

IN THE HIGH COURT OF JUSTICE
FEDERAL CAPITAL TERRITORY OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT APO – ABUJA
ON, 9TH DAY OF FEBRUARY, 2023.
BEFORE HIS LORDSHIP:- HON. JUSTICE A. O. OTALUKA.

SUIT NO.:-FCT/HC/CV/2362/17

BETWEEN:

JEFREY SANTALI NDALO:.....CLAIMANT

AND

1. PHILIP KOLO
2. MUSTAPHA ALHASSAN MOHAMMED
3. ALHAJI M.B. LIMAN
4. OFFICE OF THE HEAD OF CIVIL SERVICE OF THE FEDERATION.

:.....DEFENDANTS

Olaniyi Oyinloye for the Claimant.

Halima Mohammed for the 1st Defendant.

Johnson P. Ayah for the 2nd Defendant.

Joy Agbadu with Gloria Udoka Iso for the 3rd Defendant.

4th Defendant unrepresented.

JUDGMENT.

The Claimant by a Writ of Summons dated the 3rd day of July, 2017 and filed the 6th day of July, 2017, brought this action against the Defendants claiming for the following;

1. An order of this Honourable Court that the Defendants jointly and severally refund the Claimant the sum of N11,000,000 (Eleven Million Naira) being the sum he paid the Defendants through the first Defendant's bank account for a three(3) bedroom bungalow at House No. 3 (IN) Road, Federal Housing Estate, Lugbe, Abuja which was never delivered to the Claimant.

2. That in the alternative to one(1) above, the Defendants deliver to the Claimant the three (3) bedroom bungalow at House No. 3 (IN) Road, Federal Housing Estate, Lugbe, Abuja and pay him the sum of N9,986,000.00 (Nine Million, Seven Hundred and Eighty-Six Thousand Naira) which is the difference between the actual amount receipted for vide a treasury receipt dated 8th June, 2013, in the sum of N1,214,000.00 (One Million, Two hundred and Fourteen Thousand Naira) and the sum of N11,000,000 (Eleven Million Naira) paid into the 1st Defendant's account.
3. An order of this honourable Court that the Defendants jointly and severally pay the sum of N3,000,000.00 (Three Million Naira) as general damages for not delivering possession of the said three (3) bedroom bungalow at House No. 3 (IN) Road, Federal Housing Estate, Lugbe, Abuja to the Claimant since he completed the (sic) in July, 2013.
4. The sum of N1,000,000.00 (One Million Naira) being the cost of this suit to the Claimant against each of the Defendants.

Stating his case in his statement of claims, the Claimant averred that on or about May, 2013, he was informed by his cousin, the 1st Defendant, that he knew someone, in the person of the 2nd Defendant (a property and land agent), who could help him to purchase a 3 bedroom bungalow at FHA, Lugbe, which property belongs to the 4th Defendant and was going for N11m.

He stated that the 2nd Defendant later met him and confirmed the information given by the 1st Defendant, and the fact that the property would go for the sum of N11m and will be delivered to him once the money is paid.

The Claimant averred that the 2nd Defendant further informed him that one M.B. Liman (3rd Defendant) who was then a Deputy Director in the office of the Head of Civil service of the Federation, was in charge of re-allocating the houses to civil servants as the original allottees were not forth coming, and that once he paid, he would get possession. He stated that as at then, he was working with the New Nigeria Newspaper, and was thus qualified to buy the house as a civil servant.

That being convinced that he will get the property, he made the total payment of the said N11,000,000.00 through the GTB account of the 1st Defendant, after which he was issued with a letter of allocation by the 4th Defendant.

He stated that following the said payment, the 2nd Defendant issued him official receipt in the 2nd Defendant's firm's name – Shonga properties, in the sum of N2m for the 1st instalment, and that he was also issued with a treasury receipt in the sum of N1,214,000.00.

The Claimant averred that despite the payments made to the Defendants, the Defendants failed to give vacant possession of the house to him till date.

On the 27th day of March, 2019, the Claimant opened his case as he testified as PW1. He adopted his witness statement on oath wherein he affirmed the averments in the statement of claim.

He also tendered the following documents in evidence in proof of his case, namely;

1. Re-Allocation of Three Bedroom Bungalow at Lugbe – Exh. PW1A.
2. House Rent Receipt – Exhibit PW1B.
3. Treasury Receipt – Exhibit PW1C.

4. Petition to ICPC – Exhibit PW1D.

5. Re: Obtaining the sum of N11,000,000.00 from Mr. Jeffrey Santali Ndalo – Exhibit PW1E.

Under cross examination by the 1st Defendant's counsel, the PW1 told the Court that the role the 1st Defendant played was to deliver his N11m to the 2nd Defendant and that the 1st Defendant told him that he delivered the N11m to the 2nd Defendant, but that the 1st Defendant brought only N2m receipt to him from the 2nd Defendant.

Also, under cross examination by the 2nd Defendant's counsel, the PW1 stated that the 2nd Defendant introduced the 3rd Defendant, who was Deputy Director, Head of Service and in charge of Estates, and that the 2nd Defendant claimed that he was acting for the 3rd Defendant.

He told the Court that it was the 2nd Defendant that gave him the reallocation letter – Exhibit PW1A after he made the payment. That when he demanded to visit the house, the 2nd Defendant told him that the occupants of the house requested to be given two weeks to pack out, and that up till now, the said occupants are still staying in the building.

Upon being cross examined by the 3rd Defendant, the PW1 stated that he does not have anything to show that the amount he paid was different from the sum of N1,214,000 that was receipted. Also, that he does not have any document to establish that he made any payment to the 3rd Defendant, but that the 3rd Defendant issued and signed the reallocation letter to him.

The 4th Defendant was foreclosed from cross examining the PW1 following their failure to appear in Court to do so.

In his defence to the suit, the 1st Defendant filed a Statement of Defence dated 8th day of November, 2017 and filed on the 15th day of November, 2017.

While denying that he introduced the 2nd Defendant to the Claimant, the 1st Defendant averred that Claimant paid a total sum of N11m through his account to the 2nd Defendant and that the 2nd Defendant received the said sum.

