

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

**IN THE ABUJA JUDICIAL DIVISION**

**HOLDEN AT JABI**

**THIS 5<sup>TH</sup> APRIL, 2022**

**BEFORE HIS LORDSHIP: HON. JUSTICE A.A FASHOLA**

**SUIT NO: FCT/HC/CV/455/2021**

**BETWEEN:**

**CHINYERE EDOM----- CLAIMANT**

**(suing through his lawful Attorney, Jasper Obinna Oleka)**

**AND**

**BRAINS & HAMMERS LIMITED-----DEFENDANT**

**JUDGMENT**

This is a matter commenced by a writ of summons dated and filed on the 17<sup>th</sup> February 2021. The claimant's filed an amended statement of claim dated 26<sup>th</sup> October 2021 and filed on the 10<sup>th</sup> November 2021, wherein the claimant claims as follows:

- a. A declaration** that the Defendant's failure and/or refusal to effectuate the allocation of a Terrace 4 Bedroom (T4421) at Brains & Hammers Estate, life Camp, Abuja to the claimant after the payment of the sum of **18,690,000.00(Eighteen**

**Million, Six Hundred and Ninety Thousand Naira)**

claimant is a breach of contract.

**b. An Order of this Honorable Court,** directing the Defendant to effectuate the allocation of a Terrace 4 Bedroom (T4421) at Brain & Hammers Estate, life Camp, Abuja by issuing a final letter of Allocation and a Deed of Sublease executed in favor of the claimant in respect of same.

**c. Payment of the sum of N1,700,000.00 (One Million, Seven Hundred thousand Naira)** only to the claimant by the Defendant, same being the annual rent paid by claimant from the 1<sup>st</sup> day of January 2018 till the claimant is put in possession.

**d. An Order** directing the Defendant to pay the Claimant the sum of N60, 000,000.00 (Sixty Million Naira) only, which is the present cost of Terrace 4 Bedroom (T4421). With exemplary damages for the hardship occasioned on the claimant.

e. Payment of the sum of **N1,700,000.00 (One Million, Seven Hundred Thousand Naira)** only to the claimant by the Defendant, same being the annual rent paid by claimant from the 1<sup>st</sup> day of January 2018 till the claimant is put in possession.

f. Cost of this action

## **FACT OF THE CASE**

The claimant avers that she is at all time material a subscriber to the Brains & Hammers Terrace 4 Bedroom (T4421) and she was given a provisional allocation of same. That upon completion of payment has been denied final allocation and possession of the property. That the (she) claimant has authorized and mandated Oleka Jasper Obinna to institute and prosecute this matter on her behalf. That the defendant is a limited liability company registered under the Companies and Allied Matters Act and carries on the business of Real Estate development and infrastructure. That by a provisional letter of Allocation dated 17<sup>th</sup> January 2017, which contained the terms and condition of offer the Defendant informed the claimant that a Terrace 4 Bedroom (House No T4421) at Brains & Hammers Estate, Life Camp Abuja

had been allocated to her. That consequently, the claimant paid for the Terrace 4 Bedroom and the Defendant issued her a payment receipt dated 2<sup>nd</sup> November, 2017. That the Defendant also issued the claimant a letter dated 20<sup>th</sup> November 2017 to acknowledge full payment of the consideration and to announce also that they have been able to reach the roofing stage of the house. That contrary to the provision of the terms and condition of offer the Defendant did not issue her with a final letter of Allocation and a deed of sublease after she made full payment for the property within the requisite time. That all the effort to ensure the realization of the allocation of the Terrace 4 Bedroom proved abortive including, letter served by counsel to the claimant notifying the Defendant of the intention to commence the instant suit. That as a result of the defendant failure, the claimant has been staying in a rented apartment where she pays rent.

### **LIST OF DOCUMENTS ANNEXED**

1. Power of Attorney donated by the claimant to Mr Jasper Oleka
2. Provision letter of Allocation Ref BH (city) 00001106 dated 17<sup>th</sup> January 2017
3. Payment Receipt BH/016957) Dated November 02 2017
4. Defendant letter to Claimant acknowledging full payment of the consideration, dated 20<sup>th</sup> November 2017
5. Midland chamber letter dated 27<sup>th</sup> February, 2021
6. Midland chambers letter dated 7<sup>th</sup> January 2021

Upon service of the originating process on the defendant the defendant filed a statement of defence dated and filed on the 6<sup>th</sup> October 2021 and a witness statement on oath.

