

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT GARKI ABUJA
BEFORE HON. JUSTICE S. B. BELGORE**

**CLERK: CHARITY ONUZULIKE
COURT NO. 10**

**SUIT NO: FCT/HC/CV/841/17
DATE: 14/3/2023**

BETWEEN:

A. A. RANO NIG. LTDCLAIMANT/APPLICANT

AND

- | | | |
|---|---|-------------------|
| <ul style="list-style-type: none">1. NORTICA NIGERIA LIMITED2. COMFORT OTERA CHIGBUE3. THE INSPECTOR GENERAL OF POLICE4. THE ECONOMIC AND FINANCIAL CRIMES COMMISSION (EFCC) | } | DEFENDANTS |
|---|---|-------------------|

AND

MRS. CECILIA MICHAEL IBRU..... THIRD PARTY

JUDGMENT

The claim was initiated in this Court on the 6th February 2017, and is six years old on the 6th of February 2023. Suffice it to say that it was commenced before my Learned Brother Valentine Ashi J. (now of the Blessed Memory). On the 14th of December 2022, the long fought battles in this Claim were laid to rest and the respective parties vide their Counsel adopted their respective processes in urging the Court to either grant, dismiss or partially grant or indemnify, by way of third party notice, their respective claims. The volume of documents, Motions, addresses in the Court’s file is overwhelming that I felt parties should have narrowed the issues here and enforce other rights by simpler Originating Summons or Motions. In the instant suit I shall

refrain from rehashing the reliefs, facts and evidence except those I deem expedient.

I shall equally refer to the extant processes after which the Court will determine the best possible way to proceed. The task which faces this Court in the instant judgment is enormous and underrated. I must say that for a valuable research and a flowing of thought process, a judge should be given about six months to consider a case of this nature.

The Claimant, a private limited company registered under the existing law in Nigeria, tried to acquire a Filling Station owned by the 1st Defendant, marketed and sold by the 2nd Defendant. The 3rd and 4th Defendants are investigating agencies were invited by petitions at one time or the other to investigate the circumstances surrounding the marketing and sale of the 1st Defendant Filling Station on the purported or likely instructions of the Third Party. Midstream the transaction, the Third Party contacted the directing mind of the Claimant and appealed to him to collect his money back and that the sale was no longer necessary as a result of the death of her partner.

The Claimant who is irked by the conduct of all the Defendants and the Third Party beseeched this Honourable Court by a Writ of Summons Claiming Several reliefs.

It should be said that the extant claim of the Claimant is on its Further Amended Statement of Claim filed on **23rd November, 2017** wherein it sought for the following reliefs:-

- a. **AN ORDER** of this Honourable Court declaring the contract of sale between the Plaintiff and the 2nd Defendant on behalf of the 1st Defendant with respect to **Plot No. 556** within Central Area District measuring 5,080.90 square meters and evidenced by Certificate of Occupancy No. **199w-df61z-6723r-dbiau-20** as valid, subsisting and binding on both the said Plaintiff and the 1st and 2nd Defendants.

- b. **AN ORDER** of this Honourable Court declaring the payment of the sum of **N300,000,000.00 (Three Hundred Million Naira)** only and other payments as agreed between the Plaintiff and the 1st and 2nd Defendants in respect of the aforementioned Plot No. 556 as valid and binding.
- c. **AN ORDER** of specific performance ordering and or directing the said 1st and 2nd Defendants to forthwith execute in favour of the Plaintiff the relevant transfer documents to wit: Deed of Assignment, Power of Attorney and Application for Consent to Assign and Consent/Authority to register Power of Attorney.
- d. **AN ORDER** of perpetual injunction Restraining the 3rd and 4th Defendants, their agents, servants or privies howsoever and howsoever from interrogating, arresting and or detaining any of the Plaintiffs staff or anybody connected to the sale of the aforementioned property to the plaintiff or doing anything to the prejudice of the Plaintiff.
- e. **A DECLARATION ORDER** of this Honourable Court that the acts of the 3rd Defendant in effecting arrest over land matters which are purely civil is *ultra vires* the powers of the Police, null and void and of no effect whatsoever and amount to usurping the Powers of the Court, and the unlawful arrest, detention and humiliation of the Plaintiff's Director amounts to violation of the Directors of the Fundamental Human Right.
- f. **DECLARATORY ORDER** of this Honourable Court that act of the 4th Defendant in threatening and arresting the Plaintiff's Chairman and its Director (Alhaji A. A. Rano and Alhaji Yakubu Mohammed) respectively over a purely civil matters bothering on mutually contractual transaction over land matter is *ultra vires*, the Powers of the EFCC, null and void of no effect whatsoever and amount to usurping the powers of the Court.

- g. **AN ORDER** of this Honourable Court Directing the 1st and 2nd Defendants to recover the balance sum of the purchase price of **N400,000,000.00 (Four Hundred Million Naira)** only in line with the sales agreement.
- h. The sum of **N250,000,000.00 (Two Hundred and Fifty Million Naira)** only against the Defendants jointly and severally as exemplary damages and punitive damages for the embarrassment, humiliation and psychological turmoil cost to the Plaintiff and its director(s) as a result of the acts of the Defendants.

Upon service of the Claim on the Defendants, the 1st Defendant filed a Statement of Defence and Counterclaim, wherein he Counterclaimed against the Claimant as follows:-

- a. **A DECLARATION** that the Plaintiff is wrongly, illegally and unduly holding on and keeping possession of the originals of the title documents in respect of the Defendant/counter claimant's property known as Plot 556 within Central Area District, measuring 5,080.90sqm, covered by Certificate of Occupancy No. **1996w-df61z-6723r-db1au-20**, registered as No. 2176 at pg. 2176, in volume 11, of the Land Registry office at the Federal Capital Territory, Abuja.
- b. **AN ORDER** directing the Plaintiff, which is the Defendant to the counter claim, to deliver to the counter claimant the originals of the Defendant/counter claimant's title documents on its property known as Plot No. 556 within Central Area District, measuring 5,080.90sqm, covered by Certificate of Occupancy No. **1996w-df61z-6723r-db1au-20**, registered as No. 2176 at page 2176, in volume 11, of the Certificate of Occupancy registered in the Land Registry Office at the Federal Capital Territory, Abuja.

- c. **AN ORDER** of perpetual injunction restraining the Plaintiff, which is the Defendant to the counter-claim, from interfering or further interfering with, trespassing on or further trespassing on, encroaching on or further encroaching on the counter-claimant's property known as Plot No. 556 within Central District, measuring 5,080.90sqm covered by Certificate of Occupancy **No. 1996w-df61z-6723r-db1au-20**.
- d. General damages in the sum of **N500,000,000.00 (Five Hundred Million Naira Only)**, against the Plaintiff, which doubles as the Defendant to the counter claim.
- e. The sum of **N20,000,000.00 (Twenty Million Naira only)**, being the cost of this action.

The 2nd Defendant filed an amendment Statement of Defence on the **06/9/2018** and issued a Third Party Notice filed on the **28/06/2018** wherein it was stated as follows:-

IN DEFAULT OF YOUR ENTERING SUCH APPEARANCE, you deemed to admit the Plaintiff's claim against the 2nd Defendant and the 2nd Defendant's Claim against you and your liability to indemnify the 2nd Defendant or to contribution to the extent claimed.

In furtherance the 2nd Defendant claims for total contribution against the Third Party in terms of the Plaintiff claims and the validity of such judgment of any judgment that may be given in the action and you be bound by such judgment and such judgment may be enforced against you.

The third party may appear hereto by entering appearance, personally or by legal practitioner by handing in the appropriate forms, duly completed at the Registry of the Abuja Judicial, Division of the High Court of the Federal Capital Territory, Abuja. The appropriate forms may be obtained from the Registry.