He stated that the Claimant, being his uncle, informed him of his desire to purchase a property in Lugbe Area of Abuja and that the Claimant asked him to assist in looking for one for him. That he and the Claimant approached the 2nd Defendant who deals in the business of sale and purchase of landed properties, to assist the Claimant in looking for a landed property meant to be sold in Lugbe Area of Abuja and to negotiate the purchase on behalf of the Claimant.

The 1st Defendant averred that following the information from the 2nd Defendant that there was a property for sale in Lugbe, he and the Claimant went to meet the 2nd Defendant who showed them a 3 bedroom bungalow known as No.3 (IN) Road, Federal Housing estate, Lugbe, Abuja. That the 2nd Defendant told the Claimant that the house was given to him by the 3rd Defendant to sell on his behalf at a price of N11m.

Furthermore, that following the acceptance of the price by the Claimant, the Claimant paid a total sum of N11m into his account in three instalments which sum he paid in cash, in the same three instalments to the 2nd Defendant on behalf of the Claimant for the purchase of the said 3 bedroom bungalow.

The 1st Defendant gave evidence as DW1 in his defence on the 25th day of February, 2021, as he adopted his witness

statement on oath affirming the averments in his statement of defence.

Under cross examination by the 3rd Defendant's counsel, the DW1 stated that he did not have any document showing that the Claimant was required to pay N11m for a property selling at N1,214,000, save that the Claimant informed him that he would transfer money to his account for the property which he agreed to buy from the 2nd Defendant and that he paid the money to the 2nd Defendant.

The DW1 told the Court under cross examination by 2nd Defendant's counsel, that he paid N11m in cash to the 2nd Defendant, and that the payment was made in piecemeal, the first of which was receipted by the 2nd Defendant vide Exhibit PW1B. He admitted that Exhibit PW1B does not bear the name of the 2nd Defendant but stated that it carries the house address and phone number of the 2nd Defendant.

He stated under cross examination by the Claimant's counsel that he was only a messenger through whom the Claimant delivered the purchase money to the 2nd Defendant. He however admitted paragraph 6 of the statement of claim which is to the effect that he informed the Claimant that he knows someone, in person of the 2nd Defendant, who could help the Claimant purchase a 3 bedroom bungalow at FHA, Lugbe.

In his own defence, the 2nd Defendant relied on an undated Statement of Defence filed on 12th day of July, 2018.

The 2nd Defendant averred that he had never come in contact with the Claimant and the 1st Defendant at any time in respect of any transaction before the commencement of this suit, and that as such, he had never received any money from either the

Claimant or the 1st Defendant. He went further to serially deny all the averments in the Statement of Claim.

He stated that the receipt dated 12th May, 2013, was issued by Shonga Global Properties and not by him, and that as such, he cannot be held liable.

The 2nd Defendant further denied receiving the letter dated 24th January, 2017, stating that the name and signature on the said letter are not his; that the acknowledgment on the letter are not his, and that the acknowledgment on the letter was thus, forged.

The 2nd Defendant testified in his defence as DW2 on the 6th day of June, 2022 as he adopted his witness statement on oath affirming the averments in his Statement of Defence.

Under cross examination by the Claimant's counsel, the DW2 admitted that he knows the Claimant, the 1st Defendant as well as the 3rd Defendant.

He told the Court that he knew the Claimant through one Kolo Babajia, a customs officer to whom he had sold a house through the 3rd Defendant. He stated that Babajia Kolo introduced the Claimant to him and told him the Claimant needed a house in the same area. That he discussed it with the 3rd Defendant because the 3rd Defendant had 4 extra houses and that the 3rd Defendant said that they were only selling to civil servants.

He told the Court that when he told the 3rd Defendant that the Claimant was a civil servant, the 3rd Defendant demanded for evidence and he took the Claimant to the office of Head of Service where the Claimant showed the 3rd Defendant proof that he worked with New Nigeria Newspaper.

The DW2 stated further, that they went back to the property at Lugbe and the Claimant saw house NO. 3 and said that he liked it. That he told the Claimant that the occupants of the house were illegal occupants, and that after payment, they asked FHA to eject the illegal occupants.

He stated that the 3rd Defendant was the Director, Housing and Maintenance, Head of Service, and that he was the allottee of those houses. That after verification, of the other houses, the 3rd Defendant came to his office and he requested him to accept the payment, but the 3rd Defendant directed them to the 4th Defendant.

He told the Court that he informed the Claimant that the house was going for N1,214,000 but that the Claimant would pay him N2m as agency fee since he would need to use a lawyer to eject the illegal occupants. He stated that the Claimant paid him N2m, which he receipted, and that he paid the N2m into his company's account through which he raised a draft and took same to the 4th Defendant's treasury where he was given a receipt.

That he gave the receipt to the 3rd Defendant, who gave him allocation paper and he gave same to the Claimant. Also, that the 3rd Defendant suggested that the illegal occupants be ejected using a lawyer, and he consequently brought a lawyer, in the person of Mr. Gold.

When asked whether Exhibit PW1B was the receipt he gave to the Claimant, the DW2 stated that Exhibit PW1B has "part payment" on it, whereas the one he signed had no "part payment" on it.

He identified Exhibit PW1C as the treasury receipt he collected for the Claimant. He also identified Exhibit PW1A as the allocation letter he collected for the Claimant.

The DW2 told the Court that he delivered the property to the Claimant, but that the reason why the Claimant is not occupying same, is because, the Claimant's wife said that the property is located "behind the house" and that they needed the one "in front of the house". That he met with the 3rd Defendant who said that he could not change the allocation.

He stated that Mr. Gold ejected the illegal occupants and he locked the place and gave the keys to the Claimant but the Claimant refused to pack in.

The DW2 told the Court that the averments in paragraphs 17 and 18 of his witness statement on oath are not correct.

He stated that why he averred in his witness statement on oath that he did not collect any money from the Claimant was because he was told that he collected N11m, but that it was N2m that he collected from the Claimant.

Under cross examination by the 1st Defendant, the DW2 stated that the day he wrote his witness statement on oath, he was pissed off. That the evidence he gave in Court is true.

He maintained his evidence under cross examination by the 3rd Defendant, to the effect that the 3rd Defendant informed him to make payment to 4th Defendant in the sum of N1,214,000, and that 3rd Defendant issued letter of allocation when shown evidence of payment.

