IN THE HIGH COURT OF JUSTICE
FEDERAL CAPITAL TERRITORY OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT APO – ABUJA
ON, 5TH MAY, 2022.
BEFORE HIS LORDSHIP:- HON. JUSTICE A. O. OTALUKA.

SUIT NO.:-FCT/HC/CV/1306/2017

BETWEEN:

CLOBEK NIGERIA LIMITED.:.....CLAIMANT

AND

ANEKE PASCAL:……...DEFENDANT

Elochukwu Wilson Okereke for the Claimant.
Ogbonanya O. Kanu with RoselineObiakor for the Defendant.

JUDGMENT.

The Claimant by a Writ of Summons dated and filed the 29th day of March, 2017 brought this suit against the Defendant claiming as follows:

1. A declaration that the allocation of the 3-Bedroom Detached Bungalow with Guest Room known as House No. D-6 situate at Clobek Crown Estate, Plot 1946, Sabon-Lugbe East Extension, Lugbe, Abuja, Federal CapitalTerritory by the Claimant to the Defendant has become vitiated due to the Defendant's fundamental breach of the terms of his allocation.
2. Delivery up and yielding possession of the said 3-Bedroom Detached Bungalow with Guest Room known as House No. D6 situate at Clobek Crown Estate, Plot 1946, Sabon-Lugbe East Extension, Lugbe, Abuja, Federal Capital Territory, on the ground of the Defendant's fundamental breach of the terms of his allocation.

3. N10,000,000.00 being general damages for damages done to the Claimant's structures in and about the 3-Bedroom Detached Bungalow with Guest Room known as House No. D6 situate at Clobek Crown Estate, Plot 1946, Sabon-Lugbe East Extension, Lugbe, Abuja, Federal Capital Territory, without the consent in writing of the Claimant and against the will of the Claimant.
4. N5,000,000.00 being general damages for injurious falsehood.
5. Any just and convenient ancillary relief.

The case of the Claimant as per its Statement of Claim is that by a letter dated 21st March, 2013, it allocated a 3-Bedroom detached bungalow with guest room to the Defendant following the Defendant's application for same vide an application form dated 22nd February, 2013.

The Claimant averred that the Defendant in due course, signed a sub-lease sale and purchase agreement as well as Facility Management Agreement with the Claimant. That in the said agreements, the Defendant covenanted not to alter or add to the elevation, external structure or stability of the buildings and structures erected on the plot pursuant to the approved architectural and technical plans, and not to erect or maintain or permit to be maintained any wall, fence, partition, building, or structure whatsoever on the plot, whether movable or immovable, whether temporary or permanent other than those erected thereon in accordance with the approved architectural and technical plans, without prior written consent of the managing Agent.

The Claimant stated that in spite of the undertakings and obligations assumed by the Defendant under the application form, the letter of allocation,the facility management agreement, and the sale agreement, the Defendant without the

consent of the Claimant, and by force, began to alter the 3-bedroom detached bungalow by inter alia, installing external door totally unacceptable to the Claimant. That the Claimant reminded the Defendant of his obligations, undertakings and binding promises, but the Defendant remained obdurate and would neither cease nor desist. That consequently, the Defendant by a letter dated 16th September, 2015 revoked the Defendant's allocation.

The Claimant averred that upon receipt of the said revocation letter, the Defendant fabricated a report of "Criminal Conspiracy, Obtaining under False Pretences, Assault, Intimidation and Wrongful Restraint" against the Claimant and officers of the Claimant, which the Police investigated and dismissed. That following the retirement of the initial IPO in 2017, the Defendant repeated the same spurious report, following which one ACP Adamu A. Elelema, briskly ordered the Claimant's CEO, not to interfere with the Defendant's constructions on the premises.

That being emboldened by the Police's breach of the Claimant's right to fair hearing on his behest, the Defendant escalated his breach of his undertakings and obligations under the application form filled by him and under the letter of allocation and facility management contract as well as the sales agreement signed by him. That the Defendant completely ignored the revocation notice and has continued to deface the ambiance and environment, including the external door of the house.

The Claimant further averred that the allegation of "Criminal Conspiracy, Obtaining under False Pretences, Assault, Intimidation and Wrongful Restraint" made against it by the Defendant to the Police is totally false and grossly injurious to it, and has occasioned grave injury and harm to it as a juristic

entity. That it has expended much time and expense answering to the said spurious allegation which was in due course, never investigated.

Following the filing of defence and counter-claim by the Defendant, the Claimant filed a defence to the Defendant's counter-claim wherein the Claimant averred that it did not lock up the property in question as alleged by the Defendant, and that it neither drove away the Defendant's workers nor took laws into its hands.

The Claimant further averred that it requested the Defendant, vide the first letter of withdrawal of allocation dated 30th March, 2015, to come for a refund of the N15,000,000.00 paid for the purchase of a sublease interest in the property and other funds established to have been expended on additional works on the property. That rather than adhere to the intimations by the Claimant, the Defendant began to forcibly impose his will on the officials of the Claimant,which led the Claimant to write a second letter of withdrawal of allocation dated 16thSeptember, 2015 to the Defendant, which also notified the Defendant to come for a refund, after which the Claimant peaceably took back possession of the property by locking its gate.

The Claimant stated that instead of coming for a refund, the Defendant maliciously and with intent to further intimidate and bend the Claimant to his will, wrote a report to the Nigerian Police Force, fabricating all sorts of lies against the Claimant.

The Claimant averred that it is not responsible for any trauma or financial loss that the Defendant may have suffered as it was the Defendant that breached the agreement between the parties. That notwithstanding the breach by the Defendant, the Claimant magnanimously offered to refund the Defendant the funds expended on the property, but the Defendant rather

chose to bully the Claimant using the officers of the Nigerian Police Force.

