) p. 1247.**

I now come to the issue No. 6 as to whether the plaintiff is entitled to the reliefs sought?

In this judgment, I hold the view that the revocation letter EXH. "A4" is defective, the plaintiff is entitled to relief in

paragraph (a) of the reliefs sought. The Revocation letter made is hereby set aside.

Thus, I held earlier on, in this judgment that there are contain in the Application Form EXH. "A8"/"D1" which has been duely executed by the plaintiff, and EXH. "A3" which has not been executed by the plaintiff has some terms and conditions to be fulfilled by the plaintiff. One of the declarations agreed by the plaintiff in EXH. "A8"/"D1" is in paragraph 10 which reads:

> **"I/we agree to pay the Government official fees and all other fees leading to the engrossing and registration of the Deed of sub-lease and the issuance of Certificate of Occupancy".**

By this, it could be inferred that the plaintiff has agreed from the onset to have a Deed of Sub-lease with the defendants, and where the sales/purchase agreement prepared by one Barr. Lady N. Udechukwu on behalf of the defendant which, according to the plaintiff, contains, among other things, that the 1st defendant reserved the reversionary interest to my mind, that was what was agreed by the plaintiff.

It was decided in this judgment earlier on that the plaintiff could not prove that there was a discussion between him and the 2nd defendant which the later told the plaintiff that the plaintiff would be consulted together with the other house owners to mutually agree on the terms and conditions in the said facility management agreement and nothing therein that will be untoward nor detract from the outright sale of the said house to the plaintiff by the defendants. In the circumstances, the relief in paragraph (b) is also refused.

The plaintiff having not entitled to relief in paragraph (b), He is not also entitled to the relief in paragraph (c).

The plaintiff is not entitled to the relief in paragraph (d) based upon the finding of the court above.

It is also the finding of this court that the intention of both parties was to execute a Deed of Sub-lease with respect to the house in issue, and by virtue of the provisions of sections 22(1) and 23(1) and (2) of the Land Use Act, L5, LFN, 2004, the defendant intends to have the reversionary right in the transaction, and therefore, the relief in paragraph (e) also failed.

The plaintiff agreed in paragraph 11 of EXH. "A8"/"D1" to be bound by the rules guiding residents of the estate and shall pay the facility management fees and when due, more so agreed in paragraph 9 of same EXH. "A8"/"D1" to pay all these charges as are applicable, and therefore, relief in paragraph (f) also failed

The plaintiff has agreed in EXH. "A8"/"D1", more particularly in paragraph 14 to sign the facility management agreement with the 1st defendant and pay the annual facility management fee and any arrears, and therefore, relief in paragraph (g) is also refused.

It was agreed by the plaintiff that the decision on all issues of allocation and prices by the 1st defendant shall remain discretionary, exclusive and final to the 1st defendant under all circumstances, and that he would be bound by the rules guiding residents of the estate, and by the Bye-laws, Rules and Regulations EXH. "A5" in paragraph 4.5 wherein it states that:

> **"Personal Power Generator in the estate are at all times prohibited"**

By the above, and having the plaintiff agreed to be bound by the such rule in paragraph 4.5 of EXH. "A5", the

plaintiff is not entitled to the relief in paragraph (i), and the reliefs in paragraphs (j) and (k) also failed.

There is no any breach on the part of the defendants in the transaction, and therefore the relief in paragraph (ℓ) is refused.

The plaintiff has not tendered any receipt of payment for the professional fees for the prosecution of this suit and has therefore not proved that he is entitled to such relief, and it therefore failed.

It is pertinent at this juncture to consider the status of the transaction between the plaintiff and the defendants.

Thus, in the whole of what transpired between the plaintiff and the defendants, it was only that the plaintiff has filled the Application Form EXH. "A8"/"D1" which contains terms and conditions to be fulfilled by the plaintiff, and that the Allocation Letter EXH. "A3" was issued which the plaintiff has not indicated that he has accepted the offer, however, upon full payment of the purchase price, the plaintiff moved into the property. From there the disagreement ensued between the both parties, and even the Sales/Purchase Agreement is not signed or executed by the plaintiff. in essence, the contract is subject to the fulfillment of certain conditions as are provided in the Application Form EXH. "A8"/"D1", Allocation Letter EXH. "A3" and the Bye-Laws, Rules and Regulations EXH. "A5". Therefore, I am of the firm view that the contract is subject to the fulfillment of such conditions, and therefore, it is not formed and it is not binding on the parties. See the case of **Atiba Iyalamu Savings & Loans Ltd V. Suberu (2019) All FWLR (pt 1008) p. 953 at 970, paras. G-H** where the Supreme Court held that where a contract is made subject to the fulfillment of specific terms and conditions, the contract is not formed and not binding unless and until those terms and conditions

are fulfilled. In the instant case, right from the onset there was no contract between the plaintiff and the defendants, as the conditions in EXH. "A8"/"D1" , "A3" and "A5" must be fulfilled before it becomes binding, and therefore, the termination letter or rather revocation letter of the contract by the defendants should not have been made as the contract was not formed. The defendants could not have put something on nothing and expect it to stand, it will certainly fall. See the case of **Adeyemi V. V.O. Achimu/NDIC/Assurance Bank Ltd (2016) All FWLR (pt 814) 144 (CA).**

It is based upon the above premise, I hold that the plaintiff is not entitled to relief in paragraph (n) and is hereby refused.

On the whole, the plaintiff is entitled to the relief in paragraph (h) in pursuance of his fundamental right to freedom of movement.

The 1st defendant, his agents, servants, assigns, privies by whatever name called are restrain from disturbing the movement of the plaintiff and his family members in and outside the Clobek Crown Estate.

Hon. Judge
Signed
4/3/2022

Appearances:

S.O. Ekiyoi Esq appeared for the plaintiff.

C.J. Aniugbo Esq appeared for the defendants.