IN THE HIGH COURT OF JUSTICE OF THE F.C.T.
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT APO, ABUJA
ON WEDNESDAY, THE 11TH DAY OF JANUARY, 2023
BEFORE HIS LORDSHIP: HON. JUSTICE ABUBAKAR HUSSAINI MUSA
JUDGE

SUIT NO.: FCT/HC/CV/2755/2021

BETWEEN:

HHL INVESTMENT AND PROPERTY DEVELOPMENT COMPANY LIMITED **CLAIMANT**
AND

1. **MRS SALAMAT LARO ABDULKADIR**
2. **MR DEMAS YAYIRUS DIDENO** **DEFENDANTS**

JUDGMENT

This Judgment is on the suit of the Claimant seeking a number of declaratory reliefs in respect of the property known as Plot No./House No. D3 Harmony Estate, Galadimawa, Abuja.

By an Originating Summons dated and filed on the 20th of October, 2021, the Claimant instituted this suit seeking the determination of the following questions:-

1. *Having regard to the Offer Letter dated 7th July, 2017 issued to the 1st Defendant by the Plaintiff, whether or not the Plaintiff made any allocation*

of Plot No./House No. D3 Harmony Estate, Galadimawa, Abuja to the 1st Defendant.

2. *Whether or not the 2nd Defendant (sic) without allocation of Plot No./House No. D3 Harmony Estate, Galadimawa, Abuja by the Plaintiff to her can validly sell, transfer and or assign any right or interest to the 2nd Defendant or any third party by way of Contract of Sale, Power of Attorney or Deed of Assignment.*
3. *Whether or not the 1st Defendant having failed to pay in full the consideration for the sale of Plot No. D3 Harmony Estate, Galadimawa, Abuja pursuant to the Letter of Offer dated 7th July, 2017 acquired any title or interest in the said plot.*
4. *Whether or not the interest conveyed by the 1st Defendant to the 2nd Defendant in respect of Plot No./House No. D3 Harmony Estate, Galadimawa, Abuja by way of Contract of Sale, Power of Attorney and Deed of Assignment is valid in law.*
5. *Whether or not the failure of the 1st Defendant to pay the balance sum of ₦7,500,000.00 (Seven Million, Five Hundred Thousand Naira) only of the sum of ₦10,000,000.00 (Ten Million Naira) only as stipulated by the Letter of Offer constitute a fundamental breach of contract.*

Upon an affirmative determination of the above questions, the Claimant seeks the following reliefs:-

1. *A Declaration that the failure of the 1st Defendant to pay the balance sum of ₦7,500,000.00 (Seven Million, Five Hundred Thousand Naira) only of the sum of ₦10,000,000.00 (Ten Million Naira) only as agreed consideration contained in the Letter of Offer constitute a breach of contract.*
2. *A Declaration that the 1st Defendant has no title to or interest in Plot No. D3 Harmony Estate, Galadimawa, Abuja capable of being assigned or transferred to the 2nd Defendant or any third party.*
3. *A Declaration that the sales (sic) transaction in respect of Plot No./House No. D3 Harmony Estate, Galadimawa, Abuja between the 1st Defendant and 2nd Defendant is null and void.*
4. *An Order of Court directing the 1st Defendant without delay to pay the sum of ₦10,000,000.00 as mesne profit for the use and occupation of Plot No./House No. D3 Harmony Estate, Galadimawa, Abuja from the 7th July, 2017 till the date of Judgment and vacant possession is granted.*
5. *An Order of Court directing the 1st and 2nd Defendant to deliver immediate and vacant possession of Plot No./House No. D3 Harmony Estate, Galadimawa, Abuja to the Plaintiff.*

6. *An Order of perpetual injunction restraining the 1st and 2nd Defendants by themselves, privies, agents, servants, assigns or any other person howsoever called from any further infringement and or trespass on Plot No./House No. D3 Harmony Estate, Galadimawa, Abuja.*
7. *General damages in the sum of ₦10,000,000.00 (Ten Million Naira) only against the 1st and 2nd Defendants for trespass on the Plaintiff's Plot No./House No. D3 Harmony Estate, Galadimawa, Abuja.*
8. *Cost of action in the sum of ₦1,000,000.00 (One Million Naira) only.*

In support of the Originating Summons, the Claimant filed a 14-paragraph affidavit deposed to by one Uneku Adaji who described herself as the Site Officer of the Plaintiff. Attached to the supporting affidavit are eight documentary exhibits. These are the Letter of Offer the Claimant issued to the 1st Defendant in respect of the property the subject of this suit, the receipt of payment of ₦2,500,000.00 (Two Million, Five Hundred Thousand Naira) only the 1st Defendant made to the Claimant, a Letter of Demand from the Claimant to the 1st Defendant for the payment of the outstanding balance of ₦7,500,000.00 (Seven Million, Five Hundred Thousand Naira) only, a copy of a Notice of Intent to Revoke the sale of the property, copies of a Power of Attorney, a Contract of Sale and a Deed of Assignment between the 1st

Defendant and the 2nd Defendant. These are marked as **Exhibits HHL1, HHL2, HHL3, HHL4, HHL5, HHL6, HHL7 and HHL8** respectively. The Claimant also filed a Written Address encapsulating its legal submissions in support of its claims against the Defendants.

The gist of the claims of the Claimant against the Defendants is that the Claimant offered the plot of land properly described as Plot No. D3 Harmony Estate, Galadimawa, Abuja to the 1st Defendant *vide* **Exhibit HHL1** on the 7th of July, 2017 at the purchase price of ₦10,000,000.00 (Ten Million Naira) only. The 1st Defendant pursuant to **Exhibit HHL1** accepted the offer and paid the sum of ₦2,500,000.00 (Two Million, Five Hundred Thousand Naira) only to the Claimant. The evidence of this payment is **Exhibit HHL2**. Following the failure of the 1st Defendant to liquidate the outstanding balance of ₦7,500,000.00 (Seven Million, Five Hundred Thousand Naira) only, the Claimant served a Notice of Demand for the payment, that is, **Exhibit HHL3**, on the 1st Defendant and subsequently followed up it up with **Exhibit HHL4** and **HHL5**, which are copies of a letter terminating **Exhibit HHL1**.

It is the case of the Claimant that it found out, during a routine verification exercise, that the 1st Defendant had sold the property to the 2nd Defendant. The 2nd Defendant, according to the Claimant, is relying on the Power of Attorney

the 1st Defendant donated to him, a Contract of Sale as well as a Deed of Assignment executed in his favour to claim title and ownership of the property and has refused to deliver vacant possession of the property to the Claimant, notwithstanding that the Claimant has demanded for same and had, according to the Claimant, directed him not to erect any structure on the property.