However, it claimed as follows:

1. **A DECLARATION** that any amount (if any) found to be due and payable by the 2nd Defendant to the Plaintiff is payable by the third party and should be paid by her.
2. **A DECLARATION** that any of all the relief sought by the Plaintiff to which the 2nd Defendant is found liable shall be satisfied by the third Party as a measure of indemnity guarantee by the Third Party.
3. **AN ORDER** of this Honourable Court directing the Third Party to fully indemnify and continue to indemnify the 2nd Defendant to the time covering all the liabilities that may arise against the 2nd Defendant in respect to the transaction she entered into with the Plaintiff and the full remuneration of her interest including all the amount due and payable to her.

On the part of the 3rd Defendant, they filed a Notice of Preliminary Objection and a Statement of Defence on **11/06/2018** in defence of this suit.

The 4th Defendant entered a Conditional Appearance and filed a Statement of Defence on 28/01/2020.

Upon the issuance of the Third Party Notice, the Third Party entered an unconditional appearance and filed a Statement of Defence to the 2nd Defendant's Third Party Notice Claims and a Counterclaim wherein she counterclaims against the 2nd Defendant as follows:-

1. ***A declaration that the 3rd third party is neither liable to the 2nd Defendant nor the Plaintiff in any respect against any loss and cannot therefore indemnify her directly or through her to any person she bears liability however including the Plaintiff.***

2. **General damages in the sum of N500,000,000.00 (Five Hundred Million Naira) Only for inconvenience to the third party.**
3. **The sum of N50,000,000.00 (Fifty Million Naira) Only as cost to the third party notice suit.**

The Court set down the matter for trial, parties called witness(es) who testified on their respective behalfs and tendered documents, except the 3rd and 4th Defendants. At the end of trial parties filed various Written Address which were adopted in urging me to grant their respective prayers on the 14th day of **December 2022**.

I have earlier stated that the Court will not begin a detailed summary of the argument of parties in their respective addresses. This case has the main claim, counterclaim, third party notice and counter claims constituting in it about four independent claims which could have been filed separately and consolidated. Here lies the difficulty in navigating arguments in all the written addresses. I therefore proceed to the resolution of the matters raised.

Let me start by addressing the objection to the admissibility of various documents, raised by the 1st Defendant in his final written address. The 1st Defendant raised a number of objections to the admissibility of **Exhibits 'A', 'B', 'AA1', 'AA2' and 'B'**. I have gone through the authorities cited, the pleadings and **"Exhibit A"** was pleaded by the Claimant as evidence that a transaction between the 2nd Defendant and the 3rd party authorizing her to act in her behalf, and that indeed she acted, as such it removes **"Exhibit A"** from the provision of the Land instrument Registration Act and Stamp Duty Act. This is why the Supreme Court held that a document like **"Exhibit A"** is amorphous. Per **Nweze JSC** in **Abdullahi vs. Adetutu (Supra)**.

"such a document, described as an "amorphous" document is not reliable in evidence for the purpose of establishing any right, title or interest in land...if it is however tendered to

show that there was a transaction between the lessor and the lessee, it will be admissible as a purchase receipt”

This state of affairs equally affects Exhibits “**B**” it was pleaded as evidence of purchase hence the Claimant seeks for specific performance. See please paragraph **40 (c)** of the further Amended Statement of Claim. I hold that this objection has missed its intended target, it is hereby overruled. I hold Exhibit “**A**” **AA2** and **B** are relevant and properly admitted.

On “**Exhibit AA1**” There is no objection raised against “**Exhibit AA1**” as the 1st Defendant having not led any argument on same is deemed to have abandoned his objection reserved, I so hold.

On **Exhibit AA3**, the submission of the Learned Silk on the inadmissibility of the document for being unsigned, is with the greatest respect untenable. The Law is very well settled and trite that an unsigned document is a worthless document without any evidential value. I say so without deciding so in this suit as regards **Exhibit AA3**. The Court at this point is only concerned with whether the indemnity attached in **Exhibit AA3** being unsigned is inadmissible. I think not. This objection is baseless. The authority relied on by the Learned Senior Advocate is totally against his stand on this. The Supreme Court in **APGA VS. ALMAKURA** (Supra) held per **C. C. Nweze JSC**, listen to His Lordship at page **348 (c)**:-

“With profound respect to the distinguished Senior Counsel for the Appellant, this tendentious albeit, sophistic submission needs not detain us further in this Judgment.” It is common ground that Exhibit P. 20 was not signed. That put paid to the issue of the weight to be attached to it. As this Court held in Jinadu v. Esurombi-aro (2009) NWLR Pg. 1145 55, documents that do not bear the signatures of their makers should attract little or no weight.”

On the whole, the objection raised in the final Written address of the 1st Defendant, on the admissibility of “**Exhibits, A, B, AA1, AA2 and AA3**” is a distraction, it is hereby overruled.

THE CASE OF THE THIRD DEFENDANT

The wisdom in starting from the 3rd Defendant lies in long line of authorities that where a party raises a Preliminary Objection challenging the Jurisdiction of the Court, it is right that the Court determine its jurisdiction before proceeding less it falls into the intractable web of nullity. The 3rd Defendant’s notice of Preliminary Objection was filed on **11/6/2018** praying for:-

- a. **AN ORDER** of this Honourable Court striking out the name of the 3rd Defendant from this Suit.
- b. **AND FOR SUCH FURTHER ORDER** this Honourable Court may deem fit to make in the circumstances of this application.

The said objection is supported by an 11-paragraphed Affidavit and a Written Address. The grounds are that the suit is not maintainable against it, it discloses no reasonable cause of action against the 3rd Defendant and that the Court has powers to strike out the name of the 3rd Defendant.

However, the 3rd Defendant on the **14/12/2022** did not move his Objection but proceeded to adopt the final Written Address. Since that is the case, determining the issue of reasonable cause of action on the basis of the Notice of Preliminary Objection will deny the Claimant and other parties their right to fair hearing, as this Court is not satisfied that the said objection was served on all the parties especially the third party in this suit.

It is equally not lost on the Court that the Court can raise the issue *suo moto*, but in the instant case, the objection that a suit discloses no reasonable cause of action against the 3rd Defendant does not oust the substantive Jurisdiction of the Court to try the matter in

the main and having regard to the fact that 3rd Defendant argued cause of action from paragraph 3.17 of the final Written Address, no miscarriage can be occasioned in resolving it as argued in the final written address. Without much ado, I hold that the 3rd Defendant's notice of preliminary objection filed on 11/6/2018, having been abandoned, be and is hereby struck out.

I will consider the case of the Claimant as it relates to the 3rd and 4th Defendants, since I have already started with the Preliminary Objection of the 3rd Defendant. The claims relating to them must succeed before the Defendants are liable in damages for the breach of Claimant's fundamental rights and all other privileges. It is imperative for the Court to exhume from the further Amended Statement of Claim the reliefs against the 3rd and 4th Respondent, though they relate to all Defendants. My view is that if the reliefs succeed, then those who wrote the petitions or set in Motion the acts that activated the 3rd and 4th Defendants' investigative powers will be liable. The reliefs are:-

- a. **AN ORDER** of this Honourable Court declaring the contract of sale between the Plaintiff and the 2nd Defendant on behalf of the 1st Defendant with respect to **Plot No. 556** within Central Area District measuring 5,080.90 square meters and evidenced by Certificate of Occupancy No. **199w-df61z-6723r-dbiau-20** as valid, subsisting and binding on both the said Plaintiff and the 1st and 2nd Defendants.
- b. **AN ORDER** of this Honourable Court declaring the payment of the sum of **N300,000,000.00 (Three Hundred Million Naira)** only and other payments as agreed between the Plaintiff and the 1st and 2nd Defendants in respect of the aforementioned Plot No. 556 as valid and binding.
- c. **AN ORDER** of specific performance ordering and or directing the said 1st and 2nd Defendants to forthwith execute in favour of the Plaintiff the relevant transfer documents to wit: Deed of Assignment, Power of Attorney and Application for

Consent to Assign and Consent/Authority to register Power of Attorney.

