IN THE HIGH COURT OF JUSTICE
FEDERAL CAPITAL TERRITORY OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT APO – ABUJA
ON, 8TH DAY OF DECEMBER, 2022.
BEFORE HIS LORDSHIP:- HON. JUSTICE A. O. OTALUKA.

SUIT NO.:-FCT/HC/CV/228/2022

BETWEEN:

1. MICHAEL NNACHI OKPARA
2. EDWARD O. ADEBAYO
3. ANDREW KOHOL
4. VERONICA UCHEGBU **:……..CLAIMANTS**
(Suing for themselves and on behalf of the Allottees/Assignees of Plots of land in Vascumi/Transproject Estate, Apo-Wumba District, Abuja, FCT).

AND

1. VASCUMI INVESTMENT NIGERIA LTD
2. MUKTAR LADAN
3. FEDERAL CAPITAL DEVELOPMENT AUTHORITY. **:….DEFENDANT**
4. HONOURABLE MINISTER, FCT

Everestus U. Chinedu with IjeomaNnabuike for all the Claimants.
Defendants unrepresented.

JUDGMENT.

The Claimants brought this suit against the Defendants vide an Originating Summons dated 24th January, 2022 and filed on the 26th day of January, 2022, seeking for the determination of the following questions:

1. Whether the Claimants/Allottees having paid the full consideration fee for the land and the Defendants having transferred their interest to the allottees via the Deed of Assignment executed between the parties, the Claimant

are not entitled to full transfer of interest and the Defendants' interest completely out of the land, having regard to clause 7 of the Deed of Assignmentwhich provides thus:

"The Assignee, Purchaser hereby applies to be registered as owner of the Demised premises"?

2. Whether the Defendants having collected the consideration fee paid by the Claimants intoPlaintiff(sic) by paragraph 1.1 of the Deed of Assignment executed by the parties, the contract/purchase of the plots of land agreement is not complete and cannot be subject to condition precedent as provided in paragraph 2 to 2.7 of the Deed of Assignment.
3. Whether the misrepresentation of facts and deceit by subjecting the Claimants to pay infrastructure fees and the fraudulent mismanagement of the 50% infrastructure fees paid by the Claimants did not vitiate all rights available to the Defendants in the Deed of Assignment, especially as in Clause 2 to 2.7 of the Deed of Assignment, executed between the parties?
4. Whether non-payment or payment of infrastructural fee in part, vitiates the interest and rights already transferred from the Defendants to the Claimants by the character and intent of Clause 1.1 and Clause 7 of the Deed of Assignment?

5. Whether Vascumi Investment Nigeria Limited, having failed to provide and maintain infrastructure in the Vascumi Estate and also, having sold out the plots, has not lost its interest in the estate, and the lease between Transproject Nigeria Ltd and Musa ShugabaAbdullahi and Vascumi Investment Nigeria Ltd have (sic) expired and reverted back to Federal Capital Development Authority(FCDA) pursuant to S.1 and Section 10 of the GUIDELINE FOR HOUSING DEVELOPMENT

INFEDERAL CAPITAL TERRITORY (FCT) ABUJA 14TH OCTOBER, 2009. FEDERAL REPUBLIC OF NIGERIA OFFICIAL GAZETTE NO. 84, ABUJA – 21ST OCTOBER, 2009?

Subject to the answers to the above questions the Claimants claim for the following:

a. A declaration that the Claimants as the allottees, having paid the total consideration fee for the plot of land, and the Defendants having transferred the interest to theClaimants via the deed of assignment executed between the parties, the Claimants are entitled to total transfer of all interest of the Defendants in the plots of land to the Claimants. And the Defendants' interest completely out of the plots of the land especially having regard to Clause 7 of the Deed of Assignment, which provides;

   "The Assignment Purchaser hereby applies to be registered as owner of the Demised premises."

b. A declaration that the Claimants having paid the total consideration fee for each of the plots of land to the Defendants, as per paragraph 1.1 of the Deed of Assignment executed by parties, the contract of purchase is complete and cannot be subject to condition precedent as provided in Clause 2 to 2.7 of the Deed of Assignment.

c. A declaration that payment or non-payment of infrastructural fee cannot vitiate the interest and rights already transferred from the 1st and 2nd Defendants to the Claimants/Allottees in the plots of land.