The 3rd Defendant in his defence, filed a statement of defence dated and filed the 26th day of February, 2018.

He admitted that he was, up until his retirement on 15th May, 2013, a Director, Housing with the 4th Defendant. He averred that he was not aware of the personal transactions between the Claimant and the 1st and 2nd Defendants.

The 3rd Defendant denied informing the 2nd Defendant or any other person, that he was in charge of allocating houses. He stated that although his department, under his leadership, handled the issues bordering on several houses in Lugbe, FCT, that the houses in question were properties of the 4th Defendant and that every allottee was handed same by the 4th Defendant after undergoing a process.

The 3rd Defendant, averred in particular, that following the failure of some occupiers of some housing units which the 4th Defendant used to flag off the owner-occupier scheme for Federal Civil Servants, to make payments for the units which they occupied, he was directed to do a physical verification exercise of the units to ascertain if they were still being occupied and to thereafter direct payment from any interested civil servants to the 4th Defendant, the occupiers having defaulted.

He stated that during the physical verification exercise of the units, the 2nd Defendant approached him and indicated interest to purchase one of the units should the 4th Defendant decide to revoke the allocation to the occupiers. That he informed the 2nd Defendant that if the said units were revoked, they would only be sold to civil servants and that since the 2nd Defendant stated that he was a businessman, the units would not be available to him.

The 3rd Defendant averred that the 2nd Defendant left the venue of the exercise, stating that he has a family member who was in the civil service, that he would advise him to indicate interest, to

which he responded that as long as the person was a civil servant and follows due process, he could be allocated a unit.

He further averred that he was only aware that the price for each of the sold units was N1,214,000.

That he had no personal knowledge of any money in excess of the said sum paid to anybody.

He stated that sometime in 2014, long after he had retired from the 4th Defendant, he was accosted by the Claimant who lamented to him that he was yet to occupy House 3(IN) Road, Federal Housing Estate, Lugbe, which was the house allocated to him, despite emerging successful since 2012. That he expressed shock and informed the Claimant that he was aware that before his retirement, it was observed that the said House 3(IN) Road, and one other unit were unlawfully sold by the Federal Housing Authority and the 4th Defendant insisted on taking back its unit which was not available for the FHA to sell.

He averred that sometime in 2015, he was invited to the office of ICPC on a petition authored on the Claimant's behalf, claiming fraudulent sale of FHA housing unit and collecting N11m from him. That he vehemently denied selling any house to the Claimant let alone by fraudulent means and that he was emphatic that the houses were sold by the 4th Defendant through due process and for the sum of N1,214,000.00.

The 4th Defendant averred that in a meeting between officers of the 4th Defendant and FHA, FHA admitted being wrong in selling the two houses and promised to make the houses available to the 4th Defendant or at the very least, relocating the Claimant and the other buyer to alternative housing units, which construction at the time, was underway.

The 3rd Defendant however, opted not to lead evidence on his pleadings.

The parties subsequently filed their respective final written addresses, save the 4th Defendant, who after filing its pleadings, abandoned the case entirely. Following the delay of the 1st – 3rd Defendants in filing their final written addresses, the Claimant preceded them in filing his.

In his final written address, learned Claimant's counsel, Olaniyi Oyinloye, Esq; raised three issues for determination, namely;

1. Whether the Claimant has successfully proved claims 26(i), (ii), (iii) and (iv) on the balance of probabilities as required by Section 134 of the Evidence Act, 2011 to be entitled to judgment thereon?
2. Whether any weight and relevance can be attached to the evidence of the 2nd Defendant by this Court in view of his contradictory statements during cross-examination as compared to his witness statement on oath which he adopted as his evidence in the case on oath?
3. Whether the pleadings and witness statements on oath of the 3rd and 4th Defendants can be deemed abandoned, both having not called evidence in support thereof and therefore, be deemed to have admitted the evidence of the Claimant as stated in his pleadings and witness statement on oath?

Proffering arguments on issue one, learned counsel contended that it is not in doubt that the Claimant disbursed the total sum of N11m to the 1st Defendant for the purchase of the property, the subject matter of this suit.

He argued that the fact that the 1st Defendant did not deny receiving the said sum, buttresses the fact that the Claimant

indeed, disbursed the said total sum of N11m as payment for the property as requested by the 2nd Defendant. He further argued that the “part payment” inscribed on the receipt, Exhibit PW1B, shows an expectation of more funds by the 2nd Defendant. Also, that the balance of N9m was received from the Claimant by the 1st Defendant and was successfully passed on to the 2nd Defendant in cash, at his insistence, all of which facts were adduced in evidence by the 1st Defendant in paragraph 8 of his witness statement on oath, and which the 2nd Defendant could not shake under cross examination of DW1.

Learned counsel further contended that Exhibit PW1A shows that indeed, the property was allocated to the Claimant by the office of the Head of Civil Service of the Federation, the 4th Defendant, which evidence was corroborated by the 1st – 3rd Defendants and was not challenged by the 4th Defendant. Also, that based on incontrovertible evidence before the Court, it is clear that possession of the property was not delivered to the Claimant despite due consideration being furnished for it as evidenced by Exhibits PW1C and PW1D.

He argued that based on all of the above, that the Claimant has been able to prove his case on the balance of probabilities as required by Section 134 of the Evidence Act, 2011 and therefore, entitled to judgment with respect to claims 26(i) and (ii).

He urged the Court to order the Defendants, jointly and severally to refund the total sum of N11m back to the Claimant as it is now obvious that the Defendants have failed to deliver the property, the subject matter of this suit.

On the claim for damages, learned counsel contended that the Defendants have held on to the Claimant’s money for more

than 9 years and that the value of the money has depreciated considerably since then, considering the exchange rate then and now. He argued that the Claimant is thus entitled to the claim for damages. He referred to **Kupolati v. MTN Nigeria Communication Ltd (2020)LPELR-49538(CA)**.

He further referred to **Union Bank of Nigeria PLC v. Mr. N.M. Okpara Chimaeze (2014)LPELR-22699(SC)** with respect to the claim for solicitor's fees, on the point that where solicitor's fees are pleaded and unchallenged, the victorious Claimant is entitled to such fees as special damages as expenses incurred by him in prosecuting the suit. He urged the Court to grant the claim as well.