In the Written Address in support of the suit, the Claimant, through its Counsel, formulated three issues for determination. These issues are: *(1) Whether or not Exhibit HHL1 (Letter of Offer), the interpretation of the Terms of Offer contained therein vest title and or transferred title to the 1st Defendant; (2) Whether or not the payment of the sum of ₦2,500,000.00 (Two Million, Five Hundred Thousand Naira) only by the 1st Defendant without paying the balance sum of ₦7,500,000.00 (Seven Million, Five Hundred Thousand Naira) only is not a violation of the terms of Offer (Exhibit HHL1) and a breach of contract; and (3) Whether or not the 1st Defendant without valid title to No. D3 Harmony Estate, Galadimawa, Abuja and owing to her breach of contract with the Claimant can validly transfer title to the 2nd Defendant*.

Arguing the first issue, learned Counsel submitted that **Exhibit HHL1** could not ground a contract as it was a mere expression of intention by the Claimant to enter into a contract with the 1st Defendant. He cited the cases of ***Enemchukwu***

v. Okoye (2018) All FWLR (Pt. 929) 226 CA, Atiba Ialamu Savings & Loans Ltd v. Suberu (2019) All FWLR (Pt. 1008) 949 SC. He therefore urged the Court to apply the literal rule of statutory interpretation and find that the payment of ₦2,500,000.00 (Two Million, Five Hundred Thousand Naira) only without more could not vest title in the property in the 1st Defendant.

On Issue 2, learned Counsel submitted that the formation of a valid contract is dependent on the offeree accepting the terms of the offer in its entirety. He posited that the failure of the 1st Defendant to pay the balance of ₦7,500,000.00 (Seven Million, Five Hundred Thousand Naira) only after she had made the initial payment of ₦2,500,000.00 (Two Million, Five Hundred Thousand Naira) only constituted a breach of contract and rejection of the offer. He relied on the cases of ***GTBank v. Ogboji (2019) All FWLR (Pt. 995) 814 CA; Achakacem Plc v. Mubashshurun Inv. Ltd (2019) All FWLR (Pt. 1011) 476 SC and ZTE Nig. Ltd v. Abytel Nig. Ltd (2018) All FWLR (Pt. 962) 1608*** among others.

In his submissions on Issue 3, learned Counsel contended that the settled position of the law as entrenched in the doctrine of *nemo dat quod non habet* is that one could only give what is legally vested in them. He submitted that since the title of the property was not vested in the 1st Defendant following the failure of the 1st Defendant to pay up the purchase price of the property, she lacked the

legal capacity both in law and in equity to transfer the title in the property to the 2nd Defendant. Citing the cases of ***Adebiyi v. Dasilva (2019) All FWLR (Pt. 975) 776 SC and Warifama v. Egbo (2019) All FWLR (Pt. 9911) CA***, learned Counsel for the Claimant urged this Court to find in favour of the Claimant that the 1st Defendant lacked the capacity to alienate a property over which she lacked both legal and equitable title.

The Defendants were duly served with the originating processes in this suit. While the 1st Defendant was served through substituted means on the 28th of September, 2022, the 2nd Defendant was served personally on the 24th of January, 2022. The 1st Defendant did not file any process in response to the claims of the Claimant. The 2nd Defendant, however, on the 10th of February, 2022, filed his Counter-Affidavit and Written Address dated the 31st of January, 2022 in reply to the Claimant's claims.

In the 8-paragraph Counter-Affidavit which the 2nd Defendant deposed to in person, the 2nd Defendant stated what he believed to be the facts as they related to him. The kernel of the 2nd Defendant's defence is that he approached a property firm, Fally Properties Nigeria Limited, in 2018 to facilitate the acquisition of a plot of land for him. The property firm linked him with the 1st Defendant who was willing to sell the property which is the subject of this suit.

The 1st and 2nd Defendant agreed on the purchase price of ₦10,000,000.00 (Ten Million Naira) only. The 2nd Defendant made an initial payment of ₦6,000,000.00 (Six Million Naira) only and spread the balance of ₦4,000,000.00 (Four Million Naira) only over a number of months, completing the payment on the 9th of August, 2018. In addition to the purchase price, the 2nd Defendant swore that he paid the sum of ₦250,000.00 (Two Hundred and Fifty Thousand Naira) only to the 1st Defendant as administrative charges. He further averred that he and the 1st Defendant executed all the necessary instruments evidencing the transfer of ownership of the property from the 1st Defendant to him. He added that he was not a party to the contract between the 1st Defendant and the Claimant.

It is the case of the 2nd Defendant that he commenced the erection of a building on the said plot of land in 2018 without any challenge from any person and currently lives in the building. He insisted that the Claimant was aware of the transaction between him and the 1st Defendant in relation to the property but stood by and watched them close the transaction. He also insisted that the Claimant was aware when the 2nd Defendant began the construction of the building.

The 2nd Defendant further challenged the competency of the suit of the Claimant on the grounds that the company being a body corporate ought to have obtained a Resolution of the Board of the Claimant before instituting this present action. He also contended that the suit ought not to have been commenced by way of Originating Summons. He therefore urged the Court to dismiss the suit of the Claimant.

Three exhibits were attached to the Counter-Affidavit of the 2nd Defendant. These are a Letter of Acknowledgement by Fally Properties Nigeria Limited acknowledging the receipt of the sum of ₦10,000,000.00 (Ten Million Naira) only from the 2nd Defendant, an irrevocable Power of Attorney donated by the 1st Defendant to the 2nd Defendant, and a Deed of Assignment between the 1st Defendant and the 2nd Defendant.

The 2nd Defendant also filed a Written Address in support of his Counter-Affidavit. In the said Written Address, learned Counsel for the 2nd Defendant formulated four issues for determination. These issues are *(1) Whether from the totality of this case, the Claimant is not caught up with the defence of estoppel, acquiescence, laches and standing by; (2) Whether the Claimant fulfilled the condition precedent to the exercise of jurisdiction by the Court for failure to obtain board resolution authorizing the institution of this case in the name of the*

Claimant; (3) Whether the Claimant is a competent party; and, (4) Whether the Claimant is right in commencing this action via Originating Summons.