d. A declaration that Vascumi Investment Nigeria Ltd, having failed to provide and maintain infrastructures in the Vascui Estate and also, having sold out the plots of land, have lost its interest in the Estate and the lease between Hon. Minister, Federal Capital Territory and Transproject Nigeria Ltd and Musa ShugabaAbdullahi and Vascumi Investment Nigeria Ltd and the allottees, have expired and

reverted back to theFederal Capital Development Authority pursuant to Section 1 and 10 of the GUIDELINE FOR HOUSING DEVELOPMENT IN FEDERAL CAPITAL TERRITORY (FCT) ABUJA 14TH OCTOBER, 2009. FEDERAL REPUBLIC OF NIGERIA OFFICIAL GAZETTE NO. 84, ABUJA – 21ST OCTOBER, 2009.

e. A declaration that the misrepresentation of the facts and deceit by subjecting the Claimants topay infrastructural fees and the fraudulent mismanagement of the infrastructural feespaid by the Claimantsallottees, vitiated all the rights available to the Defendants in the Deed of Assignment, especially in Clause 2 to 2.7of the Deed of Assignment executed between the parties, and the Claimants are justified under the law and equity not to make further payment.
f. An order of perpetual injunction restraining the Defendants either themselves, privies, agent, or howsoever described from further disruption of peaceful enjoyment of the interest of the Claimants/Allottees in the plots of land in Vascumi Investment Nigeria Ltd.
g. An Order of Court mandating the Hon. Minister of FCT and or the Federal Capital Development Authority (FCDA) to issue the Claimant/Allottees, certificates of Occupancy (ies) (C. of O.) in respect of the plots of land independent of the first and second Defendants.
h. And for such further order(s) the honourable Court will deem fit to make in the circumstances of the case.

In the supporting affidavit deposed to by the 1st Claimant, the Claimants averred that by an offer of grant through the Accelerated development Programme of theFCT, the Minister of the Federal Capital Territory granted or allocated a piece or parcel of land known as plot 41, Cadastral Zone C10, Wumba District, Abuja to Transproject Nigeria Limited (Original Allottee), for the development of mass housing estate for sale to prospective buyers.

That the said Original Allottee, by a Deed of Authorization, assigned her interest in the said plot of land to one Alhaji Musa Shugaba who in turn, appointed the 1st Defendant as his attorney over the said plot for a valuable consideration, vide an irrevocable Power of Attorney dated January 18th, 2008. See paragraph 3 of Deed of Assignment.

The Claimants averred that the Defendants subdivided the said plot of land into about 212 smaller units which they sold at prices ranging from N2m to N5m, depending on the size of the plot and the type of building to be put thereon, and executed deeds of assignment containing the terms of allotments and the sale of the various units or plots between them and the allottee.

The Claimants stated that among the terms in the Deed of Assignment and sale/allocation of the plots to them and other allottees, was that each of the allottees was to pay the sum of N2,500,000.00 per plot for the provision of infrastructure in the Estate, namely; roads, drainage, water, electricity, etc, as well as 50% or N1,250,000.00 of the infrastructure fee immediately upon execution of the Deed of Assignment with each of the allottees.

That the Claimants paid full consideration price for each of the plots, after which the 1st and 2nd Defendants transferred their total interest to each of the allottees. They stated that following the purchase of the plots in the estate, the assignees/allottees immediately took possession of the plots in the estate and commenced construction, and have completed erection of the various buildings in line with the approved designs since on or about 2010.

Furthermore, that by January, 2011, the Defendant(?) had collected a total sum of N146,150,000 from the Claimants and other allottees as infrastructure fees, but having collected the said sum, the Defendants only deposited some trips of sand on

the roads and used a grader to level the sand on the road, without more.

The Claimants averred that the entire 50% infrastructural fee paid by each of the allottees was fraudulently mismanaged by the 1st and 2nd Defendants, thereby vitiating the purported right(s) if any, available to the 1st and 2nd Defendants.

They stated that it is the duty and obligation of the 1st and 2nd Defendants to provide infrastructures in the Estate, but that the 1st and 2nd Defendants fraudulently deceived each of the Claimant/Allottee by misrepresenting to them that it is the duty of the allottees to build infrastructures in the premises.

In his written address in support of the originating summons, learned Claimants' counsel, Valentine C. Iroagalachi, Esq, proffered arguments on the questions submitted for the Court's determination by the Claimants.