The defendant avers in response to paragraph 6 of the statement of claim that the final letter of allocation is always issued to subscriber when their house is completed and all payment like legal fee and infrastructure levy are fully paid. That the claimants property is still under construction and cannot be issued the final letter at this stage that the defendant is faced with challenges and currently out of the 1200 housing units only 400 units have been delivered to some batch 1 subscribers who completed payment for their housing unit in 2016. That the company initiated discussion with the Federal Ministry of Housing to partner with the defendant on the construction of a 9 km dual carriage road that leads from life camp to Brains & Hammers city and its environs. That after a year of intense discussion and planning the Federal Ministry pulled out of the project at the last minute. That this created a huge set back and the defendant had to pay over N200, 000,000,000.00 Two Hundred Million Compensation to the communities who had farms on the road.

At the hearing on the 7<sup>th</sup> October 2021, learned counsel to the claimant open his case and called one jasper Oleka as a sole witness, the pw1 adopted his witness statement on oath. The following Exhibits were tendered through PW1 and were admitted in evidence.

1. Power of Attorney not dated by Chinyere Anthonia Edom admitted as Exhibit JC1
2. Provision letter of allocation by Braine & Hammers dated 17/01/2017 admitted as Exhibit JC2
3. Letter written by midland chambers to the Executive director Brains & Hammers dated 7<sup>th</sup> /01/2021 is admitted as Exhibit JC3
4. Letter written by midland chambers to the Executive director Brains & Hammers dated 17<sup>th</sup>/02/2021 is admitted as Exhibit JC4
5. Letter written by midland chambers to the Executive director Brains & Hammers dated 27<sup>th</sup>/02/2021 is admitted as Exhibit JC5
6. Payment receipt dated 02/11/2017 admitted as Exhibit JC6
7. Letter of progress by Brains & Hammer dated 20/112017 is admitted as Exhibit JC7

8. Rent renewal receipt dated the 25/06/2021 is admitted in evidence as Exhibit JC8.

Under cross Examination PW1 stated that he did not know who received exhibits JC3 and JC5 on behalf of the defendant. And that was all that was asked of him under cross-examination.

The defendant then open up the defence to this action with the testimony of DW1 the sole witness of the defendant by name Segun Aribisala, who works for Brains and Hammers as client relations manager. DW1 adopted his witness statement on oath he did not tender any document in evidence as Exhibit. Under cross-examination DW1 confirmed in his cross-examination that the claimant is not in breach of the term of allocation under the contract. That the claimant had paid all the fees required of him. He confirmed that it is true they have not delivered the property to the claimant. This witness was not re-examined. Learned counsel to the defendant closed his case. This action was adjourned for final written addresses.

The learned counsel to the defendant and the claimant adopted their final written addresses on the 26<sup>th</sup> January 2022. This suit was thereafter adjourned for judgment

## **ISSUES FOR DETERMINATION**

Learned counsel to the claimant in his written address dated and filed on the 10<sup>th</sup> November 2021 formulated the following issues for determination to wit:

1. Whether there is a valid contract between the claimant and the defendant.
2. Whether the failure of the defendant to deliver possession of the Terrace 4 Bedroom (T4421) at Brains & Hammers Estate Life camp, Abuja after full payment of consideration by the claimant amounts to a breach of contract
3. Whether the claimant is entitled to damages

List of cases cited by the claimant counsel in his written address

1. OSCAR & ANOR V ISAH (2014)LPELR-23620(CA)
2. ZENITH BANK V KANU & ANOR (2020) LPELR-51136(CA)
3. NWA OLISAH V NWABUFOT (2011)ALL FWLR (591) 1438
4. NATIONAL COMPUTER SERVICE LTD V OYO STATE GOVERNMENT & ORS (2019)LPELR- 48077 (CA)
5. DOCTERTY & ANOR V SUNMONU & ORS (2018) LPELR-46725 (CA)
6. YPUNG V CITTEURON (NIG) LTD (2014) ALL FWLR PT 747 P 625



Learned counsel to the defendant in his written address dated and filed on the 12/11/2021 formulated the following issues for determination:

1. Whether from circumstance and reason adduced by the defendant that occasioned the delay in the issuance of the final letter of allocation to the claimant the defendant cited in bad faith or breach of contract
2. Whether the alternative prayer can be granted by the court.