On issue two, learned counsel contended that the 2nd Defendant as DW2, has not shown himself to be a witness of truth, given that in his witness statement on oath, he completely denied the facts of this case but under cross examination, he renounced his witness statement on oath by confirming and acknowledging the facts he had hitherto emphatically denied on oath.

He placed reliance on **Nwankwoala v. FRN (2018)LPELR-43891(SC)** in urging the Court not to countenance the evidence of DW2, given the contradictions in same.

Arguing issue three, learned counsel submitted that it is a well settled principle of law that when evidence is not called in support of pleadings, then such is deemed abandoned. He contended that 3rd and 4th Defendants having not adopted or led evidence on the pleadings which they filed; do not have any defence against the claims of the Claimant. He referred to **Jolayemi v. Alaoye (2014)12 NWLR(pt.887)322 at 340; Chief S.L. Durosayo v. T.A.A. Ayorinde (2005)8 NWLR (Pt.927)407 at 425.**

He urged the Court to resolve issue 3 in favour of the Claimant as there is nothing provided on the side of the 3rd and 4th Defendants to balance the scale, the scale thus tilting fully to the side of the Claimant.

Replying on points of law to the 3rd Defendant's final written address, particularly in respect of his Preliminary objection, learned Claimant's counsel submitted that the Public Officers Protection Act relied upon by the 3rd Defendant, does not provide a blanket protection for public officers as there are exceptions under the law.

He posited that the facts of this case not only fall under the said exceptions, but that the 3rd Defendant did not place any fact before this Court that he was a civil servant at the time this case was filed, and that he also abandoned his pleadings by not testifying in the suit against him.

He listed the following as the exceptions to the protection provided for public officer and public officers under the Public Officers (Protection) Law;

- i. Cases of continuance of damage or injury: **Attorney General of Rivers State v. Attorney General of Bayelsa State & Anor (2018) LPELR-45944(SC), pgs 148-149.**
- ii. Cases of recovery of land: **Attorney General of Rivers State v. Attorney General of Bayelsa State (supra).**
- iii. Breaches of contract: **Bureau of Public Enterprises v. Teinsurance Acquisition Group Ltd & Ors (2008) LPELR-CA/A/195/M/05.**

He argued that the instant case is for recovery of built-up property on a piece of land, the delivery of which the Claimant has not stopped asking from the Defendants and that same

involves a breach of contract, and is thus an exception to the Act.

He urged the Court on the basis of the foregoing judicial authorities, to discountenance the preliminary objection of the 3rd Defendant as same is myopic and far reaching.

Replying to issue 1 raised by the 3rd Defendant, alleging that the Claimant failed to take possession when it was delivered to him because his wife did not like the property; learned counsel posited that no other witness, save the DW2 whose evidence was contradictory, gave evidence of that allusion, and that same was not put to the Claimant upon cross examination by any of the Defendants.

In respect of the 2nd issue raised by the 3rd Defendant, learned counsel posited that the 3rd Defendant having not adopted the processes he filed in Court for same to be tested under cross-examination, that same were abandoned and should be treated so. He referred inter alia, to **TAR & Ors v. Ministry of Commerce & Industries & Ors (2018)LPELR-CA/MK/29/2013.**

He posited that any evidence sourced from a fundamentally defective deposition, as in the case at hand, is equally fundamentally inadmissible and cannot be relied upon in proof of any fact. That such evidence goes to no issue as same cannot be placed on nothing.

He submitted that the 3rd Defendant has nothing before the court with which to build his case on, and therefore, that the argument regarding evidence elicited under cross-examination, goes to no issue.

On the 3rd issue raised by the 3rd Defendant, learned counsel relied on the **Katoli Investment Ltd v. JAJ Development Co.**

Ltd & Ors (2018)LPELR-46483(CA) to posit that the Claimant has established a cause of action against all the Defendants.

He referred to **Dickson v. Assamudo (2013)LPELR-20416(CA)** on the point that joint tortfeasors can be sued severally or jointly and that each would be liable in damages for the injuries caused by their joint acts which amounted to the tort in issue.

He urged the Court in conclusion, to discountenance the arguments of the 3rd Defendant and to grant all the reliefs of the Claimant in this suit.

Also in his reply on points of law to the 2nd Defendant's final written address, learned Claimant's counsel referred to Section 121(a) of the Evidence Act 2011 and posited that based on the statement of claim, the evidence of PW1 and all the exhibits tendered, that the Claimant has discharged the legal burden on him.

He further posited that the 2nd Defendant in his final written address, did not respond to the Claimant's issue on whether the evidence of the 2nd Defendant should be dismissed based on obvious inconsistencies. He argued that this omission or neglect is tantamount to an admission, and thus, that the 2nd Defendant cannot be said to have successfully challenged the claim of the Claimant on this point.

Learned counsel further posited that the allusion of the 2nd Defendant to the fact that only documentary evidence holds any weight before the Court, is not an accurate representation of the law. That while documentary evidence goes to great length in proving a matter, there are exception that allow for oral evidence which the Court will still attach evidential weight to.

He referred to Section 128(1)(b) of the Evidence Act, 2011 and posited that by bearing “part payment for the purchase of house” as its description, Exhibit PW1B was definitely not intended to be a complete representation of the transaction between the parties, and thus, that oral evidence can be adduced to supply the missing details. He further referred to **Nammagi v. Akote (2021)3 NWLR (Pt.1762)170.**

In his own final written address, learned counsel for the 3rd Defendant, Joy Maade Agbaduh, Esq, raised a notice of preliminary objection to the jurisdiction of this Court to entertain this suit on the grounds that;

- a) This suit as presently constituted, is statute barred.
- b) This suit is an abuse of the process of Court and therefore, is liable to be dismissed.

He contended, on the first ground, that this suit is statute barred and is thus, liable to be dismissed, the Claimant having failed to file same within the mandatory 3 months stipulated by the Public Officers (Protection) Act.

He referred to Section 2(a) of the Public Officers (Protection) Act and the case of **Sani v. President, Federal Republic of Nigeria (2020) 15 NWLR (Pt.1746)151.**

Learned counsel contended that this suit borders on the sale of a property to the Claimant under the office of the 4th Defendant, and that the letter of allocation issued to the Claimant, was signed by the 3rd Defendant who was then the Deputy Director, Housing and Maintenance under the office of Head of Civil Service. That the said transaction happened in May, 2013 and this suit was filed on the 6th of July, 2017, which is four years and two months after the alleged breach complained of.