In his argument on the first issue, learned Counsel adverted the mind of this Court to the facts of this case and submitted that the Claimant, having stood by and watched the 2nd Defendant conclude the transaction relating to the property with the 1st Defendant in 2018, commence construction of the property in the same 2018, complete the construction, move into the property and continue to live therein could not be heard to complain that the transaction was illegal or that the 2nd Defendant was not the beneficial owner of the property. Citing the cases of ***Adejumo v. Olawaiye (2014) 12 NWLR (Pt. 1421) 252 at 280 at 281, paras G – C per Rhodes-Vivour, JSC, Isaac v. Imasuen (2016) 7 NWLR (Pt. 1511) 250 at 267 paras D – E; Atunrase v. Philips (1996) 1 NWLR (Pt. 427) 637 at 652 – 653, para H – C per Ogundare, JSC*** and ***Waziri v. A.-G. Federation (2004) 3 All FWLR (Pt. 205) 252 at 257***, Counsel contended that the Claimant, having slept on his right, was estopped from seeking the Court's aid.

In his argument on the second issue he formulated, learned Counsel for the 2nd Defendant, referred the Court to the case of ***Madukolu v. Nkemdilim (1962) LPELR-24023 (SC)*** and submitted that the Claimant did not fulfill the conditions

precedent to the exercise of jurisdiction by the Court. he contended that the Claimant, being a corporate entity, ought to have obtained and exhibited the Resolution of the Board of the Claimant authorizing it to institute the action. Citing the cases of ***Bank PHB v. CBN & Others (2019) LPELR-47383 (CA), Haston Nig. Ltd v. ACB Ltd (2002) LPELR-1359, Donald v. Saleh (2015) 2 NWLR (Pt. 1444) 529 at 546*** and ***Ikinne v. Edjerode (2021) 12 S.C. (Pt. 11) p. 94***, he urged the Court to hold that the failure of the Claimant to obtain the Resolution of the Board before instituting this present suit was fatal to the case of the Claimant.

On the third issue, learned Counsel for the 2nd Defendant maintained that since the Claimant did not obtain the requisite Resolution of the Board authorizing it to institute this action, it was not a competent party to this suit. He cited the case of ***Mozi & Others v. Mbamalu & Others (2016) LPELR-1922 SC***.

On the last issue, learned Counsel submitted that the suit was incompetent because it was commenced by way of a wrong originating process. He maintained that considering the contentious nature of the suit, the Claimant ought to have commenced the suit by way of a Writ of Summons instead of by way of an Originating Summons. He referred this Court to the facts of the case and insisted that the mode of commencement of this suit was inappropriate as

the facts relating thereto disclosed the need to call evidence. He cited the cases of ***Ogunsola v. A.P.P. (2004) All FWLR (Pt. 207) 727 at 729, Keyamo v. House of Assembly, Lagos State (2002) 18 NWLR (Pt. 799) 605 at 613, paras E – F, JEV v. Iyortyom (2014) NWLR (Pt. 1428) 575 at 615 paras F and Oguebego v. PDP (2016) 4 NWLR (Pt. 1503) 446 at 485 paras C – D*** and urged the Court to resolve the issue in favour of the 2nd Defendant.

The above are the facts and legal submissions of the Claimant and the 2nd Defendant which they presented to this Court on the 8th of November, 2022. The parties, safe the 1st Defendant, through their Counsel, adopted and argued their respective positions on the 8th of November, 2022. On that day, learned Counsel for the 2nd Defendant informed the Court that the 2nd Defendant filed a Notice of Preliminary Objection to which the Claimant did not file any response. I have perused through the processes in the case file and I cannot find any Notice of Preliminary Objection. I am, however, aware that the 2nd Defendant raised objections on points of law in his Counter-Affidavit and the Written Address in support of same. I am also aware that the Claimant did not file any Further and Better Affidavit or a Reply on Points of Law in response to the objections of the 2nd Defendant on points of law. This Court considered these elements in this Judgment.

In determining the questions the Claimant has formulated as well as the issues the parties have raised in their respective written addresses in support of their processes, I hereby formulate the following issues for determination: "***(1) Whether this suit is not incompetent by reason of the mode of commencement and the failure to obtain the Resolution of the Board of the Claimant before the institution of this suit; and (2) Whether by virtue of the Power of Attorney which the 1st Defendant donated to the 2nd Defendant, the Deed of Assignment which the 1st Defendant and the 2nd Defendant executed and the Letter of Acknowledgement evidencing the payment to the 1st Defendant by the 2nd Defendant of the purchase price the 2nd Defendant has not acquired good title to Plot No./House No. D3 Harmony Estate, Galadimawa, Abuja the subject of this suit?***"

RESOLUTION OF ISSUE 1

(1) Whether this suit is not incompetent by reason of the mode of commencement and the failure to obtain the Resolution of the Board of the Claimant before the institution of this suit

In the *locus classicus* on jurisdiction, ***Madukolu v. Nkemdilim (1962) 2 SCNLR 341,*** the Federal Supreme Court per Vahe Bairamian, FJ held that:-

"…I shall make some observations on jurisdiction and the competence of a court. Put briefly, a court is competent when

(1) it is properly constituted as regards numbers and qualifications of the members of the bench, and no member is disqualified for one reason or another; and

(2) the subject matter of the case is within its jurisdiction, and there is no feature in the case which prevents the court from exercising its jurisdiction: and

(3) the case comes before the court initiated by due process of law, and upon fulfilment of any condition precedent to the exercise of jurisdiction.

Any defect in competence is fatal, for the proceedings are a nullity however well conducted and decided: the defect is extrinsic to the adjudication."

My duty is defined; and that is, to answer these questions: did this suit come before me through due process of the law and upon the fulfilment of all the conditions precedent to the exercise of jurisdiction? Are there features in this case which can prevent this Court from exercising jurisdiction to hear and determine this case? To answer these questions, I must consider the originating

processes before me. The Courts have held in a number of decided cases that it is the claim of the Claimant that vests jurisdiction in the Court. See, for instance, the case of **Skypower Exp. Airways Ltd. v. U.B.A. Plc (2022) 6 NWLR (Pt. 1826) 203 S.C. at 242 paras B-G** where the Supreme Court held that,

> "***It is the claimant's case that vests jurisdiction on the court. A valid writ of summons is sine qua non to the assumption of the requisite jurisdiction by a court to entertain or adjudicate over a matter commenced by that process. The court will not look at a defendant's processes to determine whether it has jurisdiction. The onus is on the claimant to ensure that his action at the trial court was originated by due process of law. That duty has never been that of the defendant.***"

I have reproduced the claims of the Claimant at the beginning of this Judgment. At the risk of being prolix, I shall reproduce them again. The reliefs are:-

1. *A Declaration that the failure of the 1st Defendant to pay the balance sum of ₦7,500,000.00 (Seven Million, Five Hundred Thousand Naira) only of the sum of ₦10,000,000.00 (Ten Million Naira) only as agreed*

consideration contained in the Letter of Offer constitute a breach of contract.

