

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**  
**IN THE ABUJA JUDICIAL DIVISION**  
**HOLDEN AT COURT NO. 4, MAITAMA ON THE**

**24<sup>TH</sup> DAY OF JANUARY, 2023**

**BEFORE HIS LORDSHIP: HON. JUSTICE U. P. KEKEMEKE**

**SUIT NO. FCT/HC/CV/532/2016**

COURT CLERKS: *JOSEPH ISHAKU BALAMI & ORS.*

**BETWEEN:**

1. EMENIKE CLARA CHIDUBEM 2. EMENIKE ONYEKA JOSEPH 3. ESSEU CHIDI STELLA	}	..... CLAIMANTS
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**AND**

**BLACKGOLD GLOBAL SERVICES LIMITED ..... DEFENDANT**

**JUDGMENT**

The Claimants' Writ of Summons and Affidavit placed under the Undefended List Procedure is dated 20<sup>th</sup> day of December, 2016. It was amended vide an Amended Writ of Summons and an Affidavit dated 27/03/2017.

The Defendant was served with the Originating Processes. The Defendant filed a Notice of Intention to Defend with an Affidavit dated 2/05/2017.

In a considered Ruling on 16/05/2017, the Court held that the Defendant has a defence on the merit. The matter was therefore transferred to the General Cause List.

The Court ordered pleadings to be filed. The Claimants' Pleading is dated 21/08/2017 but filed on the 24/08/2017. The Defendant failed, refused and neglected to file a Statement of Defence.

The Claimants opened their case and called only one (1) witness. She is Chidubem Clara Eemenike, a public servant that lives at Oda Crescent, Wuse. She adopts her Witness Statement on Oath dated 24/08/2017 as her oral evidence.

In the said Statement, she deposes as follows:

The 2<sup>nd</sup> and 3<sup>rd</sup> Claimants are her brother and sister. The Defendant was introduced to her by an agent who informed her of the Defendant's estate development at Diamond Ville Estate, Lugbe 1 Extension, Abuja. She took

interest and applied for four (4) plots of land within the estate.

She paid ₦5,000.00 only each to the Defendant as application fees for forms. That she was issued with receipts. She filled the forms and returned same. Thereafter, the Defendant directed her to pay ₦750,000.00 only each for the four plots of land which she did. She was issued with Letters of Allocation dated 2/02/2012 for Plot 5 Block A, Plot 12 Block A, Plot 13 Block A, Plot 14 Block A, Plot 15 respectively.

That she also made other applications for three (3) plots on behalf of the 2<sup>nd</sup> and 3<sup>rd</sup> Claimants and they were also issued with Letters with the following allocations: Block B Plot 10 and Block A Plot 11 to the 2<sup>nd</sup> and 3<sup>rd</sup> Claimants respectively.

The purchase price for Block B Plot 10 for the 2<sup>nd</sup> Claimant was ₦1.5 Million while Block A Plot 11 and Block A Plot 12 are ₦750,000.00. The Defendants issued

receipts Nos. 1210, 1211 and 1146 dated the 17<sup>th</sup> of May 2012 respectively in the name of 2<sup>nd</sup> and 3<sup>rd</sup> Claimants.

That the total money she paid to the Defendant for the seven (7) plots of land is ₦6,035,000.00 which includes money paid for the application forms and the purchase price.

That despite the above payment, they were not allowed to take physical possession. She wrote a letter of demand with the consent of the 2<sup>nd</sup> and 3<sup>rd</sup> Claimants for the refund of the money paid for the seven (7) plots of land.

That she made investigation and found out that the FCDA has taken over all the land within Kiami District, along Airport Road including the Estate of the Defendant. That they engaged a Solicitor after a long while to write a further letter of demand.

That all efforts to make the Defendant pay back their money proved abortive rather Defendant started proposing an alternative land beside Living Faith which

they are not interested in. That Defendant has no valid title *ab initio*.

That the failure to pay back the money has affected them emotionally and psychologically. They claim as per the Writ of Summons and Statement of Claim.

PW1 tendered Exhibits A - A6 which are seven (7) Letters of Allocation.

Exhibits B - B2 are Receipts Nos. 1210, 1211 and 1146 dated 17/05/2012.

Exhibits C & C1 are letters of demand by 1<sup>st</sup> Claimant on behalf of the other Claimants and their Solicitor's letter of demand.

Exhibits D - D6 are Receipts issued for application forms.