One Francis Maande, an employee of the Claimant gave evidence for the Claimant at the hearing of the case. Testifying as PW1, he adopted his Witness Statement on Oath as well as his Further Witness Statement on Oath wherein he affirmed the averments in the Statement of Claim and defence to the Defendant's counter-claim respectively. He also tendered the following documents in evidence.

1. Application Form – Exhibit PW1A.
2. Letter of Allocation – Exhibit PW1B.
3. Estate Bye-Laws, Rules and Regulations - Exh. PW1C.
4. Sale/Purchase Agreement – Exhibit PW1D.
5. Withdrawal of Allocation for House No. D6 – Exh PW1E.
6. Specimen Signatures of PW1 – Exhibit PW1F.
7. Letter of Non-Compliance– Exhibit PW1G.

Under cross examination, the PW1 stated that he signed the Allocation Letter, exhibit PW1B. Following the allegation of falsification of signature by the learned defence counsel against the PW1, the Court directed that the PW1 be given a clean sheet of paper to sign his signature. The PW1 thus signed two signatures on the paper (Exhibit PW1F) and explained that the first signature on the paper is his current signature while the second one was signed for David Agbo and that he used same from 2012 – 2014.

The PW1 stated that the Claimant did not lock the premises on 23/3/15 when Mr. David Agbo went to the house and chased away the Defendant's workers; that it was locked on the orders of the Company (Claimant) after the issuance of the revocation order.

The PW1 confirmed that as at the day he was testifying, the premises was still locked. He further confirmed that as at the time of the issuance of Exhibit PW1G, the Defendant had paid the sum of N15m for the property. He stated that the reason for Exhibit PW1G was because the Defendant was altering the exterior of the house against the original standard. That there was a specific type of door in use in the estate specified in paragraph 12.00 of Exhibit PW1C.

In defence of the suit, the Defendant filed a statement of defence dated 22nd September, 2017.

The Defendant in his Statement of Defence averred that what he signed with the Claimant was a Sale/Purchase Agreement dated 6th day of December, 2014 and not a sub-lease sale and purchase Agreement.

He stated that the external door he installed did not violate either the Estate Bye-Laws Rules and Regulations or the Sale/Purchase Agreement, but was only unacceptable to the Claimant. That the Claimant never reminded him of any of his obligations and undertakings but rather that the Claimant's Managing Director, Mr. Bernard Ekwe and Mr. David Agbo, came to his house with their officials/staff and drove away his workers from the building, locked up the gate and pasted on the Claimant's building an instruction: "STOP WORK", thereby taking the laws into their hands.

The Defendant averred that before he made a report to the Police against the Claimant; that the Claimant had already taken him to the LugbeDivisional Police Station, causing the Police to come to the property to verify the claim of breach of the Estate Bye-Laws, Rules and Regulations, and Sale/Purchase Agreementalleged by the Claimant, and when the Lugbe Police could not come to any conclusion as to

whether or not there was a breach on the side of the Defendant, he had to go to the Force CID, Garki, Abuja where the Police also dismissed his report. He stated that he did not know about the retirement of the former officer who initially investigated the first report he wrote; that he only wrote the second report sometime in February, 2017 to Force CID to re-investigate the said matter since the property he bought from the Claimant since 21st March, 2013 had been locked up by the Claimant since 23rd March, 2015, with the materials he bought for the building work dilapidating due to the action of the Claimant.

The Defendantalso counter-claimed against the Claimant vide an amended counter-claim dated and filed the 5th day of October, 2018.

He averred in his counter-claim that on the 22nd day of February, 2013, he completed an application form for the purchase of a 3-bedroom detached bungalow (uncompleted), at the rate of N15,000,000.00 in the office of the Claimant, and that before the allocation letter was given to him, he made the first instalment payment in the sum of N6,000,000.00 to the Claimant on 7th March, 2013.

The Defendant/Counter-Claimant averred to the effect that the Claimant allocated to him house No.D-6, Clobek Crown Estate, vide a letter of allocation dated 21st March, 2013, and that he completed the payment thereof on 30th October, 2014. That after he made the final payment for the property, the Claimant sent to him the Sale/Purchase Agreement on 6th December, 2014, which he signed the same day. Then, that on 13th January, 2015, the Estate Bye-Laws, Rules and Regulations was sent to him and he signed same.

He stated that the Claimant failed to rectify the faults which he identified via an email to the Claimant on 30th October, 2014, namely replacement of leaking roofing sheets, and sinking rooms.

That on the 16th of March, 2015, the Claimant wrote a letter to him captioned "WITHDRAWAL OF ALLOCATION OF HOUSE NO. D-6", stating that the external door he installed altered the features of the Estate and that his refusal to comply with the Estate Bye-Laws is a violation of the conditions of the allocation of the house. Also, that on the 18th March, 2015, the Claimant wrote another letter for "NON-COMPLIANCE"stating that it was writing to express its displeasure in his non-compliance to the Estate's standard and specifications in the type of entrance doors he installed. That the Claimant in the said letter demanded that all work in his house No. D-6, be stopped with immediate effect until requisite approval be gotten from the Management.

The Counter-Claimant averred that before he could dialogue with the Claimant on the issue raised in its letter, the Claimant on 23rd March, 2015, came with its staff and locked up the house gate with padlock and pasted on both the house and the gate, the inscription, "STOP WORK". That the driving away of his workers and locking of his gate occurred within 5 days from the date Claimant wrote him the non-compliance letter, without allowing any input from him on the matter.

The Counter-Claimant further averred that from the 23rd of March, 2015 when the Claimant locked up the house which he paid N15m to purchase, he has continued to pay rent of N1,200,000.00 per annum in a three bedroom bungalow house at No. B-62, Wisdom estate, Lugbe, Abuja, where he lives with his family. He stated that his reason for paying N15m to the Claimant for the 3-bedroom detached bungalow (uncompleted)

was to stop him from further paying house rent, but that such has been defeated by the Claimant's action.