2. *A Declaration that the 1st Defendant has no title to or interest in Plot No. D3 Harmony Estate, Galadimawa, Abuja capable of being assigned or transferred to the 2nd Defendant or any third party.*
3. *A Declaration that the sales (sic) transaction in respect of Plot No./House No. D3 Harmony Estate, Galadimawa, Abuja between the 1st Defendant and 2nd Defendant is null and void.*
4. *An Order of Court directing the 1st Defendant without delay to pay the sum of ₦10,000,000.00 as mesne profit for the use and occupation of Plot No./House No. D3 Harmony Estate, Galadimawa, Abuja from the 7th July, 2017 till the date of Judgment and vacant possession is granted.*
5. *An Order of Court directing the 1st and 2nd Defendant to deliver immediate and vacant possession of Plot No./House No. D3 Harmony Estate, Galadimawa, Abuja to the Plaintiff.*
6. *An Order of perpetual injunction restraining the 1st and 2nd Defendants by themselves, privies, agents, servants, assigns or any other person howsoever called from any further infringement and or trespass on Plot No./House No. D3 Harmony Estate, Galadimawa, Abuja.*

7. *General damages in the sum of ₦10,000,000.00 (Ten Million Naira) only against the 1st and 2nd Defendants for trespass on the Plaintiff's Plot No./House No. D3 Harmony Estate, Galadimawa, Abuja.*
8. *Cost of action in the sum of ₦1,000,000.00 (One Million Naira) only.*

The High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules, 2018 provides for the nature of action that can be commenced by each type of originating process. Order 2 Rule 2(1) provides that:-

> ***(1) The under listed proceedings shall be commenced by writ except any applicable law requires that the proceedings shall be begun otherwise, than by writ:***
>
> ***a. Proceedings in which claimant claims:***
>
> ***(i) Any relief or remedy for any civil wrong or***
>
> ***(ii) Damages for breach of duty, whether contractual, statutory or otherwise, or***
>
> ***(iii) Damages for personal injuries to or wrongful death of any person, or in respect of damage or injury to any person, or in respect of damage or injury to any property.***

b. Where the claim is based on or includes an allegation of fraud, or

c. Where an interested person claims a declaration.

On the other hand, Order 2 Rule 3 of the Rules of this Court stipulates the nature of cases most appropriate to be commenced by way of Originating Summons. The Rule provides as follows:-

(1) Any person claiming to be interested under a deed, will, enactment or other written instrument may apply by originating summons for the determination of any question of construction arising under the instrument and for a declaration of the rights of the persons interested.

(2) Any person claiming any legal or equitable right in a case where the determination of the question whether he is entitled to the right depends upon a question of construction of an enactment, may apply by originating summons for the determination of such question of construction and for a declaration as to the right claimed.

There have been judicial pronouncements on modes of commencement of action. For instance, in ***Ezeigwe v. Nwalulu (2010) 4 NWLR (Pt. 1183) 159 S.C. at 215, para B***, the apex Court held that "***The mode of commencement of action is an indispensable aspect of our civil procedure, hence various courts have it embodied in their Civil Procedure Rules***." The Supreme Court was quite emphatic on this subject in the case of ***Riok (Nig.) Ltd. v. Incorp. Trustees, N.G.F. (2022) 16 NWLR (Pt. 1857) 725 S.C. at 779, paras E – F*** when it held that the subject matter of a suit determines the mode of commencement of the suit. Speaking further ***at page 780, para B***, the Court held that "***Where a procedure for carrying out a matter is clearly spelt out in a law, a party has no choice but to comply fully with the procedure. Failure on the part of a plaintiff shows that he has not fulfilled the condition precedents for commencement of such action."*** See also in this regard ***Kwara State Govt. v. Guthrie (Nig.) Ltd. (2022) 13 NWLR (Pt. 1846) 189 S.C. at 207, paras. A-C***.

The reliefs sought here revolve around declaration of title to Plot No./House No. D3 Harmony Estate, Galadimawa, Abuja. There is also an element of breach of contract. To crown it all, the Claimant in Reliefs 4 and 5 is asking for reliefs that can be claimed only in an action for recovery of premises – a *sui generis*

proceeding. While the reliefs sought herein are within the subject matter jurisdiction of this Court, an action seeking those reliefs can be commenced only by way of Writ of Summons. I so hold. Of course, I am not unaware of the practice by some lawyers who, in their desperation to shorten the lifespan of the cases most appropriate to be commenced by way of Writ of Summons, especially cases on declaration of title to land, contrive such cases as one for construction of the instruments of allocation, thereby bringing same *via* Originating Summons. This Court is very much alive and alert to be taken in by such litigatory subterfuge.

The Rules of this Court tells the Court what to do in the circumstance. Order 2 Rule 3(3) provides that "***The court shall not be bound to determine any such question of construction if in its opinion it ought not to be determined on originating summons but may make any such orders as it deems fit***." It is for this reason that I will not consider the questions the Claimant formulated for determination in the Originating Summons. The suit of the Claimant is not one for determination of any written instrument; it is a case for declaration of title and it shall be treated as such. Though the Claimant has commenced this suit through a wrong originating process, and I am minded to strike out this suit for the wrong mode of commencement of action adopted by the Claimant, this

Court shall save this suit by virtue of Order 5 Rules 1(1) and 3. The Rules provide that:-

> ***(1) Where in beginning or purporting to begin any proceedings there has by reason of anything done or left undone, been a failure to comply with the requirements of these rules, such failure shall not nullify the proceedings.***
>
> (3) ***The court shall not wholly set aside any proceedings or writ or other originating process by which they were begun on the ground that the proceedings were required by any of this Rules to be begun by an originating process other than the one used.***

In ***Alh. Bala Usman v. Tamadena & Company Ltd & Ors (2015) LPELR-40376(CA) at Pp. 16-18, paras. D-B***, the Court of Appeal per Abba Aji, JCA (as he then was, later, JSC) held as follows:-

