

Thousand, Thirty four Naira) for two Units of two Bedroom (Coventry), at Brains and Hammers City Life Camp Abuja at the rate per unit in the sum of N14,557,017.00(Fourteen Million, Five Hundred and Fifty-Seven Thousand Naira) only and the allocation of House No F2519 with Reference Number 00007096 and house No F2517 with Reference Number 00007095.

2. Whether the failure and refusal of the defendant to handover the two bedroom flat (Coventry) at Brains and Hammers City Estate Life Camp Abuja, till date is a breach of the defendant's contractual obligation to the claimant having regards to the claimant's compliance with the two letters stating the terms of the indicative offer to purchase a two bedroom flat (Coventry) at Brains and Hammers City Life Camp Abuja, both dated 20th of December 2017 and compliance with the terms of the two provisional letters of Allocation dated 8th of January 2018 by prompt payment of the full purchase price in cumulative sum of ~~N~~29,114,034.00 (Twenty-Nine Million, One Hundred and Fourteen Thousand and Thirty-Four Naira only) for two units of two bedroom flat Coventry at Brains and Hammers Estate, Life Camp Abuja at the rate per unit in the sum of ~~N~~14,557,017.00 (Fourteen Million Five Hundred and Fifty-Seven Thousand and Seventeen Naira only) and the allocation of House No F2519 with Reference Number 00007096

and allocation of House No F2517 with Reference Number 00007095.

3. Whether this court may make orders for specific performance and direct the defendant to immediately hand over the two unit of two bedroom flat (Coventry) at Brains and Hammers City, Life Camp Abuja to the Claimant by virtue of the Claimant's compliance with the two letters stating the terms of the indicative offer to purchase a two bedroom flat (Coventry) at Brains and Hammers City Estate Life Camp Abuja both dated the 20th of December 2017 and compliance with the terms of the two provisional letters of Allocation dated 8th of January 2018 by prompt payment of the full purchase price in the cumulative sum of ~~N~~29,114,034 (Twenty Nine Million, One Hundred and Fourteen Thousand and Thirty-Four Naira only). For two units of two-bedroom flat Coventry at Brains and Hammers City Life Camp Abuja at the rate per unit in the sum of ~~N~~14,557,017.00 (Fourteen Million, Five Hundred and Fifty-Seven Thousand and Seventeen Naira only) and the allocation of House No. F2519 with Reference Number 00007096 and allocation House No. F2517 with Reference Number 00007095.
4. Whether the Defendant is liable in general damages to the claimant for the breach of the Defendant's contractual obligation to

the Claimant by virtue of the Claimant's compliance with the two letter stating the terms of the indicative offer to purchase a two bedroom flat (Coventry) at Brains and Hammers City, Life Camp Abuja both dated 20th December 2017 and compliance with the terms of the two provisional letters of allocation dated 8th January 2018 and 9th January 2018 by prompt payment of the full purchase price in cumulative sum of ₦29,114,034.00 (Twenty Nine Million One Hundred and Fourteen Thousand and Thirty-Four Naira only) for two unit of two-bedroom flat (Coventry) at Brains and Hammers City Estate, Life Camp Abuja at the rate per unit in the sum of ₦14,557,017.00 (Fourteen million five hundred and fifty seven thousand and seventeen naira only) and the allocation of house No F2519 with Reference Number 00007096 and the allocation of house no F2517 with Reference Number 00007095.

5. Whether the Defendant is liable in punitive damages to the Claimant for the Defendant's colossal insensitivity to its contractual obligation to the claimant by virtue of the claimant's compliance with the two letters stating the terms of the indicative offer to purchase a two bedroom flat (Coventry) at Brains and Hammers City Life Camp Abuja both dated 20th December 2017 and compliance with the terms of the two provisional letters of allocation dated 8th January 2018 and 9th January 2018 by prompt

payment of the full purchase prices in the cumulative sum of ₦29,114,034.00 (Twenty-Nine Million, One Hundred and Fourteen Thousand, Thirty-Four Naira) for two units of two bedroom flat (Coventry) at Brains and Hammers City Life Camp Abuja at the rate per unit in the sum of ₦14,557,017.00 (Fourteen Million, Five Hundred and Fifty Seven Thousand And Seventeen Naira only) and the allocation of House No F2519 with Reference Number 00007096 and the allocation of House No F2517 with Reference Number 00007095.