He stated that he also paid the sum of N1,500,000.00 to the Claimant for the repair of his leaking roofing sheets and the sinking rooms, which the Claimant failed to do. That he has suffered a lot of psychological trauma and great economic loss as he has continued to pay house rent since 2015 he paid for the house, till date, in addition to other damages from both the mixed sand and cement by his workers, about 25 bags of cement and POP materials left on the locked premises.

The Counter-Claimant further averred that after locking his house, the Claimant has since then been using his premises for welding works where they fabricate gates.

He thus counter-claimed against the Claimant as follows:

a. A declaration of this Honourable Court that the Counter-Claimant is the legal, Equitable and Bona fide owner of theHouse No. D-6, 3-Bedroom Detached Bungalow with a guest room (Carcass Building) situate at Clobek Crown Estate, Plot 1946, Sabon-Lugbe East Extension, Lugbe, District, FCT, Abuja, of which he had paid the sum of N15,000,000.00 (Fifteen Million Naira) only, since October, 2014, the receipt of which we annexed before this Court.
b. Special damages of N1,200,000.00 (One Million, Two Hundred Thousand Naira) only, per annum, being house rent paid by the Counter-Claimant from 25th February, 2015 to 24/02/2016, 25/02/2016 to 24/02/2017, 25/02/2017 to 24/02/2018, 25/02/2018 to 24/02/2019 and till the determination of this suit.
c. Cost of the damaged building materials in his house, i.e. damaged mixed cement and sand being

N1,000,000.00(One Million Naira) only; cost of twenty-five bags of cement, to the tune of N1,900.00 each, giving a total of N475,000.00 (Four Hundred and Seventy-Five Thousand Naira) only; cost of POP materials to the tune of N1,000,000.00 (One Million Naira) only.

d. An Order of Court compelling the Claimant to open the gate of the Counter-Claimant's house which was locked up by the Claimant since 23/03/2015 till date.
e. General damages of (sic) trespassing and/or interfering with the Counter-Claimant's house for a period of three years plus, and preventing him from having access to his house after paying the sum of N15,000,000.00 (Fifteen Million Naira) only, to (sic) the sum of N2,500,000.00 (Two Million, Five Hundred Thousand Naira) only.
f. The cost of this action stated at N1,000,000.00 (One Million Naira) only.
g. An order of perpetual injunction restraining the Claimant either by themselves, agents, servants, cronies and/or privies from any further interference, trespass whatsoever with the property of the Counter-Claimant over his House No. D-6, 3-Bedroom Detached Bungalow with a guest room (Carcass Building) situate at Clobek Crown Estate, Plot 1946, Sabon-Lugbe East Extension, Lugbe, District, FCT, Abuja.

Testifying as DW1, the Defendant/Counter-Claimant adopted his witness statement on oath at the hearing of the case and tendered the following documents in evidence.

1. Letter of Allocation – Exhibit DW1A.
2. Payment Receipt for N6m – Exhibit DW1B.
3. Two Payment Receipts for N2m each – Exhibit DW1C-C1.
4. Revocation of Allocation of House No. D6 – Exhibit DW1D.

5. GTBank Online Transfer Advice – Exhibit DW1E.
6. Email Print Out – Exhibit DW1F.
7. Certificate of Identification – Exhibit DW1G.
8. Photographs of Doors and Other Items – Exhibit DW1H-H10.
9. Letter of Non-Compliance– exhibit DW1J.
10. Withdrawal of Allocation of House No. D6 – Exh DW1k.
11. Receipts for Payment of Rent –Exhibits DW1L-L5.

Under cross examination, the DW1 admitted that he did not make the complete payment for the property within 180 days stipulated in the allocation letter, but stated that the delay was caused by the developer who did not make the building ready after he made the initial deposit of approved 30%.

He admitted that the Claimant requested him to remove the door he installed, but stated that he did not remove the door.

At the close of the evidence of DW1, the parties moved the Court to visit the locus in quo to observe the external doors in the estate vis-à-vis the external door installed by the Defendant in his property.

At the locus in quo, the Court observed that the entrance gate was locked with a padlock. The PW1 admitted that the Claimant locked the gate when the Defendant failed to comply with their entrance door specification.

On the order of the Court, the padlock on the entrance gate was broken to allow the Court access to the premises as the Claimant could not produce the key to the padlock.

Upon entry into the premises, the Defendant opened the external door to the house with his own key. The Court observed that the external door was in the process of being

installed. The installation was not completed before the Claimant stopped work and locked the gate, thereby denying the Defendant access to the premises.

The Court observed in addition, that the premises was overgrown with weeds.

The Court also went round about 4-5 other premises to observe the external doors to the houses to see if they were same. The various external doors seen by the Court were similar but not all together identical, but the Defendant's door was radically different from the rest of the doors observed by the Court.

The Court thereafter adjourned back to the Court room where the PW1 and DW1 were recalled to give evidence regarding the visit to the locus in quo.

The PW1 stated that at the locus in quo, the Court ordered the breaking of the padlock which the Claimant used to lock the gate of the Defendant's premises following his refusal to remove the external door which he installed on the house, to allow the Court access to the premises. That after the Court gained access to the premises, the Defendant opened the entrance door to the house with his key and that the Court observed the entrance door and compared it with other doors in other houses and noted the discrepancies.

He further stated that the Court ordered the Court registrar to snap pictures of the respective doors observed.

The Defence counsel told the Court that he had no cross examination for the PW1.

The DW1 in his own evidence, stated that upon arrival at the house, he observed that the gate was padlocked as it was years ago. That the Court ordered the padlock to be destroyed to enable it have entrance.