> "***As stated earlier, rules of Court are purposely made to be obeyed and followed, therefore all procedure set by the rules must be complied with. However, where in the course of following the rules some errors or mistakes are committed or omitted, such***

error or mistakes would not out rightly render the proceedings a nullity. Depending on the circumstance of each particular case, where the noncompliance has occasioned miscarriage of justice or where the right of the adverse party will be affected, the Court shall not treat the non-compliance as a mere irregularity and as such mandate the rules to be followed or nullify the proceedings as the case may be. But in a situation where it has not occasioned miscarriage of justice it shall be treated as a mere irregularity and should not vitiate the proceedings. This is because all rules of Court are made in aid of justice and that being so, the interest of justice will have to be given priority over any rule, compliance of which will lead to outright injustice. The Rules are not sine quo non in the determination of a case and therefore not immutable. See Oni V. Fayemi (2008) 8 NWLR (PT. 1089) 408. In Abubakar V. Yar'adua (2008) 4 NWLR (PT. 1078) P. 465 at 510 paras G - H, the Supreme Court held inter alia that: It is not every non-compliance with rules of court that vitiate the proceedings or do harm to the party in default. As a matter of our adjectival law, and by the state of the non-compliance rules, the Courts will regard certain acts or conduct of non-compliance as

mere irregularity which could be waived in the interest of justice. Again, as a matter of our adjectival law, non-compliance rules in their aggregate content point more to this trend than the reverse position of a punitive nature against the non-complying party. The state of the law is more in favour of forgiving non-compliance with rules of Court, particularly where such noncompliance, if waived, will be in the interest of justice."

Another reason this Court shall save this suit is because the Supreme Court has enjoined trial Courts and intermediate appellate Courts to determine a suit on its merit, even after the Courts have found that they lack jurisdiction to entertain the suit. The reason is to avail the appellate Court the benefit of the trial Court's reasoning on the merits of the case and to save the time that could be expended on remitting the suit for rehearing where the Supreme Court or the intermediate appellate court finds that the trial Court actually has the jurisdiction to entertain the suit. It is in view of the foregoing that I will excuse the mode of commencement adopted by the Claimant in instituting this suit and proceed into the merits of this case.

The 2nd Defendant is also challenging the competency of this suit on the ground that the Claimant did not exhibit the resolution of the board of the Claimant

authorizing the institution of this suit. This is a serious challenge to the competency of this suit. There is no question that a company is a juristic person, distinct from its directors, shareholders and members and vested with the powers to sue and be sued in its own name. Though a juristic person, it is a non-natural entity and, therefore, requires human agents through which to drive its actions and activities. See ***MTN Nigeria Communications Ltd v. Mr Akinyemi Aluko & Anor (2013) LPELR-20473(CA)*** where the Court of Appeal held *inter alia* that "***…a company is recognized as a corporate body that can sue or be sued. Admittedly, it is a legal fiction that exists only in the eyes of the law. This is due to the fact that a company has no brain, eyes or hands of its own. It acts through human beings/natural persons such as its Directors or Shareholders whose actions are invariably binding on it. See Ladejobi v. Odutola Holdings Ltd. (2002) 3 NWLR (Pt.753) 121.***" See also the case of ***Saleh v. B. O. N. Ltd (2006) NWLR (Pt.976) 316 at 326 – 327*** where the Supreme Court held thus: "***A company is a juristic person and can only act through its agents or servants***."

In ***Bulet International Nigeria Limited & Anor v. Dr. Mrs. Omonike Olaniyi & Anor (2017) LPELR-42475(SC) at 39 – 40, paras F – D***, the Supreme Court, speaking through Kekere-Ekun, JSC held that "***The concept of corporate***

personality was established a long time ago in the case of Salomon Vs Salomon & Company Ltd. (1897) AC 22 to the effect that a company is a legal entity distinct from its members. It has a distinct legal personality and is capable of suing and being sued in its corporate name. A company is a different person altogether from the subscribers to the memorandum and is neither an agent nor trustee for them. It also has the capacity to enter into any agreement in its corporate name…"

Certain sections of the Companies and Allied Matters 2020 are relevant to the resolution of the challenge of the 2nd Defendant to the competency of this suit. The relevant sections are sections 341, 87, 89 and 90. I have reproduced the sections below:

Section 381:

> "***Subject to the provisions of this Act, where an irregularity is made in the course of a company's affairs or any wrong is done to the company, only the company can sue to remedy that wrong and only the company can ratify the irregular conduct.***"

Section 87:

(1)A company shall act through its members in general meeting or its board of directors or through officers or agents appointed by, or under authority derived from, the members in general meeting or the board of directors.

(2)Subject to the provisions of this Act, the respective powers of the members in general meeting and the board of directors shall be determined by the company's articles.

(3)Except as otherwise provided in the company's articles, the business of the company shall be managed by the board of directors who may exercise all such powers of the company as are not by this Act or the articles required to be exercised by the members in general meeting.

(4)Unless the articles otherwise provide, the board of directors, when acting within the powers conferred upon them by this Act or the articles, is not bound to obey the directions or instructions of the members in general meeting provided that the directors acted in good faith and with due diligence.

(5) Notwithstanding the provisions of subsection (3), the members in general meeting may—

(a) act in any matter if the members of the board of directors are disqualified or unable to act because of a deadlock on the board or otherwise;

(b) institute legal proceedings in the name and on behalf of the company, if the board of directors refuse or neglect to do so;

(c) ratify or confirm any action taken by the board of directors; or

(d) make recommendations to the board of directors regarding action to be taken by the board.

(6) No alteration of the articles invalidates any prior act of the board of directors which would have been valid if that alteration had not been made.

Section 89:

Any act of the members in general meeting, the board of directors, or a managing director while carrying on in the usual way the business of the company, shall be treated as the act of the company itself and the company is criminally and civilly liable to the same extent as if it were a natural person:

Provided that—

(a) the company shall not incur civil liability to any person if that person had actual knowledge at the time of the transaction in question that the general meeting, board of directors, or managing director, as the case may be, had no power to act in the matter or had acted in an irregular manner or if, having regard to his position with or relationship to the company, he ought to have known of the absence of such power or of their irregularity; and

if in fact a business is being carried on by the company, the company shall not escape liability for acts undertaken in connection with that business merely because the business in question was not among the business authorised by the company's memorandum.

The above provisions have been construed and given effect to in a number of judicial authorities such as: ***Bank PHB V. CBN & Ors (2019) LPELR-47383 (CA); Odutola Holdings Ltd Vs Ladejobi 2006 12 NWLR (Pt 994) 321; Adegbenro Vs Akintilo (2010) 3 NWLR (Pt 1182) p.541 at 562; Plateau State Government v. Crest Hotel & Garden Ltd (2012) LPELR-9794(CA); African Continental Bank Plc v. Haston Nigeria Limited (1997) LPELR-5218(CA); United Investments Limited v. The Registrar of Titles, Lagos State & Ors (2016) LPELR-41406 (CA); The Attorney General of Lagos State v. Eko Hotels Limited & Anor (2006) LPELR-3161(SC) and CITEC International Estates Limited & Ors v. Josiah Oluwole Francis & Ors (2021) LPELR-53083 (SC)*.**

It is the contention of the 2nd Defendant that there was no authorisation in the form of a resolution of the board of directors of the Claimant or the resolution of the members in a general meeting to inject the serum of legal competency into this suit. Counsel for the 2nd Defendant argued in his written address that the Claimant ought to discharge the evidential burden of showing the authorisation to institute this suit by exhibiting the resolution to the originating process. The question then becomes: on whom lies the evidential burden of proof in this regard?