- d. **AN ORDER** of perpetual injunction Restraining the 3rd and 4th Defendants, their agents, servants or privies however and howsoever from interrogating, arresting and or detaining any of the Plaintiffs staff or anybody connected to the sale of the aforementioned property to the plaintiff or doing anything to the prejudice of the Plaintiff.

- e. **A DECLARATORY ORDER** of this Honourable Court that the acts of the 3rd Defendant in effecting arrest over land matters which are purely civil is *ultra vires* the powers of the Police, null and void and of no effect whatsoever and amount to usurping the Powers of the Court, and the unlawful arrest, detention and humiliation of the Plaintiff's Director amounts to violation of the Directors of the Fundamental Human Right.

- f. **DECLARATORY ORDER** of this Honourable Court that act of the 4th Defendant in threatening and arresting the Plaintiff's Chairman and its Director (Alhaji A.A Rano and Alhaji Yakubu Mohammed) respectively over a purely civil matters bothering on mutually contractual transaction over land matter is *ultra vires*, the Powers of the EFCC, null and void of no effect whatsoever and amount to usurping the powers of the Court.

- g. **AN ORDER** of this Honourable Court Directing the 1st and 2nd Defendants to recover the balance sum of the purchase price of **N400,000,000.00 (Four Hundred Million Naira)** only in line with the sales agreement.

- h. The sum of **N250,000,000.00 (Two Hundred and Fifty Million Naira)** only against the Defendants jointly and severally as exemplary damages and punitive damages for the embarrassment, humiliation and psychological turmoil cost

to the Plaintiff and its director(s) as a result of the acts of the Defendants.

It is clear that reliefs (g), (e), (f), (h) are targeted against the 3rd and 4th Respondent, only when they succeed that the effect will bind the Defendants in relief (h). The question is, has the Claimant proved his case?

I will start by restating the very settled Principle of Law to the effect that the Courts and Parties are bound by their pleadings. The apex court in **OYEWUSI & ORS. VS. OLAGBAMI & ORS. (2018) LPELR – 44906 27-28 para. F. (SC)** that:

“Both the parties and the Court are bound by the pleadings filed in a particular suit. The parties cannot go outside their pleadings to introduce evidence nor can the court go outside the pleadings to decide the issues in controversy in the matter. It is equally trite that evidence given on facts not pleaded goes to no issue”.

See also **ADELAJA & ORS. VS. ALADE & ANOR (1999) LPELR-109, p. 24, paras. F-F (SC), OKOKO V. DAKOLO (2006) LPELR-2461) SC.**

It is invariably true to equally say that evidence which is at variance with pleading goes to no issue. This trite principle was re-echoed by the Supreme Court in the recent case of **LUKE VS. RSHPCA & ORS. (2022) LPELR-57580 (SC) P36** where Peter-Odili J.S.C held:

“It is well settled in law that parties are bound by their pleadings and that any evidence led by any of the parties which does not support the averments in the pleadings or, put another way, which is at variance with the averments of the pleadings goes to no issue and must be disregarded by the Court.”

The Claimant’s pleadings against the 3rd and 4th Defendant are as follows:-

.....

17. that while the Plaintiff was in the said process of Construction, the Plaintiff's Chairman to his dismay and chagrin, received a call from one Bala Chiroma a Deputy Commissioner of Police wherein the Plaintiff's Chairman was informed of a case reported against the Plaintiff with respect to the uncompleted building the Plaintiff bought from the first and second Defendants.

18. that thirty (30) minutes after the Deputy Commissioner called the Plaintiff's Chairman, the 2nd Defendant called the Plaintiff's Chairman and informed him that she has been locked up and has been in detention in Abuja and her detention is connected to the sale of the uncompleted Filling Station she sold to the Plaintiff with the Authority of the 1st Defendant.

19. that the 2nd Defendant request of the Plaintiff to come to Abuja with all the Original Documents handed over the Plaintiff by her at the time, of sale.

20. that before the call from the Deputy Commissioner of Police in Abuja the Plaintiff's Chairman had received several text messages from Cecilia Ibru who claimed to be the Chief Executive Officer of the 1st Defendant begging the Plaintiff to ask the 2nd Defendant (the 1st Defendant had unequivocally authorized the 2nd Defendant to sell the property) to refund the amount(s) back to the Plaintiff.

21. that it was on the basis of the Plaintiff's intervention and upon making available to the Deputy Commissioner that the said 2nd Defendant was eventually released on bail to the Plaintiff.

22. that it was after the release of the 2nd Defendant that the 2nd Defendant discovered that the 3rd Defendant had at the

instance of the 1st Defendant broken into the 2nd Defendant's apartment with a bid to collocating the title documents to the property in question not knowing that the said title Documents had already been handed over to the Plaintiff upon execution of the Sales Agreement.

23. that after the 2nd Defendants was released, she was asked to report to the 3rd Defendant on the 4th January, 2017 with the Plaintiff to the Deputy Commissioner and the Commissioner of Police FCT Command.

24. That discussion held at the Commissioner of Police, FCT Command's Officers betrayed the officers of the 3rd Defendant as having taken side in that the 2nd Defendant who alleged to have forged the landed documents to the property sold to the Plaintiff was not given the opportunity to explain or defend the frivolous allegations against her.

25. That all attempts at prevailing on the 3rd Defendant to compel the attendance of Cecilia Ibru (Chief Executive Officer of the 1st Defendant and who was behind the Petition) or any of the representatives of the 1st Defendant (the Original Allottee of the property in question) proved abortive.

26. That after the matter was looked into, the officers of the 3rd Defendant discovered the matter was purely civil, and no element of forgery and it is a matter that could be settled by both parties.

27. That inspite of this obvious finding, the 3rd Defendant at the instance of the 1st Defendant and in disregard of the valid and subsisting sale agreement between the Plaintiff and the 1st and 2nd Defendants are bent on using the office of the 3rd Defendant to forcefully collect from the Plaintiff the title documents with respect to the said No. 556, validly purchased by it.

28.

29.....

30. That the used of men and officers of the 3rd Defendant to truncate the valid and subsisting Sales Agreement between the Plaintiff and the 1st and 2nd Defendants by unlawful and unconstitutional arrest and detention of the Plaintiff's Director Alhaji Yakubu Mohammed is not only unlawful but illegal, and a gross violation of the Plaintiff's Director's Right as enshrined under the Construction. The Plaintiff shall find and rely on the testimony of its Director and other staff in prove of this assertion.

32. That the 3rd Defendant has against all civilized and decent norms has resorted to violation of the existing law and order by attempting to forcefully collect from the Plaintiff the original title documents in its possession through the process of threat of arrest and intimidation.

33. That I know the 4th Defendant has also against all civilized, decent norms, and it Statutory powers resorted to the violation of its own laws and the Fundamental Human Right of the Plaintiffs and its staff (Director) by threatening, arresting and compelling the Plaintiff through its agent and Directors to submit through coercion of original title documents in its possession in the name of carrying out investigation. The Plaintiff shall find and rely on the testimony of its Director and such other staff.

34. That I know that the Plaintiff and its Management Staff have been threatened, intimidated and compelled to submit original title documents duly conveyed to the Plaintiff upon a legally and mutually concluded transaction on the said land.