Arguing issues 1 & 2 jointly, learned counsel posited that the implication of Clause 7 of the Deed of Assignment which says that *"The Assignee, purchaser hereby applies to be registered as owner of the demised premises"*, is that the interest in the premises is completely divested or transferred to the purchaser upon payment of the full purchase price.

He argued that it follows that since the interest in the property has been transferred from the vendor to the purchaser/allottee, the transaction is complete and cannot be subject to condition precedent as in Clause 2 to 2.7 of theDeed of Assignment. That to that extent, the said paragraphs 2 to 2.7 of the Deed of Assignmentis ultra vires and therefore, void and of no legal effect.

He referred to **Okoye v. Dumez (1985) NWLR (Pt.4) 783 at 790.**

On issue three; learned counsel argued that the misrepresentation of facts and deceit by the 1st and 2nd Defendants by subjecting the Claimants to pay for infrastructures fees, and the subsequent fraudulent mismanagement of the payment of the infrastructure fees already paid by the Claimant, has vitiated all the rights (if any) available to the Defendants.

He contended that by the provision of Section 1, paragraphs 2 of the Guidelines for Housing Development in Federal Capital Territory, that it is the duty and obligation of the 1st and 2nd Defendants to provide for tertiary infrastructures; but that the 1st and 2nd Defendants deceived the Claimant/allottees and shifted the said duty to the Allottees.

He referred to **S.O. Ntuks and 10 Ors v. Nigeria Port Authority (2007) 13 NWLR (Pt.1051) 214 at 427-428** on the definition of fraud, and posited that the 1st and 2nd Defendants having concealed the facts that they are to provide the tertiary infrastructure and deceived the Claimants to believe that the allottees are meant to provide infrastructures in the Estate, thereby imposing infrastructure fees on the Claimants; are therefore guilty of fraudulent concealment or misrepresentation of facts. He argued that the said fraudulent concealment and misrepresentation of facts, coupled with the fraudulent mismanagement of infrastructure fees already paid by the Claimants, has thus vitiated all the rights (if any) available to the 1st and 2nd Defendants as are contained in Clause 2 to 2.7 of the Deed of Assignment.

He relied on **Alh. FataiAdekunleTeriba v. AyoadeTiamiyuAdeyemo (2010)13 NWLR (Pt.1211)242 at 263** to submit that a person cannot benefit from his own wrong.

Arguing issue four; learned counsel posited that Section 1, paragraph 2 of the Guideline for Housing Development in

Federal Capital Territory (FCT) Abuja, does not provide that allottees/purchasers in an estate should pay for infrastructure fees. He contended that part payment or non-payment of infrastructure fee cannot therefore, vitiate the rights and interest of the allottees in the properties.

On issue five, learned counsel contended that the 1st and 2nd Defendants having failed to provide and maintain infrastructures in the Estate, and having sold out all the plots in the Estate, have lost all rights and interest in the Estate by virtue of Sections 1 and 10 of the Guideline for Housing Development in Federal Capital Territory, Abuja.

He argued in conclusion, that the Claimants have established before this Court, their legal and/or equitable rights as allotteesto the plots of land in issue.

He urged the Court to grant all the reliefs/orders sought in the originating summons.

From the case as presented by the Claimants, this Court can decipher an invitation by the Claimants to determine the question of construction ofthe contract between them and the 1st and 2nd Defendants, vis-à-vis the provisions of a written instrument, the Guideline for Housing Development in Federal Capital Territory (FCT) Abuja,2009 published in the Federal Republic of Nigeria Official Gazette, No.8 of 2009.

This originating summons filed on 26th January, 2022 sought for determination of the five questions as stated earlier and for 8 reliefs a – h.

In considering the 1st Defendant relief vis a vis the related question one, the question is **whether the Defendants interest particularly the 1st and 2nd Defendants have been totally transferred to the Claimants.**

The law that guards the allocation and purchase of properties in Federal Capital Territory, Abuja empowers the Honourable Minister, FCT to allocate by lease of 99years to Applicants. In other words it is only the Federal Capital Territory, Minister that can allocate land in Federal Capital Territory and that role is a role he performs on behalf of President who happens to be Governor General of Federal Capital Territory. The Minister acts on delegated authorityof President by virtue of Section 18 Federal Capital Territory, Act. The Minister has right to allocate a person or a corporate body land in any approved area. The right is for a period of 99 years lease for residential purpose, while other uses range from 35 – 70 years depending on value improvements.