Section 133 (1) provides that "***In civil cases, the burden of first proving existence or non-existence of a fact lies on the party against whom the judgment of the Court would be given if no evidence were produced on either side, regard being had to any presumption that may arise on the pleadings***." The issue of authorisation or its absence in this suit was first raised by the 2nd Defendant in paragraph 8 (i) – (vii) of his Counter-Affidavit.

I do not agree with learned Counsel to the 2nd Defendant that his explication represents the position of the law. If that were the case, a party to a suit will deny the existence of a fact and simply go to sleep. Section 133(1) of the Evidence Act places ***the burden of first proving existence or non-existence of a fact…" "…on the party against whom the judgment of the Court would be given if no evidence were produced on either side, regard being had to any presumption that may arise on the pleadings."*** In ***Akande v. Adisa (2012) 15 NWLR (Pt. 1324) 538 S.C. at P. 558, paras. A-G; 571-572, paras. H-C; 574, para. D; 583, paras. G-H***, the Supreme Court, in examining the provisions of the Evidence Act relating to burden of proof, held *inter alia* that "***Thus, by those provisions, it is the requirement of the law that he who asserts must prove.***"

In this case, it is the 2nd Defendant that is asserting the non-existence of a resolution of the board of directors of the Claimant herein authorising the initiation of this suit in the name of the Claimant that is saddled with the evidential burden of proving the non-existence of that fact. In other words, the burden is therefore on the 2nd Defendant to prove that no meeting was held or that the Claimant was not authorised by the board of directors or the members to institute this suit. It is only when he has discharged that burden of proof that the burden of proving the existence of authority to institute this suit will shift to the Claimant. See ***Okoye & Ors v. Nwankwo (2014) LPELR-23172 (SC) per Mary Ukaego Peter-Odili, JSC at page 25 -26 paras F – E.***

In ***Akande v. Adisa (2012) supra at 565, paras. B – E***, the apex Court held that "***Where there is no issue, the question of burden of proof does not arise. On the burden of proof on the pleading, the rule is that the burden of proof rests on the party, whether plaintiff or defendant, who substantially asserts the affirmative of the issue. On the burden of adducing evidence, the burden of proof may shift depending on how the scale of evidence preponderates. Subject to the scale of evidence preponderating, the burden of proof rests squarely on the party who would fail if no evidence at all or no more evidence, as the case may be,***

was given on either side. In other words, it again rests before evidence is taken by the court of trial on the party who asserts the affirmative of the issue." The 2nd Defendant in the instant case has not discharged the legal burden of proof upon him to the required standard; so, the burden of proof cannot shift to the Claimant. I so hold.

It is important to note that the same subsection of the Evidence Act, 2011 provides that "***regard being had to any presumption that may arise on the pleadings***." Two of the presumptions relevant here is the presumption that the common course of business has been followed in particular cases and also the presumption of regularity of judicial and official actions.

Section 167(c) of the Evidence Act, 2011 provides that the Court may presume that "***the common course of business has been followed in particular cases***." Since this is a rebuttable presumption of fact, it is for the Defendant, who is alleging that the proper course has not been followed by the Claimant in bringing this action, to prove that the common corporate practice prior to the commencement of legal action by corporate bodies has not been followed in this case. See ***Right Choice Electronics Ltd v. Kelvin Festus Int'l Ltd (2012) LPELR-19726 (CA); Chemiron (Int'l) Ltd v. Stabilini Visinoni Ltd (2018) LPELR-44353 (SC); Kate Enterprises Ltd v. Daewoo Nigeria Ltd (1985) 2***

NWLR (Pt. 5) 116; Saleh v. B.O.N. Ltd (2006) NWLR (Pt. 976) 316 at 326 – 327; Onwuka & Ors v. Onwuka (2017) LPELR-42281 (CA).

Section 168(1) of the Evidence Act, 2011 provides that "***When any judicial or official act is shown to have been done in a manner substantially regular, it is presumed that formal requisites for its validity were complied with***." It is my considered view, and I so hold, that the 2nd Defendant has failed to established the absence of authorisation on the part of the Claimant. What is more? The 2nd Defendant has failed to challenge the assertion of Uneku Adaji, the Claimant's Site Officer and the Deponent of the Claimant's Affidavit in support of the Originating Summons that she had the consent of the Claimant to depose to the affidavit.

For the above reasons, therefore, I am impelled to disagree with the 2nd Defendant that the Claimant had not fulfilled the conditions precedent to the institution of this suit. It is also impossible for me to attain a point of convergence with him on his contention that the Claimant is not a proper party in this suit. It is my firm conviction, and I so hold, that the arguments of learned Counsel for the 2nd Defendant on these grounds go to no moment. I therefore discountenance all his arguments on these subjects and find that this suit is

competent. I hereby resolve this issue against the 2nd Defendant and in favour of the Claimant.

RESOLUTION OF ISSUE 2

Whether by virtue of the Power of Attorney which the 1st Defendant donated to the 2nd Defendant, the Deed of Assignment which the 1st Defendant and the 2nd Defendant executed and the Letter of Acknowledgement evidencing the payment to the 1st Defendant by the 2nd Defendant of the purchase price the 2nd Defendant has not acquired good title to Plot No./House No. D3 Harmony Estate, Galadimawa, Abuja the subject of this suit?

I have noted carefully the reliefs the Claimant seeks in this suit. As I stated earlier, the kernel of this suit is the ownership of the property known as Plot No./House No. D3 Harmony Estate, Galadimawa, Abuja. The case of the Claimant is that since the 1st Defendant did not pay the balance of ₦7,500,000.00 being the balance outstanding on the purchase price of ₦10,000,000.00 (Ten Million Naira) only, she lacked the capacity to alienate the said property. The 2nd Defendant's case is that he purchased the property from the 1st Defendant upon being satisfied that the Letter of Offer was genuine and

that it emanated from the Claimant. He further asseverated that he paid the purchase price of ₦10,000,000.00 (Ten Million Naira) only to the 1st Defendant who executed the necessary documents of transfer in his favour. Having concluded the transaction, he commenced construction of his building in 2018, completed same and moved in. He swore that he had been in occupation of the property since then. The 1st Defendant did not file any process in opposition to the suit; so, this Court is bereft of an insight into her side of the story.