35. That the 4th Defendant can conveniently and professional undertake all its needed investigations with secondary or photocopies of such title Documents.

Meanwhile the Claimant filed Replies to the 3rd Defendant process, the evidence of **Alhaji Abubakar Mohammed (PW1)** rehashed the Claimant's pleadings. Under the crucibles of cross examination by 3rd Defendant's Counsel, Festus Dude Esq, on **29/06/2021**, the **PW1** Stated:

- **Yes, officers of 3rd Defendant did not arrest any directors of the Plaintiff.**
- **Yes, none of the Directors were detained or beaten.**
- **Yes, 3rd Defendant is not a party to the land transaction leading to this suit.**
- **I was present when 2nd Defendant was arrested I even bailed her.**

Equally 4th Defendant's Counsel, N. M. Tertusa Esq, cross examined PW1 and he testified thus:

“No the 4th Defendant were not part of the sale transaction.”

Next is the evidence of Hassan Umar (PW2). Under cross examination by 1st Defendant's learned Senior Counsel, Bode Olanipekun SAN on 30/6/2021, he said:

“when the matter went to EFCC, I was able to verify the identity of the Director in Exhibit “A” but not Secretary”

When cross examined by 3rd Defendant's Counsel, he said:

- **“no staff of the Plaintiff has been arrested by the police in respect of this transactions.**
- **I was not there when the 2nd Defendant was arrested by the 3rd Defendant.**

- *I was not there when the 2nd Defendant came back to her house only to realize her house has been broken into by 3rd Defendant to collect title document to the said land transaction.*
- *To the best of my knowledge, I do not know if the 2nd Defendant has brought any fundamental Rights against the 3rd Defendant.*

Under cross examination by the 4th Defendant, PW2 stated that:

“The 4th Defendant requested me to produce the Certified True Copy of C of O of the land which is the subject matter of this case.”

After the above evidence, there is nothing else to support the case of the Claimant in this regard.

Now, Fundamental rights are constitutional and statutory rights conferred on a party by Section 46(1) of the Constitution. This Court is equally empowered by Section 46(2) of the Constitution to hear and determine any application made pursuant to such Sections of Chapter IV of the Constitution and other statutory enactments and to issue such writs and give such directions as it considers appropriate for the purpose of securing or enforcing the right of such applicant. However, Section 46(3) mandates the Chief Justice of Nigeria to make rules with respect to the practice and procedure of a High Court for the Purpose of this Section. This is what my Lord, **Hon. Justice Idris Legbo Kutigi GCON** (now of the blessed memory) Chief Justice of Nigeria (as he then was) made and it commenced on 1st December 2009, the rule is cited as **“Fundamental Rights (Enforcement Procedure) Rules,2019.”**

In the instant case, the Claimant did not seek to enforce this right through this appropriate rule but lumped same up in an action for specific performance. I shall consider it in the light of the decision of the Supreme Court in the case of **FRN & ANOR V. IFEGWU (2003) LPELR 3173 (SC) @ PAGE 18** where the Court held that:

“The manner in which the Court is approached for the enforcement of a fundamental right is hardly objectionable once it is clear that the Originating Court process seeks redress for the infringement of the right so guaranteed under the Constitution. The Court process could come by the Fundamental Rights (Enforcement Procedure) Rules or by originating summons or indeed by writ of summons: see SAUDE VS. ABDULLAHI (1989) 4 NWLR (Pt. 116) 387. That seems to underline the concerns in regard to redressing a contravention of a fundamental right by liberalising the type of originating process without the person affected being inhibited by the form of action he adopts. It is enough if his complaint is understood and deserves to be entertained.”

Having analyzed all the evidence as it relates the parties, particularly 3rd and 4th Defendants, I am of the view that the 3rd and 4th Defendants are entitled to receive petitions from the general public and cause investigations into same. The Claimant did not plead at all any particulars of infringement not to talk of leading evidence to prove same. The mere allegation that the 3rd and 4th Defendants were dabbling into civil matters, is to say the least unsustainable. They must be allowed to conduct preliminary investigations into an allegation before they can ascertain whether there is a basis to proceed or whether the petition leans towards it being a civil matter outside their statutory mandate. I think in the instant suit, with the PW1 and PW2 testimonies herein produced, I cannot see my way faulting the 3rd and 4th Defendants.....

Equally, the Claimant appears to be seeking to enforce by his testimonies the fundamental right of the 2nd Defendant which I find curious. I say so, as the Claimant is the one who sued the 2nd Defendant thereby making her a Defendant in this action and sought several reliefs against her.

To buttress this point, I shall exhume the Claimant's relief "h" of the further Amended Statement of Claim I quote:-

h. The sum of N250,000,000.00 (Two Hundred and Fifty Million Naira) only against the Defendants jointly and severally as exemplary damages and punitive damages for the embarrassment, humiliation and psychological turmoil caused to the Plaintiff and its director(s) as a result of the acts of the Defendants.

During cross-examinations the Claimant's witness PW1 testified how he bailed the 2nd Defendant, who ironically he is jointly and severally claiming damages against in relief "f". The Claimant in my humble but firm view failed woefully in pleading clear particulars of the infringement as the 3rd and 4th Defendants have powers of arrest, search, detention and invitation of suspect. These powers are subject to Judicial Review of this Court. These powers are subject to Judicial Review of this Court, where it is shown that they have acted unlawfully or exceeded their authority, like detaining a suspect more than the time allowed by law without a Court order. All these instances, of infringement or violation of human rights, are lacking in the instant suit. I hold therefore that the 3rd and 4th Defendants, having acted lawfully without any breach of the fundamental rights of the Claimant, the issue of other liability arising from their actions to other Defendants are non-existent and a mirage.

In short, reliefs **d**, **e**, **f** and **h** are lacking in merit, they are hereby dismissed.

Third party Notice/third party's Counterclaims

A third party proceeding or a third party Notice is issued where a defendant claims against a party not already a party to the action amongst other things, that (as in this case) she is entitled to contribution or indemnity or that the question or issue relating to the subject matter is substantially the same as

some question or issue arising between the Claimant and Defendant, and should be properly determined not only as between the Plaintiff and Defendant but also between any of the parties and the third party. See **LADOBE V. OTUBU & ANOR (2001) LPELR – 1731 SC.**

I am also not unmindful that the liability of a third Party against the party whom brought it arises if the main claim succeeds against the said party. The third party may defend himself in any way in which any Defendant in an action at Suit of a Plaintiff may defend himself.

In the instant suit, the third party filed a Statement of defence and a Counterclaim. She equally filed a reply to the 2nd Defendant's Statement of defence to the Third Party's counterclaim.

At the trial, the 2nd Defendant testified herself while the Third Party who filed a witness statement on oath failed to testify in her defence and in proof of her counterclaim. However, Engineer Lawal Dahiru Ibrahim testified in support of the case of the Third Party.

I wish to state that the case of the 2nd Defendant against the Third Party is simply that all amounts found to be due and payable to the Claimant should be paid by the Third Party, and that the Third Party continues to indemnify the 2nd Defendant against all actions and liability arising or that may arise in respect of the transactions she entered into with the Claimant, including the amount due and payable to her. On the same strength the Third Party/Counter-claimant claims against 2nd Defendant **N500,000,000.00 (Five Hundred Million Naira Only)** as general damages for the inconveniences she caused her and the sum of **N50,000,000 (Fifty Million Naira Only)** as cost the Third Party's action.