The right granted is the right to use the land for a stipulated period upon expiration the land and its improvements revert to the Government. However a grantee may at its expiration of the lease re-apply for a re-grant. Having said this, and in consideration of relief (a) the allottees/Claimants cannot claim to have total transfer of all the interests of the Defendants in the plots of land by reason of clause 7 of the Deed of Assignment because the 3rd and 4th Defendants in accordance with the Federal Capital Territory, Act, can only grant the 99 years of lease.

Clearly, clause 7 on page 3 of the “Deed of Assignment” cannot be interpreted standing aloof. The interpretation must be in combination of all the paragraphs of the Deed of Assignment. In myopinion the interpretation of the Deed of Assignment is that the Claimants cannot be entitled to total transfer of all interest of the Defendants which includes 3rd and 4th Defendants being the original grantor who can only grants the 99 years lease as stipulated byFederal Capital Territory, Act. In that regard this Court cannot make a declaration to the effect

that the Claimants are entitled to the interest in the land. Therefore relief Ifails.

2) In considering relief (b & e) because of their similarity, vis a vis paragraph 1.1 of the Deed of Assignment and clause 2 – 2.7 of thecondition precedent in the Deed of Assignment. A diligent and meticulous reading of the Deed of Assignment clause 1.1 indicates the payment of fees for each plot.

Further clauses 2 – 2.7 of the Deed of Assignment indicate the "condition Precedent of the Assignment/Possession". Obviously the Claimants respectively are clearlyof full age, competent to enter into agreement with clear understanding of the facts.

The conditions precedent which the Claimant are now contesting, were not made subsequent to the contract. They were part and parcel of the Deeds of Assignment which the Claimant freely and voluntarily executed with the 1st and 2nd Defendants and by which they assert ownership of the plots/houses in the estate in issue. They cannot, after executing the contract as far back as 2008, turn around in 2022 to seek to resile from some aspects of the contract. This Court does not have the power to interfere with the freedom to contract and cannot lend itself as an instrument to defeat the intendments of a contract freely and voluntarily entered into by parties.

I find no valid basis to interfere in any way with the contracts between the Claimants and the 1st and 2nd Defendants, same having been freely and voluntarily made by the parties and same being not offensive to any known law, rules or public policy.

It is the settled position of the law that the Courts cannot re-write the contracts made by parties, but can only give effect to same.

Thus in **Sona Brew PLC v. Peters (2005)1 NWLR (Pt.908)478 at 489,** the Court of Appeal, per Aderemi, JCA, held that:

> ***"A Court of law must always respect the sanctity of the agreements reached by parties as it favours the inalienable rights of the freedom of formation of contracts by parties and would not make a contract for them or re-write the one they have already made for themselves."***

Also, in **West Construction Company Ltd v. Batalha (2006) LPELR-3478 (SC),**the Supreme Court, per Pats-Acholonu, J.S.C, held that:

> ***"… you are not to extend arbitrarily those rules which say that a given contract is void as being against public policy, because ifthere is one thing which more than another public policy, requires, it is that men of full age and competent understanding shall have the utmost liberty of contracting, and that their contracts, when entered into freely and voluntarily, shall be held sacred and shall be enforced by Courts of justice. Therefore, you have this paramount public policy to consider – that you are not likely to interfere with freedom of contract."***

It is trite that a person is bound by the plain words of any contract he entered into which he set his signature upon and if he asserts to the contrary, he must establishthe facts on which he based his assertion.

Isa v. Alh.SaniAdamu Trader (2016)LPELR (CA) –

> ***"… it is settled law that parties are bound by the contract they voluntarily entered into and cannot act outside the terms and conditions contained in the contract…".***

The duty of the Court is to give effect to the same.

In furtherance to answer to question 3 and 4 the Applicants/Claimants argued that the payment of infrastructure fees was fraudulently mismanaged. Apart from the affidavit evidence no further witness was called to establish the fraud alleged. The Court of Appeal in **Confitrust (Nig) Ltd v. Emmax Motor Ltd &Ors (2016) LPELR (CA)** held that the law is that for an imputation of fraud or illegality to succeed, it must be pleaded with utmost particulars for indeed no rule is more clearly established than that fraud must be distinctly alleged and proved and that it is not permissible to leave fraud to be inferred from facts. See Section 135 Evidence Act 2011, **Nwobodo v. Onoh&Ors (1984) NSCC I.**

Thus it is my finding that Claimants have voluntarily entered into the contract and have also failed to prove fraud as alleged therefore relief (b & e) fail woefully.