He argued that the 3rd Defendant's participation in the transaction was strictly within the confines of his duty as the Deputy Director, Housing and Maintenance under the office of Head of Civil Service, and contended that the Claimant having failed to institute this suit before August, 2013 which is three months after the occurrence of the alleged breach against him, this Court is thus divested of jurisdiction to entertain this suit as there is no longer a live issue for the Court to decide on. He referred to **Abubakar v. Michelin Motor Services Ltd (2020)12 NWLR (pt.1739)519 at 600; Igoin v. Ajoko (2021) 17 NWLR (Pt.1804)90 at 106.**

He urged the Court on the strength of the foregoing, to dismiss this suit for being statute barred and an abuse of Court process.

The learned counsel further raised three issues for determination, in the likelihood that his notice of preliminary objection fails, to wit;

1. Whether by the totality of the evidence adduced by the Claimant, the Claimant has proved his case against the 3rd Defendant and therefore, is entitled to the reliefs sought in this suit?
2. Whether the 3rd Defendant is deemed to abandon his statement on oath by reason of his failure to call any witness to testify on his behalf, therefore the Claimant's claim against the 3rd Defendant succeeds?
3. Whether the Claimant's case disclosed a reasonable cause of action against the 3rd Defendant.

Proffering arguments on issue one, learned counsel contended that from the totality of evidence presented before the Court, the Claimant has failed to establish a prima facie case against the 3rd Defendant.

He argued that a calm consideration of all the testimonies of the parties to this suit will leave no doubt as to the 3rd Defendant's lack of participation in the transaction, and therefore, lack of culpability. That the Claimant agreed under cross examination by the 3rd Defendant, that he did not have any document before the Court as proof that the alleged N11m was paid to the 3rd Defendant. Also, that there is nothing before this Court to support the Claimant's assertion that the 3rd Defendant benefited from the alleged sum.

He relied on **Bakari v. Ogundipe (2021)5 NWLR (Pt.1768) 1 at 61-62** to posit that the best form of evidence is documentary evidence and argued that the Claimant has not supported his claims before this Court with documentary evidence as to the manner the 3rd Defendant benefited from his transaction with the 1st and 2nd Defendants.

Referring to the testimony of DW2 under cross examination to the effect that the property in question was delivered to the Claimant but that he failed to take possession of same because his wife did not like the location thereof, learned counsel contended that the Claimant having failed to take possession of the property for which he was issued a letter of allocation when possession was given to him, he cannot blame the 3rd Defendant or demand for damages against the 3rd Defendant for not delivering the property to him.

On issue two; learned counsel argued that the 3rd Defendant having filed a statement of defence and cross-examined the Claimant and other Defendants in this case, his pleading and witness statement on oath cannot be deemed abandoned.

He relied on **Bello v. Governor of Gombe State (2018)8 NWLR (Pt.1514)219 at 269-270** to submit that it is trite that a party who cross-examined an adverse party in a proceeding

can take advantage of the evidence elicited during cross examination to support his pleadings before the Court.

He further referred to **Akomolafe v. Guadian Press Ltd (2010)3 NWLR (Pt.1181)338 at 351** and **SLEE Transport Ltd v. Oluwasegun (1973)9-10SC 270.**

Learned counsel argued that the 3rd Defendant in his statement of defence and witness statement on oath denied knowledge of the transaction between the Claimant and 1st and 2nd Defendants, and that during cross-examination, the 3rd Defendant elicited evidence from the Claimant, the 1st Defendant and the 2nd Defendant to support his position.

He further contended that the 3rd Defendant cannot be said to have admitted the evidence in chief of the Claimant, having contradicted same during cross-examination. He referred to **Adebayo v. Christine (2021)9 NWLR (Pt.1780)181.**

Arguing further, learned 3rd Defendant's counsel posited that the Claimant has the primary legal burden to prove his case and not to rely on the weakness or absence of the 3rd Defendant's defence. That assuming the 3rd Defendant did not call evidence at all the Claimant still had a duty to prove his case upon the preponderance of evidence and not to rely on the weakness of the 3rd Defendant's case to prove his case.

He referred to **STATOIL (Nig) Ltd v. INDUCON (Nig) Ltd (2021)7 NWLR (Pt.1774) 1 at 127; Bello v. Emeka (1981)1 SC 101 at 122,** and urged the Court to decide issue two in favour of the 3rd Defendant in the light of the unwavering evidence elicited by the 3rd Defendant during the cross examination of the Claimant and the 1st and 2nd Defendants.

Arguing issue three, on whether the Claimant's case disclosed a reasonable cause of action against the 3rd Defendant; learned

counsel contended that the Claimant for all intents and purposes, has during the course of the trial, been grossly unable to show any sort of reasonable cause of action against the 3rd Defendant.

He argued that a communal reading of the Writ of Summons, the statement of claim, the evidence adduced before the Court during trial and all accompanying documents admitted in evidence by the Court, will show that this suit is devoid of any cause of action or reasonable cause of action against the 3rd Defendant.

He further contended that from the evidence before the Court, it can be distilled that the 3rd Defendant was not involved in any financial transaction with the Claimant or any other person, and that there is nowhere during the course of this suit that such transaction has been evidenced.

He thus urged the Court to dismiss this suit against the 3rd Defendant as the Claimant has grossly failed to disclose any ounce of evidence before this Court showing a wrongful act of the 3rd Defendant that gave rise to a cause of complaint and consequential damage.

The 2nd Defendant in his own final written address raised a sole issue for determination, to wit;

“Whether the Claimant has successfully proved his claims against the 2nd Defendant and has fully discharged the legal burden on him to be entitled to his claim?”

Proffering arguments on the issue so raised, learned 2nd Defendant’s counsel, Zaro Melchizedek, Esq, posited that the burden is on the Claimant who asserts in his pleading that he is entitled to certain claims that have been infringed upon to prove

same. – Section 131(1) of the Evidence Act, 2011; **Rajco International Limited v. Le Cavalier Motels and Restaurants Limited & Ors (L912 of 2009)NGCA 113(29 February 2016).**

Placing reliance on **Akalonu v. Omokaro (2003)8 NWLR (Pt.821)19,** he submitted that the mere fact that the defence of the defendant is weak or that the claim or evidence of the Claimant is unchallenged, does not make the evidence of the Claimant simply credible.