The third party formulated three issues for determination, they can be found at paragraphs 3.1 to 3.3 of the Third Party's final written address. They are reproduced below:

- 1. Whether the 2nd Defendant has led any credible evidence and proved her claims against the third party to warrant the grant of the 2nd Defendant's reliefs against the third party.**
- 2. Whether the third party is liable to the 2nd Defendant as claimed.**
- 3. Whether the third party has approved and is entitled to her counter claims.**

Arguing his issues, learned Counsel asked whether a company can be owned and placed reliance on **SALOMON V. SALOMON** and rendered the answer to his question in an emphatic **"No"**. It was his submission that the 2nd Defendant tendered **Exhibit AA2** which she allegedly claimed was issued by the 1st Defendant and in her confusion, she claimed it was now the Third Party who issued it. See paragraph **4.0** of the Third Party's final address.

Counsel submitted that documents speak for themselves and as such oral evidence cannot vary the content of same. See **OPARAJI V. AHIHIA (2012) 4 NWLR (PT. 1290) 266 SC**. He further submitted that the Third Party being a director from 30th April, 2013 as shown by documentary evidence before the Court, there is no how or any truth to allege that the third party validly issued Exhibit A and signed same. Counsel submitted that the Court should not allow the 2nd Defendant to approbate and reprobate and cited several authorities to buttress the point, he likened 2nd Defendant's evidence as a riotous one which is at a variance with pleadings as same goes to no issue.

Counsel went nuclear that under the principle of **Nemo DAT QUOD NON EST HABET**, that the appointment and legality of every exercise conducted by the 2nd Defendant on this principle indicate she acted in vain. Also, that being a legal practitioner she cannot rely on ignorance. Third Party herein challenges Exhibit ‘**AA19**’, which is a document from the Corporate Affairs Commission. She equally raised the issue of authenticity of Exhibit “**A**” and the objections ran up to paragraph 4.25, and urged the court to dismiss the case of the 2nd Defendant.

On issue 2, Counsel urged the court to carefully examine the pleadings, reliefs and totality of evidence adduced and determine whether the 2nd Defendant has proved her case on its strength to be entitled to the solemn declarations sought.

Learned Counsel further submitted that liability can only arise if the 2nd Defendant has been able to prove any claim, loss or damage she has suffered in execution of or pursuant to the powers of “**Exhibit A and AA3**” (Power of Authority and indemnity). Finally, Counsel urged me to grant the Third Party’s Counter claim and rely on the unshaken evidence of DW3.

Third Party equally filed a reply address signed by **STANISLAUS V. MBAEZUE ESQ.** dated 2nd October, 2022 but filed on 15th November, 2022, suffice it to say I have read all the issues of law contained therein.

On her part, the 2nd Defendant formulated on the same strength three issues for determination they are as follows:

- 1. Whether having regard to the overwhelming evidence adduced by the 2nd Defendant which are essentially documentary showing and or revealing that the third party being the alter ego/or managing Director of the 1st Defendant and/or held out herself as such expressly authorized and was instrumental to the appointment of***

the 2nd Defendant to alienate the property, subject matter of dispute, the third party is not estopped from resiling on the sale of the property to the Plaintiff particularly as the transaction had been concluded?

- 2. Whether the sale of the 1st Defendant's property, the incomplete Filling Station situate at Plot 556 CBD, FCT – Abuja to the Plaintiff through its Attorney (the 2nd Defendant) on the directive of the Third Party, is not valid being the action of an agent of a disclosed principal?*
- 3. Whether the third party has any defence to the Third Party Notice initiated by the 2nd Defendant having abandoned her witness on oath and the only evidence adduced by her sole witness is hearsay evidence?*

Learned Senior Counsel who adopted the address prepared by **Emmanuel Ekong Esq.** argued that before this Court lies overwhelming evidence that the Third Party held herself but out as the alter ego/Managing Director of the 1st Defendant. It was his submission that the rule of estoppel does not permit a man to blow hot and cold at the same time, put simply, to approbate and reprobate. **See SYLVA VS. INEC (2017) ALL FWLR (Pt. 875) 1996.**

Learned Senior Counsel stated that the crux of the case of the 2nd Defendant lies in the acts and conduct of the third party, who not only appointed the 2nd Defendant as the lawful attorney of the 1st Defendant to sell Plot 556 Cadastral Aoo, CBD, FCT Abuja on behalf of the 1st Defendant, but she expressly doled out instructions towards actualizing the mandate of the Power of Attorney. Counsel submitted that the 2nd Defendant will rely on Exhibits **AA1-AA30** in discharging her evidential burden.

On the need for the court to construe the surrounding circumstances to effectuate the intention of **parties to**

contract, Learned Counsel referred me to the case of Unity Bank Plc V. Olatunji (2015) 5 NWLR (Pt. 1452) 203 at 247, para. C-D. Learned Counsel urged the Court to read all the documents together in order to fully appreciate their legal purport and impact. He cited various authorities to buttress the point namely **CBN V. IGWOLLI (2007) NWLR Pt. 1046 393 at 433, F.G.N V. INTERSTELLA COMM LTD (2019) NWLR (PT. 38) 785 at 787, R.E.A.N LTD V. ASWANI TEXTILE INDUSTRIES (1999) 2 NWLR (Pt. 176).**

Learned Counsel then submitted that when Exhibits **AA1** to **AA30** are read together with the oral evidence of the 2nd Defendant, the court will grant the 2nd Defendant's claim.

On the issue of Directorship, Learned Silk submitted that Section 561 (1) now Section 868 (1) of CAMA 2020 defines a Director to include any person in accordance with whose directions or instructions the directors of the Company are accustomed to act. He relied on **AZODO V. KAY-KAY CONSTRUCTION LTD** (without citation) and submitted that directors are not only limited to subscribers of CAC but includes those having over bearing influence on the company and can give valid instructions and directives as the law consider those directives valid and legal and any infraction actionable.

In respect of Exhibit **AA3**, Counsel submitted that this document proves that the Third Party held herself out as the Executive Director of the 1st Defendant and bound herself to indemnify the 2nd Defendant for any loss arising from the assignment of the interest in the property. It is further submitted that the document is authentic, genuine and admissible, having been tendered in compliance with section 84 of the Evidence Act, more so as the Third Party did not object to its admissibility.

Learned Counsel also submitted that Exhibit **AA4** (email instruction dated 31/08/2012 from the Third Party to the 2nd Defendant) confirms that the Third Party instructed the 2nd Defendant to sell the property and make the proceeds of the sale available to the account of Michael and Cecilia Ibru Foundation, and that the Third Party and 1st Defendant are estopped from reneging on the transaction. According to Counsel, as long as a donee acts within the scope of the Power of Attorney, he incurs no liability and the transaction is valid, lawful and final.

On Exhibit **AA2**, learned Counsel also submitted that the allegation of forgery, being a criminal allegation, ought to be specifically pleaded and proved beyond reasonable doubt, which the Third Party failed to do, and that the cases of **EZE V. OKOLOGU (Supra)** and **ADEOSUN V. GOV. EKITI STATE (Supra)** relied on by the 2nd Defendant are not applicable to this case. Also argued that the non-registration of Exhibit **AA2** does not vitiate the purpose for which it was tendered, which is to show the existence of a transaction between the 1st and 2nd Defendants.

On issue 3, learned Senior Counsel urged me to hold that the Third Party abandoned her defence to the 2nd Defendant's Third Party Notice, having not attended Court on any occasion and having failed to adopt her witness statement on oath. He also urged me to expunge the evidence of DW3, as same allegedly constitutes hearsay evidence, given that DW3 was not privy to the transaction between the 2nd Defendant and the Third Party. According to Counsel, apart from constituting hearsay, DW3's evidence as to the email is also false as the same email has been used by the Third Party in prior communication with the 2nd Defendant.

Learned Counsel finally urged me to resolve the issues in the 2nd Defendant's favour and to dismiss the counter claim.

Resolution of Third Party's case.