List of cases cited by the defendant counsel in his written address

1. SHODEINDE & ORSV REGISTERD TRUSTEES OF THE AHMADIYA (1983) LPELR-3064 (SC)
2. AKANINWO & ORS V N SIRIM & ORS (2008)LCN/3643(SC)
3. NIGERCHIM INDUSTRY LIMITED V OLADELTIN (2006) ALL FWLR (3) 7 577
4. P.A.I S.C LIMITED VIKPEES IMPEX COMPANY LIMITED (2000) 3 NWLR (1182) 441
5. ARCHIBONG V UBA (2005) 7 5C (PT.11) 139  
ATTORNEY GENERAL ANAMBRA V C.N ONUSALOGU ENTERPRISES LIMITED (1987)11-12SCMJ 44
6. N.A.S LIMITED V UBA (2005) 75C (PT.11)139
7. OKOEBOR V EYOBO ENGENERING SERVICE LIMITED (1991) 4 NWLR MJSC (PT.1)
8. CBN V DINNEH (2010)17 NWLR (1221)125

9. ADE FULU V OKULAJA (1996) 9 NWLR(PT.473)668
10. EJEZIE V ANUWU (2008) 4 SCNJ 113
11. OKORONKWO V ORJI (2019) LPELR – 46515 (CA)

## **ISSUES OF DETERMINATION**

I will adopt the issues for determination as formulated by the claimant counsel as they appear more appropriate in the circumstance of this matter but will however in so doing consider also the arguments advanced by counsel for the defendant in support of the issues as formulated by him in his written address.

### **Issue No. 1**

The Claimant submits that there is a valid contract subsisting between the parties herein. On the essential elements of a valid contract or agreement, the learned counsel submits that there must be a definite offer and acceptance from one party to the other. There must be consideration and parties must have intended a relationship in law. He referred this court to the case of **OKUBULE V. OYAGBOLA (1990)4 NWLLR (PT. 147)** **OMEGA BANK (NIG.) PLC V. O.B.C. (1990) 4 NWLR** amongst others. That flowing from the above and exhibit JC 2 – the provisional letter of allocation was an offer to the claimant to purchase the 4 Bedroom terrace duplex at Brains & Hammer Estate, life Camp, Abuja. The Claimant accepted the offer by the

payment of N18,690,000. That this fact was not denied by the defendant. On the other hand learned counsel to the defendant submitted that the defendant acted in good faith to ensure that it constructed access road for ease of access to the property. In his cross-examination; DW1 confirmed that a letter of allocation was made to the claimant. This in my opinion constitutes a valid contract of sale of 4 bedroom (T441) at Brains & Hammer Estate, life camp, Abuja as evidence by exhibit JC 2. Consequently, I find that there is a valid contract of sale between the parties herein. Issue No. 1 is hereby resolved against the defendant/respondent herein.

## **ISSUE NO. 2**

Whether the failure of the defendant to deliver possession of the 4 bedroom (T4421) at Brains & Hammer Estate, Life Camp, Abuja after full payment of the consideration by the claimant amounts to a breach of contract.

Learned counsel to the claimant argued in a nutshell that there was a breach of contract by the defendant. He relied on the case of **NWAOLISAH V NWABUFOH (2011) ALL FWLR (591)**.

That said that there is a breach of contract by the defendant, same having not delivered possession of the Terrance 4 –

bedroom property which consideration has been fully paid. That the time within which the defendant was to deliver possession was after consideration had been paid.

The DW1 under cross examination confirmed that the claimant herein had complied with the terms of their contract in Exhibit JC 2. Clause 10 of Exhibit JC 2 – the provisional letter of allocation at reads “*The allottee shall be given possession of the property upon full payment of the consideration including legal fees, service charges, infrastructure leasing charges as well as other imposition herein contained and all allocations are provisional until all payments have been received by the vendor*”.

There is no contention as to the fact that the claimant had complied with the above clause and therefore entitled to the property under the contract. In view of the non delivery of the Terrace 4 Bedroom (T4421) at Brain & Hammer Estate, Life Camp, Abuja, FCT the defendant contrary to the terms and conditions stipulated in Exhibit JCS, I find that the defendant is in breach of contract.

There is no doubting the fact that the defendant herein default in the performance of his obligation under the contract as evidenced

by Exhibit FC 2. Issue No. 2 is resolved against the defendant herein.