Upon a determination of the above questions, the Claimant seeks the following reliefs from this Honorable Court:

- 1. A Declaration that there is an enforceable contractual obligation against the defendant by virtue of the claimant's compliance with the terms of the two offer letters titled "Indicative Offer to Purchase A Two Bedroom Flat Coventry At Brains and Hammers, Life Camp Abuja both dated 20th December 2017, the claimant's compliance with the terms of the two provisional letters of allocation dated 8th January 2018 and 9th January 2018 by prompt payment of the full purchase price in the cumulative sum of N29,114,034.00 (twenty nine million, one hundred and fourteen thousand and thirty four naira only) for two unit of two bedroom flat (Coventry) at Brains*

and Hammers City Life Camp Abuja at the rate per unit in the sum of N14,557,017.00 (Fourteen Million, Five Hundred and Fifty Seven Thousand and Seventeen Naira only) and the allocation of house no F2519 with reference number 00007096 and house no F2517 with reference number 00007095.

- 2. A Declaration that the failure and refusal of the defendant to hand over the two units duly completed two bedroom flat (Coventry) at Brains and Hammers City Estate Life Camp Abuja till date is a breach of the defendant's contractual obligation to the claimant having regards to the claimant's compliance with the two letters stating the terms of the indicative offer to purchase a two bedroom flat (Coventry) at Brains and Hammers City Life Camp Abuja both dated 20th December 2017 and compliance with the terms of the two provisional letters of allocation dated 8th January 2018 and 9th January 2018 by prompt payment of the full purchase price in the cumulative sum of ₦29,114,034.00 (twenty nine million one hundred and fourteen thousand and thirty four naira only) for two unit of two bedroom flat (Coventry) at Brains and Hammers City Life Camp Abuja at the rate per unit in the sum of ₦14,557,017.00 (fourteen million five hundred and fifty seven thousand and seventeen naira only) and the allocation of house no F2519 with*

reference number 00007096 and the allocation of house no F2517 with reference number 00007095.

- 3. An Order of specific performance directing the defendant to immediately hand over the two units of two bedroom flat (Coventry) at Brains and Hammers City Life Camp Abuja to claimant by virtue of the claimant's compliance with the two letters stating the terms of the indicative Offer to purchase a two bedroom flat (Coventry) at Brains and Hammers City Life Camp Abuja both dated 20th December 2017 and compliance with the terms of the two provisional letters of allocation dated 8th January 2018 and 9th January 2018 by prompt payment of the full purchase prices in the cumulative sum of N29,114,034.00 (Twenty nine million, one hundred and fourteen thousand and thirty four naira only) for two unit of two bedroom flat (Coventry) at Brains and Hammers City, Life Camp Abuja at the rate per unit in the sum of N14,557,017.00 (Fourteen Million Five Hundred and Fifty-Seven Thousand and Seventeen Naira only) and the allocation of House No F2519 with Reference Number 00007096 and the allocation of House No F2517 with Reference Number 00007095.*
- 4. An Order that the Defendant pay to the Claimant the sum of ~~₦~~50,000,000.00 (Fifty Million Naira) only as general damages for breach of the defendant's contractual obligation to the claimant by*

virtue of the claimant's compliance with the two letters stating the terms of the indicative offer to purchase a two bedroom flat (Coventry) at Brains and Hammers City Life Camp Abuja both dated 20th December 2017 and compliance with the terms of the two provisional letters of allocation dated 8th January 2018 by prompt payment of the full purchase prices in cumulative sum of ₦29,114,034.00 (Twenty Million, One Hundred and Fourteen Thousand, and Thirty-Four Naira only) for two unit bedroom flat(Coventry) at Brains and Hammers City, Life Camp Abuja at the rate per unit in the sum of ₦14,556,017.00 (Fourteen Million, Five Hundred and Fifty Seven Thousand and Seventeen Naira only) and the allocation of House No F2519 with Reference No 00007096 and the allocation of House No 00007095.