Third party proceedings fall into civil cases and the law is that in such cases that the burden of proof is on preponderance of evidence, meaning that one side's position outweighs the other. The onus shifts from the Plaintiff to the Defendant and vice versa. The onus is on the party who will fail if no evidence is adduced on either side. In the instant case, the 2nd Defendant has the burden to establish that she was acting on the directive of the Third Party and the Third Party indemnified her. It is equally true that the Third Party/Counter-claimant must prove with credible evidence her counterclaim. I will therefore review the state of pleadings and the totality of the evidence relevant to determine this case.

Before I proceed, the Third Party in her address, raised objections to **“Exhibits AA19, A.AA3”** I have considered them, I hold as I earlier held in the cause of this judgment that the exhibits were pleaded, relevant and they are not for establishing title or legal rights, this objection at this stage is a sheer waste of time and is overruled.

I equally held and do hold that an unsigned document has no evidential value as a matter of principle of law, without deciding on the exhibits in this case at this time of objecting to their admissibility, but they are admissible. On whether **“Exhibit AA3”** is computer generated or not, the mere fact that Counsel described it as such does not render it inadmissible, I subscribe that counsel were confused on whether a document is computer generated or not should, out of abundance of caution, comply in surplusage, rather than to be found wanting. While I appreciate the decisions of the Supreme Court in **KUBOR V. DICKSON** and **DICKSON V. SYLVA**, they are not fatal to Exhibit AA3, I so hold. This objection is academic, courts do not engage in academic exercise or I-too-know arguments which have no live issues in them, it is hereby consigned to the dustbin of judicial debris, I so hold.

Having carefully gone through all the issues formulated by both 2nd Defendant and the Third Party, I am of the view that they are not concise and straightforward. This Court has power to so reformulate issues in the interest of Justice and the sole issue to cover the entire argument of the parties is:

“Has the 2nd Defendant proved his claims against the Third Party, if not, is the Third Party not entitled to her counterclaim”?

Having carefully gone through the pleadings of the parties and examined the evidence before this Court and weighed this on an imaginary scale, let me make certain findings to demonstrate where the scale preponderates to.

On **12/1/22** the 2nd Defendant adopted her evidence, that is, the statements on oath of **06/19/18** and **28/1/2020** in proving her case. By agreement of Counsel all the documents were admitted in evidence subject to objection reserved on admissibility which I earlier resolved in the course of this judgment.

Under cross-examination the 2nd Defendant stated:

“It is correct that 3rd party Mrs. Ibru is the Prime mover” the alter ego and the deciding factor, the regulating machine of all that happens in the 1st Defendant (Nortica) from time of incorporation till today.

Further:

“I agree with Kester that the appointment of the 2 Directors of the 1st Defendant were under the instruction of the 3rd party.”

“When the 3rd party instructed me about the subject of the property of this suit, I believed it was the 1st

Defendant that was instructing me because she own the 1st Defendant (Nortica).”

I need not reproduce evidence elicited from the 1st Defendant’s Counsel here, suffice it to say the Court has reproduced same. Next is the cross examination by Counsel to the Third Party. Below is the evidence elicited under cross examination:

“It is correct I have instruction to sell, collect money and transfer to an account given to me. All by 3rd party.”

“The 3rd party never told me to return the money already paid to the Plaintiff. In fact she was jubilant when I told her of the payment.”

The third party did not testify, rather Engineer Lawal Dahiru Ibrahim testified for the Third Party adopting the witness statements on oath of 7/11/2019 and 6/2/2020 and tendered Exhibit “P”.

Under cross examination by Plaintiff’s Counsel he stated:

“It is part of her (3rd Defendant) instruction that I should come and testify on her behalf”

“I spoke with her (Mrs Ibru) last in 2019, she is alive.”

“AA12 is written on behalf of Nortica Nigeria Ltd.”

“I am not the Personal Assistant to 3rd party”

“I don’t handle her mails”

Under cross-examination by 2nd Defendant’s SAN, DW3 stated:

“my 1st encounter with Ibru Foundation was in 2014. So I would not have participated with anything that happened in 2012 with Mrs. Cecilia Ibru.”

“So anything I said happened in 2012, is what I heard from Mrs. Cecilia Ibru.”

“I have seen my two statements on oath. I did not say in these statements that I met Mrs. Cecilia Ibru and shetold me so and so”.

“I work for Michael and Cecilia Foundation as Assistant Chief Protocol Officer. Michael & Cecilia Foundation is not a party to this case.”

“I have seen my Statement on oath again. In all these paragraphs, I have used “that third party”. I spoke as 3rd party.”

“I deny the paragraphs of statement of claims because we had several meetings in respect of my appointment as manager of that Filling Station.”

“And there was not time in the presence of Mrs. Cecilia Ibru that Mrs. Comfort Otera told me how can I manage a Filling Station that is on sale.”

“I am not Cecilia Ibru.”

“My schedule of duty did not include sending and receiving emails”

“My schedule of duty did not include sending and receiving of text messages.”

“I did not read the Defence of the 2nd Defendant”

“I have no role to play regarding the Power of Attorney”

“Third party did not tell the 2nd Defendant to sell property but told to supervise the ongoing renovation of the property.”

“I did not agree that 3rd party by finding renovation was exercising Acts of ownership”

“I never saw board of resolution but I was told about it.”

“Mrs. Cecilia Ibru was on the Board of Directors when the instruction to renovate the property was given.”

“The instruction was given between 2016-2017”

“The property was sold when the renovation was going on.”

From the foregoing, there is no credible evidence to sustain the Defence and the Counterclaim set up by the Third Party.

While it is said that unsigned documents, like the indemnity of Mrs. Cecilia Ibru for an on behalf of Nortica Nigeria Limited, is worthless, but every principle of law has exceptions to it. Let me first reproduce the content of the said unsigned physical paper:

“I, Mrs. Cecilia Ibru, being the Executive Director of Nortica Nigeria Limited, a company duly registered in Nigeria on Plot 1012 Jose Street, Area 3, Garki, Abuja, do hereby give an undertaking to INDEMNIFY COMFORT OTERA CHIGUE of Otera Okey Chambers with Office situate at 30, Haile Sellasie Street, Asokoro, Abuja, FCT, Nigeria; against any loss or damages arising from defect in title or misrepresentation and in relation to assignment of the interest in the property situate at Plot No. 556, Cadastral Zone, Central Business Area, Abuja and covered with Certificate of Occupancy No. 1996w-df612-6723r-db1au-20 to a third party which transaction we fully confirm by a deed of Power of Attorney fully executed in her favour for the transaction of assigning the said property to a third party.

We further undertake to INDEMNIFY her against any loss or damage arising from any civil action instituted against her in relation or in consequence of her carrying of the Power as granted to her as our Attorney.

Finally, it is equally, freely consented to by COMFORT OTERA CHIGBUE of Otera Okey Chambers with office situate at 30, Haile Sellasie Street, Asokoro, Abuja, FCT, Nigeria; to immediately disclose and surrender the full proceeds or value realized from the assignment of the interest in the property which is situate at Plot No. 556, Cadastral Zone, Central Business Area, Abuja and covered with Certificate of Occupancy No. 1996w-df612-6723r-db1au-20 to any named third party; and cause the

said realized proceeds or value arising from the transaction to be transferred to the favour of MICHAEL & CECILIA IBRU FOUNDATION's bank account domiciled with ZENITH BANK PLC with account number 1012550686.

.....

.....

.....”

I reproduce the mail forwarding the indemnity and the subject matter:

“FWD: Indemnity to COMFORTOERA CHIGBUE

From: Mummy (mmummyci@ymail.com)

.....

Dear Comfort,

Herewith the indemnity. Thank you. Mrs. Ibru

Sent from my iPhone.”