Indeed, the Claimant offered a property to the 1st Defendant to purchase. The Letter of Offer, that is **Exhibit HHL1** constituted the offer. **Exhibit HHL2**, that is, the receipt of payment of ₦2,500,000.00 (Two Million, Five Hundred Thousand Naira) by the 1st Defendant to the Claimant established both the acceptance of this offer as well as the consideration for this contract. Of course, the parties were at a consensus *ad idem* as to the nature of the relationship being created, the subject matter of the contract and the terms of the contract. Both parties, too, were possessed of the requisite legal capacity to contract. The contract that was thus created was between the 1st Defendant and the Claimant. The 2nd Defendant was not part of this contract. By the doctrine of privity of contract, he can neither enjoy the benefits of the contract nor suffer the liabilities accruing

therefrom. He has no right therein and is not under any obligation as far as that contract is concerned.

In ***Jonah Capital Nigeria & Ors v. Incorporated Trustees of River Park Resident Association Abuja & Anor (2022) LPELR-57658(CA) at 13 – 15, paras B – A***, Gafai, JCA, speaking the mind of the Court of Appeal, held *inter alia* thus:-

> "***As a principle of law, privity of contract postulates the rule that only parties to a contract can sue or be sued on it with a view to seeking its benefit. The rule will therefore not allow a stranger to sue or seek to enforce a contract or assume liabilities or obligations under it because there is in law said to exist privity of contract only between the contracting parties. In this wise, privity of contract upholds and protects the sanctity of contracts. See Oshevire Ltd vs. Tripoli Motors (1997) 4 SCNJ 246, Reichi vs NBCI (2016) 8 NWLR (Pt. 1514), 274, John Davis Construction Co. Ltd v. Riacus Co. Ltd & Anor (2019) LPELR CA/C/179/2017.***"

See also ***The Registered Trustees Of Masters Vessel Ministries Nigeria Incorporated v. Rev. Francis Emenike & Ors (2017) LPELR-42836(CA) at 14***

– 15 paras D – B per Ogunwumiju, JCA (as he then was, later, JSC) where the Court of held espoused similar position when it held that "***The doctrine of privity of contract simply states that, as a general rule, a contract cannot confer rights and obligations on persons not party to the contract. A contract is only enforceable at the instance of parties to it and a third party is thus, generally prevented from seeking the enforcement or otherwise of a contract to which he is not a party. See Dunlop Pneumatic Tyre Company Ltd. v. Selfridge & Company Limited (1915) A.C 847, Makwe v. Nwukor (2001) 14 NWLR Pt. 733 Pg. 356.***"

Accordingly, therefore, the entire depositions contained in paragraphs 4, 5, 6, 7 and 8 do not relate to the 2nd Defendant. So also are **Exhibits HHL1, HHL2, HHL3, HHL4 and HHL5**.

I am not ignorant of the contentions of the Claimant in this regard. Its argument is that the 1st Defendant, not being vested with title over the property in question, cannot purport to alienate same to a third party. I agree with learned Counsel for the Claimant that a party who lacks the proprietary rights over a property cannot transfer same to a third party. In other words, any assignment of title made by an assignor who does not have a valid title to a property is void and of legal effect. That is the general position of the law which is cast in stone

in the Latin maxim *nemo dat quod non habet*. See ***Nwosu v. Nwankwo (1995) 6 NWLR (Pt. 400) 589; Eze v. Chukwudum (2003) 15 NWLR (Pt. 847) 549; Chukwu v. Eze (2005) 4 NWLR (Pt. 918) 479***.

Exceptions, however, exist to this general principle. These exceptions include situations where the assignee shows that they acted in good faith and without knowledge of the invalidity of the assignor's title, the doctrine of *lis pendis*, the doctrine of estoppel, and the doctrine of laches and acquiescence. See ***Olaniyan v. Ige (1962) 1 All NLR 121; Okolie v. Okolie (1984) 1 SCNLR 483; Oluwole v. Okusanya (1998) 5 NWLR (Pt. 558) 252***.

Enter the 2nd Defendant. In 2018, he purchased the property from the 1st Defendant. The parties to this particular contract are the 1st Defendant and the 2nd Defendant. They executed the necessary instruments as required for the alienation. These are the Power of Attorney and the Deed of Assignment. There is also the Letter of Acknowledgement of the payment of ₦10,000,000.00 (Ten Million Naira) only. Evidence of this contract are attached as exhibits to both the affidavit in support of the Originating Summons as well as to the Counter-Affidavit of the 2nd Defendant.

Curiously, the Claimant exhibited these instruments as **Exhibits HHL6, HHL7 and HHL8**. Explaining how it came about these documents, the Claimant's deponent averred in paragraph 9 of the affidavit in support of the Originating Summons that "*I know that during the Claimant verification (sic) exercise at (sic) October, 2019, it was discovered that the 1st Defendant had appointed one Mr Demas Yayirus Dideno now the Second Defendant as the her (sic) Attorney having sold, assigned, transferred Plot No./House No. D3, Harmony Estate, Galadimawa, Abuja to the Second Defendant without liquidating the balance of the sale consideration owed to the Claimant…*"

Responding to this averment, the 2nd Defendant averred in paragraph 7(k) and (l) as follows: "*(k) That the Claimant was aware of the sale transaction in respect of the said property between the 1st and 2nd Defendant. (l) Consequent upon paragraph 7(l) (sic) above (supra), the Claimant has in its possession all the relevant documents in regards to the transaction which he exhibited in the originating processes i.e. the Power of Attorney and Deed of Assignment.*"

I find it difficult to believe the Claimant's claim that it only discovered in 2019 during its 'verification exercise' that the 1st Defendant had alienated the property in dispute to the 2nd Defendant. Though the 2nd Defendant did not exhibit the receipt of ₦250,000.00 (Two Hundred and Fifty Thousand Naira) only which he

claimed he paid the 1st Defendant as administrative charges (see paragraph 7(e) of the 2nd Defendant's Counter-Affidavit), his averment in paragraph 7(g), to wit, "*The 1st Defendant also promised in assisting the 2nd Defendant to effect a change of ownership*", is consistent with estate management practices.