He stated that after the padlock was destroyed and access gained into the premises, he used his key to open the entrance door into the house to enable the Court see the interior of the house and the materials for building as they were since 2014.

The DW1 stated that the Court took a walk to other buildings and observed doors installed in other buildings, and took snap shots of the different doors in the estate, after which they all dismissed and returned back to Court.

The Claimant's counsel also stated that he had no cross examination for the DW1.

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

The learned defence counsel, Ogbonnia O. Kanu, Esq, in his final written address, raised four issues for determination, namely;

a. Whether the law and/or the Court will indulge a person who takes the law into his/her hands, then runs back the same Court/law for a shield?
b. Whether the Court will grant the relief sought by the Claimant before it, i.e. "a declaration that the allocation of a 3 bedroom bungalow bought and/or fully paid by the Defendant/Counter-Claimant has been vitiated by the Defendant's fundamental breach of his terms of allocation"?
c. Whether the Court in looking through the eyes of the law, will indulge a person who inflict injury on others and sees such acts as nothing simply because they feel they can hid(sic) under the umbrella of the law?
d. Whether the Defendant/Counter-Claimant is entitled to the reliefs sought before this honourable Court especially the declaration of Court that he is the legal, equitable and

bonafide owner of the house No. D-6, 3 bedroom bungalow detached with guest (sic) (carcass building) situate at Clobek Crown Estate, Plot 1946, Sabon-Lugbe East Extension, Lugbe District, FCT, Abuja which he paid the full payment thereof, and/or of the said house?

Proffering arguments on issue one, learned counsel argued that the Claimant took laws into its own hands by sending the Defendant/Counter-Claimant's workers away from the house they were working on, and by locking the gate of the said house since 18th day of March, 2015. He contended that nobody takes the law into his hand and thereafter expect the law to come to his aid.

He referred to **Gaaba v. Lobi Bank (Nig) Ltd (2003) FWLR (Pt. 173) 106** on the point that a party should not be allowed to reap any benefit out of his own fraud.

On issue two, learned counsel contended that the relationship between the Claimant and Defendant/Counter-Claimant is founded on the law of contract with all the essential elements of a valid contract present; to wit; offer, acceptance, consideration, intention to create legal relationship, and capacity to contract.

He urged the Court, on the basis of these ingredients of a contract of sale, to discountenance the claim of the Claimant that the allocation of a 3-bedroom bungalow bought and fully paid by the Defendant/Counter-Claimant has been vitiated by his fundamental breach of the terms of the allocation.

He argued that the contract of sale has been consumed between both parties and that no party will wake up and find fault in order to frustrate the other party to the contract.

Arguing issue three; learned defence counsel posited, with reliance on **A.G. Abia State v. A.G. Federation (2003)13 NSCQR 373,** that the Constitution of the Federal Republic of Nigeria is the supreme law, and that being the supreme law, the constitution will not encourage the Claimant to take laws intoits hands, and after so long, run to the same law as a shield and/or coverage over its excesses.

He urged the Court to hold that the action of the Claimant against the Defendant/Counter-Claimant was intimidating, wrong and uncalled for.

Learned counsel argued onissue four that it is trite law that if the conditions necessary for the formation of a contract are fulfilled by the parties thereto, they will be bound by the contract.

He contended that the whole conditions for the formation of a contract of sale were fulfilled by both parties in this case, and that as such, for the Claimant to go back and lock up the house, which is the subject matter of the contract, is tantamount to intimidation, oppression and acting in bad faith.

He urged the Court, on the strength of the evidence adduced before this Court, to grant the reliefs sought by the Defendant/Counter-Claimant.

The learned defence counsel also filed reply on points of law to the Claimant's final written address wherein he raised two issues for determination, namely;

1. Whether by the provisions of paragraph 7, part C, of Exhibit PW1A and paragraph 12.0 of Exhibit PW1C, the Defendant/Counter-Claimant has violated the said provisions as stated in both Exhibits?

2. Whether the law under a sale and purchase agreement between the seller and the buyer in either a house or land transaction, even if it is a sub-lease, will not transfer both legal, equitable and bona-fide title over same property, or land to the buyer?

Onissue one, learned counsel referred to paragraph 7, part C of Exhibit PW1A and paragraph 12.0 of Exhibit PW1C, and contended that no place in the two Exhibits was there any mention made of doors as an external ambience and appearance.

He argued to the effect that if door was considered as one of the external physical feature; that the Claimant would have included same in the provision of the Estate Bye-laws as it did fence,roof and paints.

He posited that the Defendant/Counter-Claimant is by no means, in violation of both paragraph 7, part C, PW1A and paragraph 12.0, PW1C.

On issue two, he posited that in a transaction for the sale of property; that payment for the property and signing of agreement for the transfer of title to the property are the things that give right/title to the buyer of the property.

He urged the Court to grant the reliefs sought by the Defendant/Counter-Claimant in this suit.

In his own final written address, the learned Claimant's counsel, C.J.Aniugbo, Esq, raised two issues for determination, namely;

a. Whether, upon consideration of the evidence before this Honourable Court and the relevant provisions of the extant law, the Claimant is entitled to the reliefs sought in the Claimant's statement of claim dated 27th March, 2017?

b. Whether, upon consideration of the evidence before this Honourable Court and the relevant provisions of the extant law, the Defendant is entitled to the reliefs as counter-claimed against the Claimant in this suit?

Proffering arguments on issue one, learned counsel relied on **Wema Bank PLC v. Osilaru (2007) LPELR-8960 (CA)** to posit that once parties to a contract have freely and mutually agreed on a term to govern their obligations pursuant to the contract, the Court is mandatorily required to give effect to only the clear and unambiguous meaning of the terms as agreed to by the parties.