### **ISSUE NO. 3**

Whether the claimant is entitled to damages? On this issue, learned counsel to the claimant contended that the claimant is entitled to damages. He submits that the law is restitution in Integrum. He relied on the case of **NWOLISAH V. NWABUFOH (2011) ALL FWLR. NATIONELE COMPUTER SERVICE LTD V. OYO STAT GOVERNMENT & ORS (2019) LPELR – 480.**

On his own part, learned counsel to the defendant/respondent contended that the alternative prayer of the claimant for the sum of N60,000,000,.00 (Sixty Million Naira) should not be granted. The reason according to the learned counsel is that the claimant failed to disclose how she arrived at the sum of N60,000,000.00. He submits that this court cannot act on mere speculation, conjuncture as no evidence is pleaded before the court by way of evaluation. He relied on the case of **ADEFULU V. OKULAJA (1999) 9 NWLR (PT. 473)668** amongst others. Learned counsel submits that the defendant has not terminated the contract, that the contract is still subsisting.

In the case of **ELIOCHIN NIG (LTD)& ORS. V. MBADIWE (1986)LPELR – 1119(SC)**. The apex court held that:

*“The primary object of an award of damages is to compensate the plaintiff for the harm done to him or a possible secondary object is to punish the defendant for his conduct in inflicting that harm. Such a secondary object can be achieved by awarding, in addition to the normal compensatory damages, damages which go by various names to wit: exemplary damages, punitive damages, vindictive damages, even retributory damages can come into play whenever the defendant’s conduct is sufficiently outrageous to merit punishment as where it discloses malice, fraud, cruelty, insolence, flagrant disregard of the law and the like”.*

**ESABUNOR & ANOR V FAWEYA & ORS (2019)LPELR 46916(SC)**

*“The general rule is that damage awarded by a court is based on evidence before the court and when there is no evidence to support a claim for damages the claim should be dismissed”.*

On the strength of the above cited authorities, I find that the claimant has not placed sufficient evidence before this honorable

court to be entitled to the sum of N60,000,000.00. it is hereby refused.

In the case of **CAMEROON AIRLINES V OTUTUIZU (2011) LPELR – 827(S)**. The Supreme Court held that:

*“A breach of contract means that the party in breach has acted contrary to the Terms of Contract in the instant case by performing a contract negligently and not in accordance with its terms. PAN BISLLDER LTD V. FIRST BANK OF NIGERIA LTD (2001)1 SC 71”.*

In awarding an action founded on breach of contract, the rule to be applied is restitution in integrum that is, in so far as the damage are not too remote the plaintiff shall be restored as far as money can do it, to the position in which he would have been if the breach had not occurred. See the case of **OKONGWU V NNPC (1989)4 NWLR PT. 115 PG 296.**

In this instant action, by clause 10 of Exhibit JC 2, the Claimant hereby is to be allocated 4 bedroom (T4421) at Brains & Hammer Estate, Life Camp, Abuja after full payment of the consideration for same. By the evidence before this Honorable court the claimant made full payment on 02-11-2017 by Exhibit JC 6. By Exhibit JC 8 – cash receipt of the sum of N1,700.00 as Rent

renewal for 3 bedroom flat at 630B T.O.S. Benson street Utako, Abuja dated 26<sup>th</sup>/06/2021 for the period of 28<sup>th</sup> December 2020 to 27<sup>th</sup> December 2021. I find that the defendant is liable in damages to claimant in the sum of N1,700.00 (One million seven hundred thousand naira) from 02/11/2017 per annum until the 4 bedroom (T 4421) at Brain & Hammer Estate, Life Camp, Abuja is delivered to the claimant herein. I so hold. In all, this action succeeds.

Consequently, **IT IS HEREBY DECLARED AS FOLLOWS:**

- a.** That the Defendant's failure and/or refusal to effectuate the allocation of a Terrace 4 Bedroom (T4421) at Brains & Hammers Estate, life Camp, Abuja to the claimant after the payment of the sum of **18,690,000.00 (Eighteen Million, Six Hundred and Ninety Thousand Naira)** by the claimant is a breach of contract.
  
- b.** The defendant are hereby ordered to effectuate the allocation of a Terrace 4 Bedroom (T4421) at Brain & Hammers Estate, life Camp, Abuja by issuing a final letter of Allocation and a Deed of Sublease executed in favor of the claimant in respect of same.



c. Payment of the sum of **N1,700,000.00 (One Million, Seven Hundred thousand Naira)** only to the claimant by the defendant, same being the annual rent paid by claimant from the 1<sup>st</sup> day of January 2018 till the claimant is put in possession.

d. No cost of action.

**Appearances:**

Parties absent

C.N Nwadi for the Claimant

Kehinde Jolade for the defendant

Judgment read in open court

**Signed**  
**Presiding Hon Judge**  
**5/04/2022**