- 5. An Order of this Honorable Court that the defendant pay to the claimant the sum of ₦50,000,000.00 (fifty Million naira only) as punitive damages for the defendant's colossal insensitivity to its contractual obligation to the claimant which have resulted in loss of time, goodwill, investment, dreams and financial benefits by virtue of the claimant's compliance with the two letters stating the terms of the indicative offer to purchase a two bedroom flat (Coventry) at Brains and Hammers City Life Camp Abuja both dated 20th December 2017 and compliance with the terms of two provisional*

letters of allocation dated 8th January 2018 and 9th January 2018 by prompt payment of the full purchase price in the cumulative sum of ₦29,114,034.00 (Twenty Nine Million, One Hundred and Fourteen Thousand, and Thirty-Four Naira only) for two unit of two bedroom flat (Coventry) at Brains and Hammers City Life Camp Abuja at the rate per unit in the sum of N14,557,017.00 (fourteen million, five hundred and fifty seven thousand seventeen naira only) and the allocation of House No F2519 with Reference Number 00007096 and allocation of House No F2517 with Reference Number 00007095.

6. An Order of this Honorable Court that the defendant refund the full purchase price for the two units of bedroom flat (Coventry) at Brains and Hammers City, Life Camp Abuja at the current market value of the two units now is a cumulative value of ₦90,000,000.00 (Ninety Million Naira) only at the rate of ₦45,000,000.00 (Forty Five Million Naira only) per unit and/or as at the date of judgement being the consideration furnished by the claimant with respect to the units of the two bedroom flat (Coventry) at Brains and Hammers City Life Camp Abuja.

7. An Order that the Defendant pay to the claimant the sum of ₦150,000,000.00 (One Hundred and Fifty Million Naira only) as general and punitive damages for the defendant's breach of

contract and colossal insensitivity to its contractual obligation to the claimant which have resulted in loss of time, goodwill, investment, dreams and financial benefits.

8. *And for such further orders or other orders as this honorable court may deem fit to make in the circumstance of this case.*

In support of the Originating summons is a 32-paragraph affidavit deposed to by the Claimant herself, Zainab Brimah. The affidavit had 8 exhibits attached. The exhibits are, the defendant's offer letters for each of the two units of two bedroom which are marked as **Exhibit Z1 and Z2**, the payment receipt issued by the defendant which is marked as **Exhibit Z3**, the said provision letters of allocation dated 8th of January 2018 and 9th of January 2018, marked as **Exhibit Z4 and Z5**, the letter of demand from the solicitors of the claimant marked as **Exhibit Z6**, the defendant's response to the demand letter marked as **Exhibit Z7**, and response to the defendant's letter by the claimant marked as **Exhibit Z8**. Briefly the facts averred too in the affidavit are that, sometime in December 2017, the claimant indicated interest to purchase two units of two-bedroom flat (Coventry) flats at Brains and Hammers Life Camp belonging to the defendant. That after receiving the defendant's offer letters for each of the two units of two bedrooms, the defendant undertook to immediately deliver possession to the claimant upon payment of the full purchase

price in the sum of N29,114,034 (Twenty-Nine Million, One Hundred and Fourteen Thousand, Thirty-Four Naira only) at the rate of N14,557,017 (fourteen million, five hundred and fifty-seven thousand, seventeen naira only) per unit. That the Defendant undertook that the 2 units of bedroom flat will be delivered after payment or within three months. That the defendant also issued two provisional letters of allocation to cover each unit of the two-bedroom flat paid for and in the letters of allocation, the defendant allocated houses F2517 with reference number 00007095 and F2519 with reference number 00007096. The said provision letters of allocation were dated 8th of January 2018 and 9th of January 2018.