He argued that the Defendant, upon signing Exhibit PW1A, became bound by the terms contained therein, and that Exhibit PW1B, issued pursuant to exhibit PW1A, also contains various terms and conditions which complement Exhibit PW1A as the terms and conditions for the allocation of the house unit to the Defendant.

He contended that the Defendant, without refuting any of the terms in Exhibits PW1A and PW1B, went on to perform the agreement by making payment of the sum of N15,000,000.00 in various instalments, for the house unit, and that, that further establishes the Defendant's unreserved acceptance of the terms and conditions of allocation of the house unit as contained in Exhibits PW1A and PW1B.

Learned counsel referred to paragraph 7 part C of Exhibit PW1A, paragraph 12.0 of Exhibit PW1C and posited that an integral term of the allocation and sublease of the house unit to the Defendant, is that the Defendant will maintain the house unit's uniformity with other house units in the Estate and the general external appearance and ambience of the Estate.

He further referred to paragraph 7 of Exhibit PW1B and contended that uniformity of the external parts of the house unit is undoubtedly, a specified standard to be maintained by the Defendant.

He argued that the door installed by the Defendant as shown in Exhibit DW1H4, is clearly different from the set of uniform doors installed in other house units in the Estate as seen in Exhibits DW1H, H1 and H2.

He further argued that the Defendant's failure to either respond to or deny the allegation in Exhibit DW1J written to him when he installed the door, amounts to an admission of its contents. He referred to **Uzoigwe v. NRC (2020)LPELR-51750 (CA).**

He contended that the Defendant having installed a door that is not in conformity with the uniform set of doors in other house units in the Estate, breached a fundamental term upon which the house unit was allocated to him and accordingly vitiated the allocation and sublease of the house unit to him.

Relying on **Best (Nig) Ltd v. Blackwood Hodge Nig Ltd &Anor (2011) LPELR-776(SC),** he posited that the Defendant's breach was a vitiating element which gave the Claimant the liberty to consequently repudiate the agreement. He further referred to paragraph 17, part C of Exhibit PW1A and paragraph 10 of Exhibit PW1B as empowering the Claimant to withdraw the allocation upon any breach by the Defendant.

Learned counsel argued that the Defendant agreed to the withdrawal of his allocation of the house unit in the event of any breach of the terms upon which the house unit was allocated, and that the Claimant is therefore, in its rights to revoke the allocation of the house unit to the Defendant.

He referred to **Ashiekaa v. UBA PLC (2021)LPELR-53277(CA).**

Arguing further, he contended that aside the contractual agreement between the parties, vesting the Claimant with the ability to revoke or withdraw the allocation of the house unit in the event of breach, that the basic law of contract also provide for consequences resulting from a breach of contract. He submitted that it is elementary legal knowledge, that a breach of contract entitles the injured party to rescind the contract, which in this case, is akin to the Claimant withdrawing the allocation of the house unit to the Defendant.

He referred to **Nationele Computer Services Ltd v. Oyo State Government &Ors (2019) LPELR-48077(CA)** and **Best (Nig) Ltd v. Blackwood Hodge Nig Ltd &Anor (Supra).**

He contended that there is therefore, both a contractual and legal justification for the Claimant's revocation of the Defendant's allocation after the Defendant failed to remedy the breach of the uniformity clause by refusing to remove the contravening door installed in the house. He urged the Court to uphold the revocation of the allocation of the house unit to the Defendant and accordingly order the Defendant to immediately yield possession of the house unit to the Claimant.

Placing reliance on **NationeleComputer Services Ltd v. Oyo State Government &Ors (supra),** learned counsel further posited that the law is trite that the consequence of breach of contract is the award of damages. He contended that the Defendant is liable to pay general damages to the Claimant, following his breach of the terms of the agreement upon which the house unit was allocated to him. He urged the Court to so hold.

He further urged the Court to hold that going to the Police by the Defendant to make false criminal complaints against the Claimant's officials, which are injurious to the commercial and business reputation of the Claimant, is sufficient grounds for damages to be awarded against the Defendant.

On issue two, on whether the Defendant is entitled to the reliefs sought in his counter-claim; learned counsel contended that the Defendant has not provided credible evidence nor sufficient legal support for any of the reliefs counter-claimed against the Claimant in this suit.

He argued to the effect that relief (a) of the Counter-claim is not grantable, the Defendant/Counter-Claimant having in paragraphs 1 and 2 of his Statement of Defence admitted paragraphs 3 and 4 of the Claimant's Statement of Claim to the effect that he applied for a sub-lease of the house unit and not an outright sale.

He submitted, relying on **Anyalewechi v. Lufthansa German Airline (2021)LPELR-55213(CA)**, that the law is firmly settled that an admitted fact is conclusively established and needs no further proof for the Court to act on it.

Learned counsel further contended that the Defendant's breach of the terms upon which the house unit was allocated to him, has been sufficiently established and that the revocation of the allocation of the house unit is justified. Accordingly, that there are no legs upon which reliefs (d), (e) and (g) can stand on.

He argued that there is no tangible and satisfactory evidence before this Court in support of the allegation that the Claimant chased out the Defendant's workers and locked up the premises since March, 2015. He urged the Court to accordingly refuse reliefs (d) and (e) counter-claimed by the Defendant.

With reference to reliefs (b) and (c), of the counter-claim, learned counsel argued that it is not in contention that the house unit allocation to the Defendant was in carcass form at the time the allocation was made and that the Defendant had not completed nor began residing in the house at the time his allocation was revoked and when this action was instituted before this Court. He contended that there is no basis upon which this Court would compel the Claimant to pay for the Defendant's rentals as the Defendant was never resident in the uncompleted house unit at the material time.