He argued that in the instant case, the Claimant claimed to have given the 2nd Defendant N11million for the purchase of a 3 bedroom bungalow but tendered a receipt of N2million issued to him by the 2nd Defendant which he collected for years without demanding for the receipt of the N9,786,000 until his lawyer wrote a letter of demand.

He contended that the letter of allocation in fact, has nothing to do with the 2nd Defendant but the Head of Civil Service, which therefore, puts the 2nd Defendant in no place to allocate a house to the Claimant or refund the imaginary N11million. Furthermore, that the Claimant has woefully failed to show how the balance of N9,786,000 was given to the 2nd Defendant and that as such, the 2nd Defendant cannot be ordered to pay for money he has no record of collecting or being aware of.

Learned counsel further, argued that the 2nd Defendant cannot comply with the second relief of the Claimant assuming the Court orders so since he has no powers to allocate the 3 bedroom bungalow belonging to the Head of Civil Service. That the 2nd Defendant cannot be held liable or ordered to give a government house or repay money paid to the government.

He contended that the additional money claimed by the Claimant to have been given to the 2nd Defendant through the

1st Defendant is a mere assertion. That there was no proof that the 2nd Defendant received the said money and that the testimony of the 1st Defendant cannot be used to aid the Claimant in his inability to prove extra money received by the 2nd Defendant.

He argued in conclusion, that the general reliefs sought by the Claimant must fail against the 2nd Defendant as there is no evidence adduced by the Claimant in proof of his claim against the 2nd Defendant. That the Claimant's failure to prove his case against the 2nd Defendant, has thereby failed to shift the burden to the 2nd Defendant to prove anything.

He urged the Court to dismiss this case with cost against the Claimant and in favour of the 2nd Defendant.

The 1st Defendant on his part also submitted a sole issue for determination in his final written address, to wit;

“Whether the Claimant has proved his case against the 1st Defendant on a preponderance of evidence to be entitled to the reliefs sought?”

Arguing the issue so raised, learned counsel for the Claimant, B.R. Gold, Esq, submitted, with reliance on **Manu Kano v. Government of Adawama State & 2 Ors (2015)All FWLR (Pt.775)308 at 900,** that an admission is a statement of fact acknowledging the correct state of facts in issue which is against the maker's interest.

He contended that it is the evidence of the 1st Defendant that he paid the total sum of N11m to the 2nd Defendant by cash in three instalments as sent to his account by the Claimant, and that paragraph 5 of Exhibit PW1D is an admission on the part of the Claimant that the 1st Defendant made the three

instalment payments of the total sum of N11m to the 2nd Defendant by cash.

Also, that the evidence of PW1 at paragraph 3 of his statement on oath, is equally an admission by the Claimant that the 1st Defendant paid the money for the purchase of the property to the 2nd Defendant in cash.

He relied on Section 123 of the Evidence Act, 2011; **Aigoro v. Bureau of Lands, Kwara State (2020)All FWLR (Pt.1062)640 at 645**, to submit that it is an established principle of law that facts admitted need no further proof.

Learned counsel further submitted on the authority of **Maigari v. Malle (2020)All FWLR (Pt.1066)295 at 301**, that the law is trite that litigants must be consistent in their pleadings with their adversaries and not to prevaricate. He argued that the evidence in chief of DW2 is not consistent with the evidence elicited from him during cross examination.

He submitted that it is a settled principle of law that the evidence of a witness must be consistent and that in the event that there is inconsistency in the evidence of a witness, the Court must treat it as unreliable and discountenance same.

He referred to **Jimoh Wusu & Ors v. Amos David & 7 Ors (2015)All FWLR (Pt.763) 1924 at 1928-1929**.

He contended that the evidence of DW2 that he did not receive the sum of N11m from the Claimant and/or the 1st Defendant is not reliable as it is devoid of consistency and that same should be discountenanced by the Court.

Learned counsel further argued that a combined reading of the pleadings and evidence shows that the 1st Defendant is not

liable to refund to the Claimant the sum of N11m or N9,786,000.00, whether jointly or severally.

He contended that the 1st Defendant is not liable to pay the sums claimed as general damages as well as the solicitor's fee. He relied on **Adebiyi v. Dasilva (2019) All Fwlr (Pt.993)354 at 374-375** to submit that it is an established principle of law that a party cannot claim his solicitor's fee from his adversary in a suit as it is considered inappropriate for one party to pass on the burden of his solicitor's fees to the other party.

He posited in conclusion, that the Claimant having admitted that the 1st Defendant paid the total sum of N11m to the 2nd Defendant in cash, he has thus absolved the 1st Defendant of liability, as facts admitted need no further proof.

He submitted that the Claimant is not entitled to the reliefs sought as he failed to prove his case on preponderance of evidence against the 1st Defendant.

In the determination of this suit, this Court will first address itself to the preliminary objection raised by the 3rd Defendant to the jurisdiction of this Court in his final written address. The contention of the 3rd Defendant is that he acted in his official capacity in the transaction leading to this suit, and as such, any claim against him in connection thereto, must be brought within 3 months as per Section 2(a) of the Public Officers (Protection) Act, and that since this suit did not comply with the three months stipulation, this Court therefore, lacks the jurisdiction to entertain same.

Section 2(a) of the Public Officers (Protection) Act provides thus:

“Section 2 – where any action, prosecution or other proceedings is commenced against any person for

any act done in pursuance or execution or intended execution of any Act or law or of any public duty or authority, or in respect of any alleged neglect or default in the execution of any Act, law, duty or authority, the following provisions shall have effect –
(a) limitation of time

The action, prosecution or proceeding shall not lie or be instituted unless it is commenced within three months next after the act, neglect or default complained of, or in case of a continuance of damage or injury, within three months next after the ceasing thereof.”