Further to this, the 2nd Defendant had averred in paragraph 7(i) that "*That since the 2nd Defendant took possession of his land, erected building in 2018 he has been in quiet possession without any interference or encumbrance*." I wonder how a building could be erected in 2018 on a property over which the Claimant exercises a lien and it only 'discovered' in October, 2019 during its 'verification exercise' that the property had been sold. The Claimant averred in paragraph 11 of its affidavit in support of its Originating Summons that it directed the 2nd Defendant to halt development on the property but the 2nd Defendant refused. The 2nd Defendant, on the other hand, insisted in paragraph 7(m), (p), and (q) that the Claimant did not make any effort to stop him from developing the property.

I believe the evidence of the 2nd Defendant for the simple reason that if the Claimant could purport to serve a Letter of Demand for Payment (**Exhibit HHL3**) and a Notice of Intent to Revoke the Offer (**Exhibit HHL 4**) on the 1st Defendant, then, it should have served a notice on the 2nd Defendant warning

him to stay off the property or to halt his development of the property. The absence of such definite resistance to the 2nd Defendant's development can mean only one thing: acquiescence of the Claimant in the conduct of the 2nd Defendant in relation to the property. I agree with learned Counsel for the 2nd Defendant that the Claimant, having slept on its rights, cannot wake up at this hour to challenge the 2nd Defendant's proprietary and possessory rights over Plot No./House No. D3 Harmony Estate, Galadimawa, Abuja.

In the case of Inspector ***Kayode v. Alhaji J. A. Odutola (2001) LPELR-1682(SC) at 14 paras B – C***, the Supreme Court noted that "***...for a delay in taking action, there must be knowledge on the part of the plaintiff of all the facts giving him a cause of action. See Mogaji v. Nuga (1960) 5 FSC 107, where it was held that laches is not delay alone; some other factors must exist such as knowledge.***" The Court of Appeal was more effulgent on the notion of laches and acquiescence in the case of ***Vihishima Igbum v. Alhaji Baba Nyarinya & Anor (2000) LPELR-9938(CA) at 38-45, paras. C-F*** per Mangaji, JCA. In that case, the Court explained the concept *inter alia* thus:

> "***I should think that attention must be drawn to the conceptual meaning of the doctrine of laches and acquiescence. Laches and acquiescence as an equitable defence operates to bar a person***

who has slept over his right for a long period of time from asserting his said right against an innocent party. It derives its origin from the equitable maxim that "equity aids the vigilant and not the indolent." It obviously discourages stale demands in the interest of peace and orderly society and is thus rooted in public policy. Where the doctrine is successfully invoked the original or true owner of the property is made to lose his title over the property. But because the doctrine is only employed as a shield, the party that relies on it cannot get a declaration of title in his favour merely because of the reliance he placed on it. See Maji v. Shaft (1965) NMLR 33; Odutola v. Akande (1960) SCNLR 282, (1960) 5 FSC 142. Laches and acquiescence it must be stressed does not consist simply in mere lapse of time. Also important is that it must be coupled with the existence of circumstances which make it inequitable for the contesting party to enforce the claim. See Kaiyaoja & Or v. Egunla (1974) 1 All NLR 426. Such circumstances include a situation in which there is considerable change in the condition of the land or where expenses had been incurred in developing the land. But more important is that it is of the essence of the doctrine of laches and acquiescence that the

party pleading the defence did not know that the property he improved belongs to another. Of most serious note however is that there cannot be declaration of title in the favour of he who successfully established the plea of laches and acquiescence; Oshodi v. Imoru (1936) WACA 93."

The Supreme Court had reason to consider this concept recently. In the case of ***Mr. Olufemi Ayorinde v. Chief Ayodele Kuforiji (2022) LPELR-56600(SC) at 77-80, paras. C-F***, the Court per Mary Ukaego Peter-Odili, JSC held thus:-

"***The law, is that a person in the position of Respondent will not be allowed to force back the hand of the clock belatedly; having made the Appellant change his position and expended monies relying on the uncalled EXHIBIT "D", it was too late in the day for Respondent to suddenly wake in a fit of contrived belated awareness in 1997 to claim the land. See BOSAH v OJI (2002) 6 NWLR PT. 762 SC, 137 at 158. In that case under similar circumstances of laches it was held that equity is created in favour of the Appellant and that where a person has expended money on land of another in the expectation, induced and encouraged by the owner of the land, that he would be allowed to***

remain in occupation, an equity is created, such that the Court would protect his occupation. See also ADEKILEKUN'S case and ELABANJO'S cases supra) The case of IDUNDUN v OKUMAGBA is not illustrative of the defence which may be set up to defeat a title in any of the five ways recognized by that authority. What the appellant urged upon the lower Court was about "misdirection" in the application of the ratio of that case. Although, a party may have proved his title in any of the five ways identified in IDUNDUN, he could still fail if the defendant makes out an unanswerable defence such as laches and acquiescence, limitation or extinguishment. Once those defences are established, it is immaterial that the counter-claimant has established his title to the land as he would still fail as the situation on ground portrays. It becomes too late for the Kuforiji family to complain. See the case of (31) ADEDEJI V OLOSO (2007) 5 NWLR (PART 1026) PP. 172-173, PARAS E-B. Where this Honourable Court held as follows: "...Occupation of land for a long time may operate to oust the title of the real owner has been guilty of laches and acquiescence. However, acquiescence may not bear a claim unless certain conditions are fulfilled: a. Adverse

possession by the person in occupation, that is, a possession inconsistent with that of the owner. b. The possession must have lasted for a long time; c. The real owner must have been guilty of acquiescence Or laches whereupon the person who relied on it must have altered his position." (EMPHASIS MINE) Premised on the above, the respondent having slept on his right for 19 good years, would be estopped after waking up from his slumber from reaping where he did not sow."

It is my considered view, and I so hold, that the Claimant, having slept on its right, cannot wake up and claim that it was not aware of the transaction between the 1st Defendant and the 2nd Defendant in respect of the property. It will be unconscionable therefore to accede to the reliefs it seeks in this suit. I so hold.

The only remedy available to the Claimant, as far as the property known and described as Plot No./House No. D3 Harmony Estate, Galadimawa, Abuja, the subject of this suit is concerned, is an action for an order of specific performance against only the 1st Defendant. He has no cause of action against the 2nd Defendant. In view of this, therefore, this action fails and is accordingly

dismissed. All the reliefs sought in this suit are accordingly refused. Parties should bear their respective costs.

This is the Judgment of this Honorable Court delivered today, the 11th of January, 2023.

HON. JUSTICE A. H. MUSA
JUDGE
11/01/2023

APPEARANCES:

FOR THE CLAIMANT:
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A.A. Orire Esq.
Z. A. Alugu Esq.

FOR THE 1ST DEFENDANT:
Did not appear and no legal representation

FOR THE 2ND DEFENDANT:
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