Placing reliance on **Gonzee (Nig) Ltd v. Nigerian Educational Research & Development Council &Ors (2005) LPELR-1332 (SC),** he further submitted that special damages are to be strictly proven and established by cogent and compelling evidence. He argued that the Defendant has not placed before this Court any evidence to show that the Claimant damaged the materials which he was using to complete the house unit. He posited that all the bags of cement and building materials were seen safely locked inside the house unit by the Defendant on the day the Court embarked on a visit thereto.

He urged the Court to hold that the Defendant's reliefs (b) and (c) are baseless and to dismiss same.

He urged the Court, in conclusion, to hold, in view of the uncontroverted evidence in support of the Claimant's claims, and the settled position of the law as succinctly expanded in its address, that the Claimant is entitled to all the reliefs sought before this Court while the Defendant is not, and to dismiss the Defendant's counter-claim with adequate costs.

In the determination of this suit, this Court will consider the issue of **whether the Claimant has established his case to be entitled to the reliefs sought**.

The principal claim of the Claimant is for a declaration of this Court that the allocation of a 3-bedroom bungalow in its estate to the Defendant, has become vitiated by the Defendant's alleged fundamental breach of the terms of his allocation.

On the duty of a party seeking a declaratory relief, the Court of Appeal, in **Oladimeji&Ors v. Ajayi(2012)LPELR-20408(CA),** held per Bada, J.C.A. that;

> ***"It is trite law that a party seeking a declaratory relief must satisfy the Court that he is entitled to the exercise of the Court's discretion in his favour by adducing cogent and positive evidence in proof of his claim. Hemust rely on the strength of his case and not on the weakness of the defence."***

On the basis of the above authority therefore, it is duty of the Claimant in this case to satisfy this Court, with cogent and positive evidence, that there exists in the contract/agreement between the parties, fundamental terms, the breach of which would vitiate the allocation, and that the Defendant breached the said fundamental term(s).

The bone of contention, and the basis of this suit, is that the Defendant installed in the house which he purchased from the Claimant, a door which contravenes the standard of the doors stipulated by the Claimant for the estate.

The Claimant alleged that by virtue of paragraph 7, part C of Exhibit PW1A and paragraph 12.0 of Exhibit PW1C, the Defendant was obligated to install an identical door with the external doors in other houses in the estate in furtherance of maintaining a uniform appearance of the estate. The Claimant contended to the effect that the Defendant having install an external door which does not conform with other doors in the estate, that he thereby breached the fundamental term of his

allocation, and that in the circumstances, paragraph 10 of the terms and conditions of the letter of Allocation, Exhibit PW1B, empowers it to withdraw the Claimant's allocation.

In considering the Exhibits being relied on by the Claimant in purporting to revoke the Defendant's allocation:Exhibit PW1A is an application form of the Defendant. It is not a contract document between the parties, although it contains a pre-contract agreement which is a form of undertaking or pledge by the Defendant. In paragraph 7, Part C of the said Exhibit PW1A, the Defendant undertook not to "alter in any form, the external features and appearance of the house, including fence, paints, roof and other external physical feature of the house."

It is trite law that parties are bound by the terms of their agreement or contract and the role of the Court is to give effect to the terms of their contract and not to alter it or introduce any new material term to it. See**STAG Engineering Company Ltd v. Sabalco Nigeria Ltd &ANor (2008) LPELR-8485 (CA).**

From the above "undertaking" of the Defendant, which the Claimant is placing reliance on, the Defendant promised not to "alter any form of the external features and appearance of the house". Alteration refers to making changes to the form or nature of "the fence, paints, roof and other external features of the house".

Furthermore, paragraph 7, under the terms and conditions in Exhibit PW1B states that: "All improvements and works on the house shall be in accordance with specified standards. The said Exhibit PW1B,Allocation letter, did not specify the standard or type of door to be installed in the house however the agreement was there must be a standard of uniformity as recommended.

It is also, instructive to note that on the visit of the locus in quo by this Court, it was observed that the external doors in the other housing units were not all very identical, but shared very close similarities and uniformity. The Defendant door was out of similarity completely.

Exhibit PW1C is the Estate Bye-Laws, Rules and Regulations signed by both parties for the purposes of "sustaining the orderly use of common amenities, and to ensure maintenance of high standards of living…" Paragraph 12.0 thereof provides that: "This Estate is a single entity, consisting of uniform units."

The uniformity of the housing units, to my mind, refers to the structure of the houses and not the fittings and fixtures, and for the avoidance of doubt, paragraph 12.2 listed the parts of the exterior of the building to which no alteration or attachment shall be made. Instructively, doors are part of the external features of the house but is not a fundamental part that on breach of which the allocation should be withdrawn.

Paragraph 12.7 provides the answer, that:**"In the case of any of these rules being broken, the Estate Managers shall require the occupant to reinstate the section concerned to the original state or shall cause the section to be reinstated at cost to the said occupant."**

Evidently, the Rules and Regulations ensured the maintenance of high standard in the estate, but it did not contemplate an allocation being vitiated or revoked in the event of a breach. Rather, it requires the Estate Managers to "reinstate" the section where the breach occurred at the cost of the occupant, where the occupant failed to do so upon request.

The Claimant is not permitted by the law, to go outside its agreement with the Defendant in proffering a remedy to a perceived breach by revoking the contract of sale.

From the totality of the foregoing, it is my finding that the Claimant has not established that the Defendant breached any fundamental term of his allocation of House No. D-6, Clobek Crown estate, Sabon-Lugbe, East Extension, Lugbe, Abuja. Therefore, the Defendants allocation cannot be revoked.

With respect to the Police report, the Claimant has also, not proved how it was injured by the report made to the Police by the Defendant. There is no evidence before this Court, that the Police interfered with the operations of the Claimant following the report made by the Defendant. On the contrary, it is in evidence that the directive by the Police to the Claimant was to reopen the Defendant's gate, that was not complied with by the Claimant.