The Defendant failed, refused and or neglected to cross-examine the witness and enter its defence despite service of Hearing Notices. The Defendant was therefore foreclosed on the application of the Claimants' Counsel.

Parties were ordered to file Written Addresses. The Claimants' Finale Written Address is dated 10/03/2022. He posited one (1) issue for determination, which is: *Whether based on the totality of the pieces of evidence before the Court, the Claimants are entitled to their claims against the Defendant.*

Learned Counsel drew the attention of the Court to Section 134 of the Evidence Act, that the standard of proof is on the balance of probability. That the Claimants have successfully through credible, cogent, reliable, unchallenged and convincing evidence discharged the evidential burden and have proved their case and therefore entitled to all the claims.

That the Defendant's failure to file its Statement of Defence and Witness Statement on Oath to challenge or oppose the Claimants' averments amounts to an admission. That Claimants' evidence is unchallenged.

Learned Counsel urges the Court to accept the Claimants' evidence as true and reliable. He urges the Court to enter judgment in Claimants' favour.

I have read the only evidence available, examined the exhibits and considered the Written Address of Counsel. The issue for determination is: *Whether from the totality of evidence the Claimants are entitled to the reliefs sought.*

In **ALHAJI ISAH T. SOKWO** (suing for himself and on behalf of Akuba and Echigeshi Ruling Houses) **vs. JOSEPH DAKU KPONGBO & 3 ORS. (2008) 7 NWLR (PT. 1086) p. 342 at 344**, the Supreme Court held:

*“It behooves on a party to give testimony in support of his pleadings if he wants to succeed in his case. It is a cardinal principle of law that he who asserts must prove his case with credible and unchallenged evidence.*

*In a civil case, a party who wishes to succeed in obtaining judgment in his favour must adduce credible evidence for such cases are deduced on the preponderance of evidence and balance of probability.”*

See Sections 131, 132, 133 and 134 of the Evidence Act.

In the instant case, the only available evidence is from the Claimants. She tendered Exhibits A - A6 which are Letters of Allocation. She also tendered receipts of payment for the said land, which are Exhibits B - B2. Exhibits D - D6 are receipts of payment for the application forms. The Claimants were denied physical possession despite the above.

The law is that whenever on an issue evidence comes from one side and is unchallenged and uncontradicted, it ought normally to be accepted on the principle that there is nothing to be put on the other side of the balance unless it is of such quality that no reasonable tribunal should have believed it. So when evidence goes on one way, the onus of proof is discharged on a minimal of proof.

**See ABDULLAI BABA vs. NIGERIAN CIVIL AVIATION TRAINING CENTRE, ZARIA (1991) 7 SCNJ 1 at 23.**

I accept the only evidence. The evidence and exhibits are cogent and credible. The reliefs of the Claimants are not precise.



In relief 1, they claim:

- (1) Breach of contract for money had and received without consideration in the sum of ₦6,035,000.00.
- (2) An Order for the refund of the sum of ₦6,035,000.00. paid to the Defendant with 10% interest from the time of judgment until it is finally liquidated.

The Claimants' evidence in this respect is that she made investigation and found out that the FCDA has taken over all the land within Kaimi District along Airport Road including the Estate of the Defendant.

Where there is a concluded binding contract, there is liability if it is terminated without justification because that will amount to breach of contract. There is therefore an implied term that an enforceable contract will not be brought to an end without just cause.

However, if some events outside the control of parties took place such as alluded to by Claimants' evidence,

making performance impossible, it could be frustration. It is the premature determination of an agreement of parties owing to an occurrence of an intervening event so fundamental, striking at the root of the agreement, in this case, title which is entirely beyond the contemplation of parties.

In the circumstance, there is no credible evidence to suggest breach of contract. There is a just cause why the contract failed, i.e. acquisition. Claim 1 therefore fails.

There is cogent and credible evidence to support relief 2.

Judgment is entered in favour of the Claimants against the Defendant as follows:

1. The Defendant is hereby ordered to refund to the Claimants ₦6,035,000.00 being the purchase price for a contract that failed.
2. 10% interest per annum on the judgment sum from the date of Judgment until it is finally liquidated.

3. ~~₦~~250,000.00 (Two Hundred and Fifty Thousand Naira)  
as cost of the action.

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**HON. JUSTICE U. P. KEKEMEKE**  
(HON. JUDGE)  
24/01/2023

Parties absent.

Unekwu Enegbani, Esq. for the Claimants.

**COURT:** Judgment delivered.

(Signed)  
**HON. JUDGE**  
24/01/2023