According to the Apex Court in **Ibrahim v. Lawal & Ors (2015)LPELR-24736(SC)**, the general effect of the above provision is that ***“where a law provides for the institution of an action in a Court of law within a prescribed period in respect of a cause of action accruing to the Plaintiff, proceedings shall not be brought after the expiration of the period circumscribed by law.”***

On the conditions for the applicability of Section 2(a) of the Public Officers (Protection) Act, Sankey, J.C.A. held in **Abba v. Jumb & Anor** Suit No. CA/YL/7/2013, thus:

“(a) It must be established that the person against whom the action is commenced is a public officer or a person acting in the execution of public duties within the meaning of that law; and

(b) The act done by the person, in respect of which the action is commenced, must be an act done in pursuance or execution of any law, public duty or

authority or in respect of an alleged neglect or default in the execution of any law, duty or authority.”

The 3rd Defendant herein, from the averments in paragraph 4 of the statement of claim, was presumably a public officer as at the date of the transaction leading to this suit.

Also, the act performed by the 3rd Defendant, to wit; allocation of a housing unit to the Claimant, was a public duty.

However, the rule in Section 2(a) of the Public Officers (Protection) Act, is not without exception.

In **Hassan & Ors v. Borno State Govt. & Ors (2016)LPELR-40250(CA)**, the Court of Appeal held that the law is not applicable in cases of recovery of land, breaches of contract and claims for work and labour done.

Quoting from Prof. B.O. Nwabueze’s “Nigerian Land Law”, Ndukwe-Anyanwu, J.C.A, in **Itam v. Effiong (2013) LPELR-20417(CA)**, gave the meaning of the word “land” thus:

“It does not just mean the ground and its subsoil, but includes also all structures and objects, like buildings and trees standing on it.”

As contended by the learned Claimant’s counsel, the instant suit deals with ‘recovery’ of land, which from the foregoing definition, includes buildings, and therefore, comes within the exception to the application of Section 2(a) of the Public Officers (Protection) Act.

Furthermore, in **Akwa Ibom State Civil Service Commission & Ors v. Akpan (2013)LPELR-22105(CA)**, the Court of Appeal held that:

“A public officer can be sued outside the limitation period of three months if, at all material times to the commission of the act complained of, he was acting outside the colour or scope of his office or outside his statutory or constitutional duty.”

The evidence before this Court show that the sum of N2,000,000.00 paid by the Claimant in respect of this transaction, was receipted on 15th day of May, 2013, per Exhibit PW1B. According to DW2, it was from the N2m paid by the Claimant that he paid the sum of N1, 214,000 purchase price of the house, which was receipted vide the Treasury Receipt, Exhibit PW1C.

Evidently, Exhibit PW1B preceded Exhibit PW1C. But curiously, exhibit PW1C which came subsequently after Exhibit PW1B, is dated 8/6/2012, a year before the payment in Exhibit PW1B dated 15th day of May, 2013.

Also, the Re-allocation letter, Exhibit PW1A is equally dated 15th June, 2012.

What is more curious is that the 3rd Defendant who made the purported allocation, averred in paragraph 4 of his statement of defence, that he retired from civil service on 15th May, 2013, the very same day that Exhibit PW1B was issued.

The only inference that can be drawn in the circumstance, is that the 3rd Defendant, Alh. M. B. Liman issued Exhibit PW1A after he had retired from the Civil Service and the deliberately and consciously back-dated same to 5th June, 2012.

The transaction apparently is tainted with fraud. Even if the Exhibit PW1A was issued on the same date the Claimant made the payment in Exhibit PW1B, being the same date the 3rd Defendant retired from the Civil Service; the fact that the 3rd

Defendant back-dated the allocation to 2012, entails that he was acting “outside the colour of his office”, and as such, he cannot claim protection under the Public Officers (Protection) Act.

On the basis of the foregoing, the 3rd Defendant falls within the exemption clause and therefore this Court can conveniently exercise its jurisdiction over this matter. I am of the firm view, and I so hold, that not only does this suit come within the exception to the application of the Public Officers (Protection) Act, but the said Act also cannot avail the 3rd Defendant in the circumstances of the suit.

It is therefore, my finding that the preliminary objection of the 3rd Defendant to the jurisdiction of this Court to entertain this suit, lacks merit. The said preliminary objection is accordingly dismissed.

Now, to the substantive suit.

In the determination of this suit, this Court will consider the issue of whether the Claimant has established his claim against the Defendants as to be entitled to the reliefs claimed.

In **Yusuf v. Adegoke (2007) All FWLR (Pt.385)384 at 405**, Aderemi, JSC held that; ***“in civil cases, the burden of proof rests on the party, whether plaintiff or defendant, who asserts the affirmative of the issue called the onus probandi..., it rests on the party who could fail if no evidence at all or no more evidence, as the case may be, were given on either side.”***

See also **Uzokwe v. Densy Ind. (Nig) Ltd (2002)2 NWLR (Pt.752)528 at 544.**

From the pleadings of the parties in the instant case, burden lies on the Claimant who is required by law, to discharge same on a preponderance of evidence or balance of probability. – **Ezema v. Ibeneme & Anor (2004) LPELR-1205(SC)**.

Talking about standard of proof in civil cases, the Court of Appeal, in **UBA PLC v. Yahuza (2014) LPELR-23976(CA)**, held per Abiru, J.C.A., that:

“In civil suits, cases are won upon a preponderance of evidence. It follows therefore that a Claimant in such a case has the burden of establishing his claim upon relevant and credible evidence that is conclusive and that commands such probability that is in keeping with the surrounding circumstances of the case in hand.”

The burden on the Claimant in this case therefore, is to establish by credible evidence that he paid the sum of N11m to the Defendants for a 3 bedroom bungalow, that is sold at a less price, which evidence must be conclusive and should command such probability that is in keeping with the surrounding circumstances of the case.

In discharging the burden placed on him by law in this case, the Claimant tendered Exhibits PW1A-PW1E, of which I find Exhibits PW1A-PW1C to be of particular relevance to the claims made out by the Claimant in this case.

Exhibit PW1A is a letter of “Re-allocation of three bedroom bungalow at lugbe”, from the office of the Civil Service of the Federation issued to the Claimant by the 3rd Defendant.

The 3rd Defendant, in paragraph 6(k) of his statement of defence admitted that a housing unit was allocated to the Claimant. He did not dispute issuing Exhibit PW1A. In the

circumstances, it stands proved that the 3rd Defendant allocated a 3 bedroom bungalow to the Claimant vide Exhibits PW1A.