From the totality of evidence, where a person has made another to believe in the existence of non-existing facts, like using this mail to induce the 2nd Defendant, she cannot be allowed to resile from her legal fraud (**See Walters v. Morgan 1861 45 E.R.**). In fact, the accompanying email has rendered the indemnity as signed, as both documents go together, I further hold.

In view of my holding above and my earlier decision that the 3rd party lacked credible or no evidence to sustain her defence to the claim, I hold that the 2nd Defendant is entitled to the grant of the relief only in the following terms:

“It is hereby declared that the third party shall indemnify the 2nd Defendant against all the claims of the Plaintiff and/or any other party arising from her selling or purporting to sell that property known as Plot 556 Cadastral Zone Central Business Area Abuja and covered by Certificate of Occupancy No. 1966w-df612-672308-db1au 20”.

Consequently, the law remains that claim and Counterclaim, though independent suits are tried together, a decision in the main claim may have a devastating effect on the Counterclaim.

In **MEDITERRANEAN SHIPPING CO. (NIG) LTD V. PEWIS ENT. LTD (2021) LPELR-53190 (CA)** the Court of Appeal held thus:

“It is commonsensical that, given the facts upon which the claim of the Respondent and the counterclaim of the Appellant were predicated, the grant of one would necessarily negate the grant of the other. Both of them could not be granted.....The law is that where the facts are intertwined and interwoven as regards a plaintiff’s action and a defendant’s counter claim, the success of the plaintiff’s claim would mean the failure of the defendant’s counter claim.”

From the above, coupled with lack of credible evidence, the Counterclaim of the Third Party is a non-starter, empty and filled with nothingness. It really deserves to be dismissed and is hereby dismissed with cost.

Plaintiff’s Claim against 1st and 2nd Defendant and the Indemnity of the Third Party in favour of the 2nd Defendant.

At this juncture of the judgment, it is pertinent to reproduce the surviving claims in the Further Amended Statement of Claim for which the Claimant, 1st and 2nd Defendant are contesting with liability, depending on the outcome to the

Third Party. The surviving reliefs as endorsed on the said processes aforementioned are:

- i. **AN ORDER** of this Honourable Court declaring the contract of sale between the Plaintiff and the 2nd Defendant on behalf of the 1st Defendant with respect to **Plot No. 556** within Central Area District measuring 5,080.90 square meters and evidenced by Certificate of Occupancy No. **1996w-df61z-6723r-db1au-20** as valid, subsisting and binding on both the said Plaintiff and the 1st and 2nd Defendants.

- ii. **AN ORDER** of specific performance ordering and or directing the said 1st and 2nd Defendants to forthwith execute in favour of the Plaintiff the relevant transfer documents to wit: Deed of Assignment, Power of Attorney and Application for Consent to Assign and Consent/Authority to register Power of Attorney.

- iv.

- v.

- vi.

- vii. **AN ORDER** of this Honourable Court directing the 1st and 2nd Defendants to recover the balance sum of the purchase price of **N400,000,000.00 (Four Hundred Million Naira)** only in line with the sales agreement.

- viii.

I have read all the processes filed in the case including the 1st Defendant/Counterclaimants Final Written Address as well as the reply addresses and exhausted the issues of law well-articulated therein. The 2nd Defendant formulated a sole issue in her own address, which I have read exhaustively, while the

claimant in his final written address to the 2nd and 3rd Defendants formulated four issues for determination and equally an address in response to 1st and 4th Defendants. The Court prefers the issues formulated by the 1st Defendant only to the extent that it will make it a sole issue. This is so as a sole issue can effectively dispose of this case if properly married with issue 2 raised by the 1st Defendant. To this end, the sole issue for determination is:

“Having regard to the Plaintiff’s Further Statement of Claim, the evidence adduced, state of pleading and position of the law, whether the Plaintiff is entitled to his claim and the 1st Defendant his counterclaim”.

The reliefs in the 1st Defendant’s Counterclaim are:

- i. A DECLARATION that the Plaintiff is wrongly, illegally and unduly holding on and keeping possession of the originals of the title documents in respect of the defendant/counter claimant’s title documents of the counter claimant’s property known as Plot No. 556 within Central Area District, measuring 5,080.90sqm, covered by Certificate of Occupancy No. 1996w-df61z-6723r-db1au-20, registered as No. 2176 at page 2176, in Volume 11, of the Certificate of Occupancy registered in the Land Registry Office at the Federal Capital Territory, Abuja.**

- ii. AN ORDER directing the plaintiff, which is the defendant to the counter claim, to deliver to the counter claimant the originals of the defendant/counter claimant’s title documents on its property known as Plot No. 556 within Central Area District, measuring 5,080.90sqm, covered by Certificate of Occupancy No. 1996w-df61z-6723r-db1au-20, registered as No. 2176 at page 2176, in Volume 11, of the Certificate of Occupancy registered in the Land Registry Office at the Federal Capital Territory, Abuja.**

- iii. **AN ORDER of perpetual injunction restraining the plaintiff, which is the defendant to the counter-claim, from interfering or further interfering with, trespassing on or further trespassing on, encroaching on or further encroaching on the counter-claimant's property known as Plot No. 556 within Central Area District, measuring 5,080.90sqm covered by Certificate of Occupancy No. 1996w-df61z-6723r-db1au-20.**
- iv. **General damages in the sum of N500,000,000.00 (Five Hundred Million Naira only), against the plaintiff, which doubles as the defendant to the counter claim.**
- v. **The sum of N20,000,000.00 (Twenty Million Naira only), being the cost of this action.**

From the state of pleading and evidence before this Court the Claimant admitted that upon payment it was handed over the original title documents by the 2nd defendant in respect of the subject matter of this suit. This evidence remains credible and unchallenged. I am of the view that if the Claimant's claim fails, then by its admission, coupled with the evidence led, the counterclaim of the 1st Defendants should succeed, except as to quantum of general damages and cost of the action which is refused. I now proceed to determine if the claimants claim has scintilla of merit.

The claimant purchased the property in dispute from the 2nd Defendant for value at the agreed fee of **N800,000,000 (Eight Hundred Million Naira Only)** of which **N300,000,000 (Three Hundred Million Naira Only)** was paid and another **N100,000,000 (One Hundred Million Naira)** Cheque paid. The position of the 1st Defendant and the third party in this suit is that they did not issue **Exhibit "A"**. The 1st Defendant also put forward a double-barrel defence that, assuming the third party ever issued **Exhibit "A"**, not being a Director or member of the

1st Defendant, she cannot lawfully do so. The Court is equally aware of the basic elements of a contract as decided in **YOUNG SHALL GROW MOTORS LTD VS. ONELOGS (2021) 3 NWLR PT. 1763 at 319.**

It is equally the law that a company speaks or express its decisions through resolutions, which must be validly passed as submitted by the 1st Defendant. I agree with the evidence before me that **Exhibit “A”** was executed by the 2nd Defendant and the third party. I am equally convinced that the Third Party as at May 7th, 2012 was not a director of the 1st Defendant. From **Exhibit “AA19”**, the Third Party though not a Director was a shareholder of 20,000 shares as such, she cannot be allowed to use the instrumentality of her non-directorship to defeat **Exhibit “A”**.

Assuming for the sake of argument that I am wrong, I am of the firm view that from the actions of the third party in various Exhibits namely **AA4, AAS, AA6, AA7, AA10, AA11, AA12, AA28, AA20**, and the unchallenged evidence of the 2nd Defendant, the third party regularized whatever affliction that inflicts **Exhibit “A”** upon her appointment on 24th April 2013 and they became fully the acts of the 1st Defendant.