In considering question 5 and relief (c) vis a vis Section 1-10 on the Guideline gazetted and exhibited as Exh 'E'. The Claimant argued that the non-payment of the infrastructural fee cannot vitiate the interest and rights already transferred by 1st and 2nd Defendants.

Reference to Section 1 subparagraph 1 and 2 of the 'Guidelines for Housing Dev' – it provided that primary infrastructure to Housing development will be provided by FCT while the tertiary infrastructure WITHINthe estate be provided by the developers.

Further in Section 6(v) the Guidelines provided that developers shall have completed not less than 40% of the approved secondary and tertiary infrastructures within the estate before commencement of building constructions.

The Claimants argument again was that the non-payment or payment of the infrastructure cannot vitiate the interest already transferred to the 1st and 2nd Defendants.

Going by the condition precedent of page 2 of the Deed of Assignment Clause 2.4 states ***"The payment of infrastructure and other charges shall be completed on or before the attainment of 80% of development on the demised land".***

I hold that parties are bound by the terms of contract – **WAEC v. Mekwunye (2016) LPELR 40350(CA).**

This Court is only expected to uphold the sanctity of the contracts. Therefore by the agreement of the parties, they are bound to complete the payment of the fee for infrastructures before attainment of 80% of the development of the land and by clause 2.5, default of clause 2.4 carries a sanction which includes revocation.

Therefore the Claimant cannot vitiate the Deed of Assignment which they executed and turn around to invite the Court to decline to the contrary. In this regard relief (c) fails. Relief (d) also dependent on the decision of this Court in relief (c) also fails.

In considering relief (f) an order of perpetual injunction in restraint of the Defendants fails because the 3rd and 4th Defendants still have the residual of the lease.Furthermore, the aim of order for perpetual injunction is usually to protect an established legal right. The Claimants have not to my mind established a total substantial right against the Defendants especially the 3rd and 4th Defendants, it would be adverse the law for this Court to grant a perpetual injunction against the Defendants particularly the 3rd and 4th Defendants.

Relief (f) therefore fails.

In respect of relief (g), the Claimant argued, urged the Court to mandate the Honourable Minister,Federal Capital Territory to issue Certificate of Occupancy to the independent Claimants.

Placing reliance on Section 1 subparagraph 2 of the "Guidelines for Housing Development in the Federal Capital Territory". It states:

> ***"The developer, at the end of the development will sell the houses, to individuals and forward their names to the FCTAuthority for issuance of title documents includingCertificate of Occupancy (C of O). The Lease Agreement between develop & the FCDA at this stage is deemed to have being expired."***

The question is whether the Claimants have adduced evidence to prove that development is completed. By paragraph 15 affidavit in support of the originating summons, the Claimants averred that "That development in the Estate has been completed". Further in paragraph 16/17 the Claimants averred that they have paid N146,150,000 for infrastructural development and therefore having completed development of the estate that relief (g) be granted.

The interpretation of Section 1 subparagraph 2 of the Guidelines for Housing Development is to my knowledge that at the end of the development the developer willsell the houses to individuals.It is the duty of the developer to forward the names of the occupants and owners to the FCT Authority for issuance of title documents including Certificate of Occupancy and not by the Court. The Court can only compel the 1st and 2nd Defendants to comply with Section 1(2) of the "Guidelines for Housing Development in the Federal Capital Territory" at the instance of the Claimants.

It is not until the developer complies with Section 1 subparagraph 3 by submitting the names of the occupants to Federal Capital Territory that the issuing authority Federal Capital Territory can issue the Certificate of Occupancy.

Again relief (g) fails until there is compliance to the above Section 1 of the Guidelines for Housing Development in Federal Capital Territory.

With specific reference to the questions submitted to this Court for determination by the Claimants, this Court holds that the contracts entered into by the parties are valid as they relate to the rights and obligations of the parties thereto.

It is therefore, my finding that the instant suit is unmeritorious. Accordingly, same is hereby struck out.

In the course of concluding this judgment I discovered that parties were bound by an arbitration clause. I therefore, will not fail to remind the parties of clause 8 ‘ARBITRATION CLAUSE’included in the Deed of Assignment which is a consensual condition precedent that parties need to exhausted before filing any dispute. In the absence of not complying with the arbitration clause it robs this Court of jurisdiction. Again accordingly this case is struck out.

HON. JUSTICE A. O. OTALUKA
8/12/2022.