The averments in paragraph 6(o) and (y) of 3rd Defendant's statement of defence are an admission of the claim of the Claimant that the house allocated to him by the 3rd Defendant and which he duly paid for was not delivered to him. It is the law that facts admitted need no further proof. See **Alahassan & Anor v. Ishaku & Ors (2016)LPELR-40083(SC)**.

The DW2 in his evidence in chief completely denied knowledge of both the Claimant and the transaction asserted by the Claimant. However, under cross examination, he admitted knowing the Claimant and receiving the sum of N2m from the Claimant through the DW1 in respect of the transaction. It is pertinent to state at this point that I do not find the evidence of DW2 to the effect that the said house was delivered to the Claimant credible. I therefore find his testimony to be unreliable and accordingly discountenance same. See **Ekweozor & Ors v. The Registered Trustees of Saviours Apostolic Church of Nigeria (2014) LPELR-23572(CA)**, where the Court of Appeal, per Bolaji-Yusuf, J.C.A, held that;

“Where a witness gives contradictory evidence on the same issue, the Court is not in a position to choose one and reject the other, the two pieces of evidence must be rejected and such a witness is not capable of being believed.”

I have carefully perused and x-rayed the issues and evidence before me and by the nature of this case, I am bound to agree with the evidence of the Claimant put on the preponderance of evidence.

It is therefore, my finding that the Claimant has established by credible evidence the fact that he was allocated a three bedroom bungalow by the 3rd Defendant after due payments and that the said house was not delivered to him.

I find this proof of allocation of the said house against the 3rd Defendant who signed Exhibit PW1A and who also in his pleading admitted making the allocation.

As held at the preliminary stage of this judgment, the transaction was apparently tainted with fraud, given that same took place in 2013, at the twilight of the 3rd Defendant's sojourn at the Civil Service, but the documents, Exhibits PW1A and PW1C issued in respect thereof, were deliberately back-dated to 2012.

There is thus, no proof that the transaction passed through official channel and that the payment thereto went to the coffers of the 4th Defendant. In the circumstance, the 4th Defendant cannot be held liable in connection with the said transaction.

Now, regarding the money paid by the Claimant, the refund of which he claims in his principal relief, the Claimant by Exhibits PW1B and PW1C established the sum of N2m. His claim however, is that he paid a total sum of N11m in three instalments through the 1st Defendant's bank account, which sum was transferred by the 1st Defendant in cash to the 3rd Defendant through 2nd Defendant.

The 1st Defendant in paragraph 19 statement of defence alluded to the fact that he made a cash payment of N11m to the 2nd Defendant for the purchase of the 3 bedroom bungalow on behalf of Claimant. The 2nd Defendant throughout his responses never denied this serious allegation. Evidence law places strong importance to pleadings and where a Defendant

fails to file a reply to deny averment in a statement of defence it is deemed admitted.

Further to the above, the 4th Defendant filed his pleadings never adopt the witness statement on oath but abandoned the pleadings. I therefore, consider him as a litigant who files statement of defence and fails to adopt it at the same time he fails to cross examine the adverse party, has in effect abandoned his defence only allows the Court to accept the Claimant's unchallenged evidence. – **CBN v. Okojie (2015)14 NWLR(Pt.1479)231 @ 258.**

The function of a reply or response is to raise an answer to the defence of any matter which must be specifically pleaded which makes the defence not maintainable.

This claim was admitted in totality by the 1st Defendant and as such, the fact that there was payment of N11m by the Claimant through the 1st Defendant stands proved, as facts admitted need no further proof, see **Alahassan & ANor v. Ishaku & Ors (supra).**

The 2nd Defendant in his pleadings and in his oral evidence as DW2, denied receipt of the said N11m from the 1st Defendant. However, having found the Dw2 to be an unreliable witness, it is my firm belief that the DW2 indeed received N11m.

It is therefore, my finding from the foregoing, that the Claimant has on a preponderance of evidence, established his claims against the Defendants.

However, given that the letter of “Re-allocation”, Exhibit PW1A, specifically stipulated the price of the house to be N1,214,000 which sum was duly receipted vide Exhibit PW1C, the 3rd Defendant is found liable to refund only the said amount of N1, 214,000.00 to the Claimant.

The 1st and 2nd Defendants on their part, are found liable to refund the balance of N9,786,000.00 to the Claimant.

On the claim for general damages, the Court of Appeal in **UTB Nigeria Ltd v. Aja gbule (2005)LPELR-7563(CA)**, held, per Abba Aji, JCA that;

“The award is quantified by what in the opinion of a reasonable person considered adequate loss, or inconvenience which flows naturally, (is) as generally presumed by law, from the act of the Respondent.”

In this case, the Claimant transacted with the 1st – 3rd Defendants and parted with N11m since 2013, and till date, he has neither received the house he paid for, nor had his money refunded to him for almost ten years. In the circumstances, it accords with reason, that the Claimant be assuaged by the award of damages. I therefore find that the claim for general damages, in the circumstances, succeeds.

Also, in respect of claim for solicitor’s fee, the Claimant failed to adduce any evidence in proof of same. Thus, the said claim fails.

From the totality of the foregoing, this Court finds that the Claimant has established his claims in reliefs 1 and 3 against the 1st, 2nd and 3rd Defendants.

Accordingly, judgment is entered for the Claimant as follows:

- a. The 1st and 2nd Defendants are ordered, jointly and severally, to refund the sum of N9,786,000.00 to the Claimant; being the difference between the actual amount receipted for vide Exhibit PW1C and the sum of N11m paid by the Claimant into the 1st Defendant’s account.

- b. The 3rd Defendant is ordered to refund the sum of N1,214,000.00 to the Claimant; being the sum received vide Exhibit PW1C as the price of the house allocated to the Claimant but which was never delivered to him.
- c. The sum of N3,000,000.00 (Three Million Naira) is awarded against the 1st, 2nd and 3rd Defendants jointly and severally as general damages, in favour of the Claimant.
- d. With the grant of relief 1, relief 2, being an alternative relief is hereby dismissed.
- e. Relief 4 fails for want of proof and same is accordingly dismissed.

HON. JUSTICE A.O. OTALUKA
9/2/2023