The argument that Section 9 of the conveyancing Act, 1882 revoked **Exhibit “A”** is untenable. Again by the conduct of the third party who is the alpha and omega of the 1st Defendant, paying ground rents from different entities, issuing unchallenged instructions, Petitions, Publication through the 2nd Defendant in the ordinary course of the company’s business, I hold that they are stopped from denying or asserting otherwise.

On the sale agreement evidencing the sale of the subject matter of this suit, I am of the view that Exhibit “B” has no evidential value, it is hereby discountenanced.

Equally the text message presented by the claimants and the 2nd Defendant wherein the Third Party said:

“Dear Alhaji,

I called earlier and the line was bad and cut off. First let me congratulate you on the marriage of your daughter. My name is Dr. Cecilia Ibru. You remember me as the MD of the Bank when I visited in Kano in the early days of your business. Congratulations you have been successful. Alhaji, I hear you bought our petrol station near the National Hospital in Abuja Central District. Alhaji, please I do not want to sell any more as my husband that I need the money died last year September. Please Sir, do me a favour and take your money from Barrister Comfort. I want to run the business myself. I have appealed to Comfort to let you know. Pl for God’s do me this honour for long time sake. Thank you very much and God bless and prosper you always. I really appreciate your understanding.

Dr. Cecilia Ibru.”

This message ought to further prove the case of the claimant and the authority of the 2nd Defendant, but in my view they are inadmissible as constituting hearsay.

I wish to disagree with the 1st Defendant that the email address of Mrs. Cecilia Ibru was not proved, I hold that Mrs. Cecilia Ibru, the Third Party failed to testify and lead credible evidence to deny that the email addresses belonged to her. The only witness called by the Third Party under cross examination by the 2nd Defendant’s SAN stated:

“My schedule of duty did not include sending and receiving emails”

In the absence of any contrary evidence, this court is entitled to believe the unchallenged evidence of the 2nd Defendant which I did earlier in this judgment. Upon that, all other assertions and evidence from those emails became evaluable evidence, which the Court is entitled to act on.

Another factor in the case of the claimant is that in the absence of Exhibit “A” there abound credible evidence after April 2013, wherein the Third Party by her conduct has presented the 2nd Defendant as her agent and the acts of the agent so disclosed are binding on her. Even in equity, who knows her children by name, the 1st Defendant and the Third Party must not be allowed to resile from their position or to approbate and reprobate at various times.

I therefore hold that it is correct to say from the preponderance of evidence before me that the claimant has acquired some equitable interest of some type in the said **Plot 556 Cadastral Zone Central Business Area Abuja**, which is enforceable by an order of specific performance. I so hold.

The cheques (Exhibit AA22) issued, from the evidence before me, cannot be null and void as they were made to be presented on future dates, the series and their dates are as follows:

94386543- 12/3/17

94386544- 12/4/17

94386545- 12/5/17

94386546- 12/5/17

The instant suit was filed on 6th February 2017, I am of the view that upon the filing of the suit, the cheques became *sub judice*,

hence the claimant sought for an order to compel the 1st and 2nd Defendant to recover the purchases price. I am also of the firm view that once a cheque is written to a bank with instructions at the back, the cheque is a valid one not in breach of the Central Bank regulations or guidelines, it is intended for bank transfer and not clearing, as such the claim of the 1st Defendant is grossly misconceived.

From all I have said, the point I am struggling to make is that the reliefs sought by the claimant in paragraphs **40(a)**, **40(b)**, **40(c)** and **40(d)** have merit and succeed, they are hereby granted. While the granting of the instant reliefs means that the counter claim of the 1st Defendant, even on the admissions of the claimant of being in possession of the original title documents to the property in dispute, cannot be granted and is hereby dismissed.

I had earlier indicated that cost follows the event, I shall only award cost against the Third Party and in favour of the 2nd Defendant at **N10,000,000** (Ten Million Naira) and for the claimant at **N10,000,000** (Ten Million Naira).

For the avoidance of doubt, and to afford the appellate courts my view and the opportunity to deal with all aspects of this suit, in the unlikely event that the appellate courts hold that I was wrong to hold that an equitable interest has passed to the claimant, I shall proceed to determine the effect of non-passage of any interest at all.

I am of the view that the conduct of the 3rd party is most reprehensible and condemnable. She cannot be allowed to use herself and the company to perpetrate fraud on innocent bystanders. This court exhumes paragraphs 14(iv) of the 1st Defendant's Amended Statement of Defence, I quote:

“14.....

i....

ii....

iii....

iv. Defendant's property covered by Certificate of Occupancy No. 1996w-df61z-6723r-db1au-20, registered as No. 2176 at page 2176, in Volume 11, of the Certificate of Occupancy registered at the Land Registry Office at the Federal Capital Territory, Abuja, with all the appurtenances/structures put thereon by the defendant before the institution of this action was valued at **N3,028,468,001.51 (Three Billion, Twenty-Eight Million, Four Hundred and Sixty-Eight Thousand, One Naira, Fifty-one Kobo)....**

This was confirmed in evidence, for which the witness was not cross examined. I therefore accept that the said property is worth about **N3,000,000,000 (Three Billion Naira)**.

In view of my finding that all acts performed by the 2nd Defendant are indemnified by the Third Party, I have no hesitation in holding that the Plaintiff is entitled to the refund of all the money paid to the 2nd Defendant from the Third Party.

In view of the Third Party's conduct and to ensure she does not benefit from her unconscionable and reprehensible conduct bereft of mercy, I invoke the 1st Defendant's pleading, accept their valuation of the worth of the land and award exemplary damages of **N1,500,000,000 (One Billion Five Hundred Million Only)** against the Third Party in favour of the Claimant. The said amount shall attract a post judgment interest of 21% until finally liquidated. The counter claim of the 1st Defendant succeeds and is granted to the extent that the damages and cost are borne by the third party.

However, my earlier decision that the Claim in the Claimant's Further Amended Statement of Claim in **paragraph 40(a)**,

(40b), (40c) and (40g) succeeds still binds the court and all parties herein and remains the judgment of the Court.

For the avoidance of doubt, judgment is entered in the following terms:

1. **AN ORDER** of this Court is hereby made declaring that there is a binding sale between the Claimant and the 1st and Defendants in respect of Plot **No. 556** in Central Business District measuring 5080.90sq meters and evidenced by Certificate of Occupancy **No. 199w-df612-6723r-dbiau-20** and same is valid, subsisting and binding on both the Claimant, 1st and 2nd Defendants.
2. **AN ORDER** of this Honourable Court declaring the payment of the sum of **N300,000,000.00 (Three Hundred Million Naira)** only and other payments as agreed between the Plaintiff and the 1st and 2nd Defendants in respect of the aforementioned Plot **No. 556** as valid and binding.
3. **AN ORDER** of specific performance is hereby made ordering and/or directing the said 1st and 2nd Defendants to forthwith comply.
4. **AN ORDER** is hereby made directing the 1st and 2nd Defendant to recover the balance sum of the purchase price of **N400,000,000.00 (Four Hundred Million Naira)** only in line with the sales agreement.
5. That reliefs **d, e, f, and h** on the further Amended Statement of Claim lacks merit and is hereby dismissed.
6. That the 1st Defendant's counterclaim lacks merit and is hereby dismissed.

7. **AN ORDER** is hereby made declaring that the third party shall indemnify and continue to indemnify the 2nd Defendant to the time covering all the liabilities that may arise against the 2nd Defendant in respect to the transaction she entered into with the Plaintiff and the full remuneration of her interest including all the amount due and payable to her.
8. That the third party's counter claim is hereby dismissed.
9. Cost is awarded at **N10,000,000 (Ten Million Naira)** each in favour of the Claimant and the 2nd Defendant payable by the third party.

This is the judgment of this Court.

Signed
S. B. Belgore
(Judge) 14/3/2023