Conclusively, I find as follows, that reliefs 1-4 were not proved, I therefore, hold that reliefs 1 – 4 of the Claimant's claims failed and they are accordingly dismissed.

Having observed during the visit to the locus in quo, that the Defendant's external door is radically different from the doors in other houses in the estate.Pursuant to relief 5 of the Claimant's claim, this Court orders the Defendant to remove the said door and install another door that hasthe same resemblance to the doors recommendedin the houses in the estate at the Defendant's cost as emphasised in paragraph 12.7 of Exh PW1C (Estate Bye-Law Rules and Regulations).

No cost is awarded.

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HON. JUSTICE A. O. OTALUKA.

Regarding the Defendant's counter-claim, it remains a trite law that a counter claim is a separate claim distinct from the main claim/suit, and that the counter-claimant, like any other

Claimant, must prove his counter-claim with credible evidence in order to be entitled to same.

See **Jeric (Nigeria) Ltd v. UBN PLC (2000) LPELR-1607 (SC).**

The issue therefore, for consideration is **whether the Defendant/Counter-Claimant has proved his counter-claim as to be entitled to the reliefs sought?**

The principal claim of the Defendant/Counter-Claimant is for a declaration that he is the legal, equitable and bona fide owner of House No. D-6, Clobek Estate, the subject matter of the suit.In proofof his claim, the Defendant/Counter-Claimant tendered in evidence, letter of allocation from the Claimant/Defendant to the Counter-Claim, (Exhibit DW1A), and receipts of payment for the building (Exhibits DW1B, DW1C-to C1, DW1E and DW1F).

The parties are also ad idem on the fact that the house was indeed allocated to the Defendant/Counter-Claimant.And that he completed the full payment of N15m for same. That alone should entitle the Defendant/Counter-Claimant to his principal claim. However, the contention of the Claimant/Defendant to the Counter-Claim is that the said relief has no basis to be granted as what theDefendant/Counter-Claimant applied for and what was allocated to him was a sub-lease of the property and not an outright sale of same. TheClaimant contended that Exhibits PW1A and PW1B expressly mentioned a sublease as the interest to be conveyed to the Defendant/Counter-Claimant.

Indeed, it is a fact that the “Application Form”, Exhibit PW1A mentioned “…the preparation of Deed of Sublease”, and in Exhibit PW1B, the Defendant’s title was described as “Deed of Sublease derivable from the Root Title”. However, this Court agrees with, and adopts the submission of the learned Claimant’s counsel in paragraph 4.8 of his final written address that all the documents that govern a transaction or relationship can be considered by the Court in construing the terms of that transaction. The learned counsel in that regard, referred to

Adelabu&Anor v. Saka&Ors (2015) LPELR-26024(CA) where the Court of Appeal held that ***"… where more than one document govern a relationship, no single document should be considered in isolation or be the sole determinant."***

In this connection therefore, Exhibit PW1B (DW1A), or PW1A, cannot be the only determinant of the nature of title which the Defendant/Counter-Claimant holds. To determine the nature of title acquired by the Defendant/Counter-Claimant, all the relevant documents governing the contractual relationship between the parties must be taken into consideration.

Accordingly, in considering the first and the principal relief sought by the Defendant/Counter-Claimant, regard will be had to all the relevant documents that govern the transaction. In this regard therefore, apart from Exhibits PW1A and PW1B relied upon by the Claimant to contend that the Defendant's title is a sublease which does not entitle him to ownership of the property, this Court will also consider the sale/purchase agreement (Exhibit PW1D) as well as the Estate Bye-Laws, Rules and Regulations (Exhibit PW1C).

In doing this, this Court calls to mind the rule of construction of contract agreements as enunciated by the Supreme Court in the case of **Odutola&Anor v. Papersack Nigeria Ltd (2006)LPELR-2259 (SC)** where the apex Court, per Tobi, JSC, held that:

> ***"… a Court of law 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. A Court of law cannot construe the agreement to convey the meaning "as understood" by the parties, if it is different from the real legal meaning of the agreement."***

By Exhibit PW1A, the Defendant/Counter-Claimantapplied for a 3-Bedroom Detached Bungalow (uncompleted). The Defendant/Counter-Claimant, was by the Application Form,

required to pay 2.5% legal fees “for the preparation of the Deed of Sublease”; paragraphs 13 and 15, under the Declaration/Agreement by Applicant, made it clear that the houses in the estate, one of which the Defendant applied for, were for sale but under a deed of sublease.

Also, notwithstanding stating the title as “Deed of Sublease derivable from the Root Title”, Exhibit PW1B talks about the “buyer” being responsible for payment of sundry fees and expenses “leading to the engrossing and registration of the Deed of Sublease and the issuance of Certificate of Occupancy.” Exhibit PW1B thus acknowledged the Defendant as a “buyer” of the property and does not statethat he is entitled to a Certificate of Occupancy.

In the agreement between the parties, the Sale/Purchase Agreement (Exhibit PW1D), the Claimant was identified as “The Seller” of the property not the land while the Defendant/Counter-Claimant was identified as “The Buyer” of the property. Also in paragraph 5 of Exh PW1D thereof, it stated that the seller erected houses on the plot of land “for sale of the houses to interested purchasers”.

It is noteworthy, that paragraph 6 of Exhibit PW1D states that “the seller intends to grant sub-lease over the houses built to purchasers…”.At a consideration of the payment of N15m, the seller, by the sale Agreement, “demises” unto the buyer, the plot with the building thereon for a term of 91 years. See pages 2 and 3 of Exh PW1D.

The Supreme Court in **Tanko v. Exhendu (2010)LPELR-3135 (SC)** defined sublease, as per the Black’s Law Dictionary, 6th Edition, as:

> ***“a lease executed by the lease of land or premises to a third person conveying the same interest which the lessee enjoys but for a shorter term than that which the lessee holds, or a transaction whereby a tenant grants interest in leased premises less than his own.”***

Form the above definition of “sublease”, it is evident that only a lessee or a tenant that can grant a sublease. The pleadings and evidence before this Court, stated that the Claimant is a lessee of the land which it developed into an estate of houses. In furtherance to this, in paragraph 2 of Exhibit PW1D, it stated that all the legal interest in the plot was assigned to the Claimant by Aftanah Trading Enterprises, supposedly the original allottee, from the Minister, Federal Capital Territory.

Thus Section 1(3) of the Federal Capital Territory Act, 1976 provides that ***“The area contained in the FCT… shall henceforth be governed and administered by or under the control of Government of the Federation to the exclusion of any other person … and the ownership of the lands comprised in the FCT shall likewise vest absolutely in the Government of the federation. By delegation, the President of the Federation empowered the Minister of FCT to allocate land to individuals and entities qualified to have land in FCT.”***

The Court takes judicial notice of the fact that all land in Federal Capital Territoryvests in the President of Nigeria who in turn delegatesHonourableMinister,Federal Capital Territorypower to allocate to applicantsfor 99 years as lease.The Claimant through the original allottee obtained a lease for 99 years therefore, being a lessee the Claimant can in law, grant a sublease to the Defendant.

Furthermore, Exhibit PW1C, whichis the Bye-Laws, Rules and Regulations made for the right of all “House Owners” not land ownersand residents.Paragraphs 17.2, 19.1, 19.2, 19.3, 20.1, 20.2 inter alia, acknowledged the purchasers/occupants as “house owners”.However, the Claimant/defence to the Defendant/Counter-Claimant in paragraph 4(b) was that the N15m paid was for purchase of a sublease interest in the plot upon which the property was built. Also by Exh PW1B,Letter of Allocation dated 21/3/13 refers to the title of the Defendant as***“Deed of sublease derivable from the root title”.***Clearly in paragraph 2 titled ‘CONSIDERATION’ onpage 2 of PW1D the

Claimant as the seller expressly***"demised unto the Defendant the plot with the building erected thereon… to HOLD the same unto the buyer for a term of 91 years less 90 days…".***

From the totality of the foregoing, it is my finding, and I so hold, that the Claimant's contention that the Defendant's interest on the subject property is a sub-lease, for 91 years is correct. It is my finding and I so hold, that the transactionbetween the parties was not an outright sale of the plot of land which is under lease arising from the allocation by the Honourable Minister FCT. By paragraph 2 of page 2 of PW1D, the consideration of N15m was paid for the property demised unto the Defendant which comprised of the plot with the building erected thereon for 91 years less 90 days.

Accordingly, relief (a) of the counter-claim succeeds.

In respect of relief (b), the Defendant/Counter-Claimant, ledevidence of the rent he paid by hiring an apartment on account of the Claimant locking up his premises claiming that the Defendant breached the agreementandprevented him from completing and moving into the same. Reference is made to Exhibits DW1L to L5 as receipts of rents paid during the locking up of his premises whereby the Defendant hired apartments and paid for rents.

The Claimant did not controvert these pieces of evidence, save its assertion that the Counter-Claimant is not entitled to same and should "be put to strictest proof". This amounts to a general traverse. Thus in **OweifaDokubo&Ors v. Idongesit T. Udoh Mrs &anor (2016) LPELR 41167 (CA)** held; ***"… a weak or general denial is akin to an admission of the specific material fact deposed to by the opposing party".*** I hold that the denial by the Claimant in his defence to the counter-claim amounts to an admission and therefore liable to relief (b) of the counter-claim. It is however, my finding, that the Defendant/Counter-Claimant is entitled to his claim in relief (b) on the preponderance of evidence, save for the claim for the year 2015.

The Defendant/Counter-Claimant failed to lead evidence to establish the "cost" of the damaged building materials in the house, and it is not within the province of this Court to speculate. Accordingly, the claim for the cost of damaged building materials in the house fails.

On the whole, it is my finding that the Defendant/Counter-Claimant is entitled to his claims in part. Judgment is therefore entered for the Defendant/Counter-Claimant as follows:

a. It is declared that the Counter-Claimant is the legal, equitable and bona fide owner of the House No. D-6 being a 3-Bedroom Detached Bungalow with a guest room, situate at Clobek Crown Estate, Plot 1946, Sabon-Lugbe East Extension, Lugbe, District, Federal Capital Territory,Abuja, for which he paid the sum of N15m since October, 2014.
b. An order for special damages of N1,200,000.00 per annum is made against the Claimant and in favour of the Counter-Claimant, from 2016 to 2022, being the house rent paid by the Counter-Claimant for the said years amounting to N7,200,000.00 (seven million, two hundred thousand naira).
c. Relief (C) is not proved and the same is accordingly dismissed.
d. The Claimant is ordered to forthwith open the gate to the Counter-Claimant's house which was locked up by the Claimant since 23rd March, 2015.
e. Order made to the sum of N1,000,000.00 (one million naira) as general damages against the Claimant for trespassing and/or interfering with the Counter-Claimant's house for a period of three years and preventing him from having access to his house after paying N15,000,000.00.
f. Cost of this action assessed in the sum of N500,000.00 (five hundred thousand naira).
g. Relief (g) is not grantable on the ground that the Counter-Claimant's house is situate within the estate owned and managed by the Claimant and as such subject to some

control by the Claimant. Accordingly relief (g) is refused and hereby dismissed.

HON. JUSTICE A. O. OTALUKA
5/5/2022.