It was further averred by the Claimant that, the defendant stated in the provisional letter of allocation, the letter of allocation, the final letter and the deed of sublease agreement to be executed between the parties to this suit shall be regarded as one and same. That the defendant has however refused, omitted, neglected and failed to deliver the said two units of houses till date despite repeated request and demand from the Claimant and authorized agents. That there have been several meetings at the defendant's office and countless follow up calls all of which were only met with baseless nonchalant, unreasonable and non-justifiable excuses for non-performance. Again that, the excuses given by the

defendant is always different from the previous ones and every excuse is always accompanied with promises that the management of the chairman will send an email as to when the property will be delivered to the claimant. But nothing has been done as promised by the defendant. Furthermore, that the defendant never deemed it fit at anytime to reach out or notify the claimant of any reason whatsoever as to why there is a delay since receiving payment and issuing provisional letters of allocation. That the defendant has continued to display and demonstrate projects and deliveries executed over the years but never contacted the claimant for anything since receiving full payment. Also, that, the refusal and inconsistent attitude of the defendant to perform its obligations under an ordinary civil contract has brought untold inconvenience and hardship to the claimant, because the claimant had hope to have started making returns on her investments within a few months from the date of payment as promised by the defendant. This failure of the defendant, refusal and neglect to perform its obligation has altered the claimant's financial goals. The claimant averred that, on the 22nd of September 2022, her solicitors wrote a letter of demand to the defendant for the immediate handover of the two units of a duly completed two-bedroom flat (Coventry) at Brains and Hammers City Life Camp Abuja. And on the 27th of September 2022, the defendant admitted its default and responded by offering no acceptable explanation for their failure to fulfill

its obligations. The Claimant averred to have again instructed her solicitors to respond to the defendant's reply of her demand letter by informing the defendant that she has lost faith in their dealings.

It was finally deposed by the claimant that; she is aware of persons who have paid for the purchase of similar properties from the defendant later in time after she paid and have already received their allocation within the same estate and also already have their unit delivered to them by the defendant in this suit. That the defendants as at the time of filing this suit, have properties within the same estate which fit the description of the claimant's allocation but these properties are being put on sale for outright purchase by the defendant. That the claimant is greatly embarrassed by the failure and refusal of the defendant to fulfill its obligations for almost five years for no justifiable reason and that the current value of each unit of duly completed two bedroom flat in life camp is put at about the sum of N45,000,000.00 (Forty-Five Million Naira) and the two units now have a cumulative value of about N90,000,000.00 (ninety million naira). That the defendant has no reasonable or plausible justification for its failure to fulfill its obligation and that this case is a proper one for grant of the claimant's claims against the defendant.

In the written address in support of the originating summons, learned counsel for the claimant formulated these issues for the determination of this court:

- 1. Whether there exist enforceable contracts between the Claimant and the Defendant with respect to the subject matter of this suit?**
- 2. Whether the Defendant is in breach of its contractual obligations to the Claimant?**
- 3. Whether this Court may exercise its equitable powers by ordering specific performance?**
- 4. Whether the Claimant is entitled to the award of general and punitive damages?**

On the first issue, learned counsel argued that the intentions of the parties in this suit has been expressly made clear from the point of initiation of the subject matter of this suit and that is the purchase of two units of the two bedroom (Coventry) by the claimant to the defendant in the sum of N29,114,034.00 (Twenty Nine Million, One Hundred and Fourteen Thousand Thirty Four Naira only) at Brains and Hammers City Life Camp Abuja at the rate per unit in the sum of N14,557,017 (fourteen million five hundred and fifty seven thousand and seventeen naira only). And that the defendant made the offer stating that terms upon which the

contractual obligation would be based on. The claimant accepted this offer and fully fulfilled its obligations by promptly paying to the defendant the cumulative and complete sum of the two units of the two-bedroom flats which the defendant acknowledged and issued receipt of the payments. Counsel submitted that, this shows that both parties intended to enter into a valid and enforceable contractual obligation and indeed so is the subject matter of the suit. He also stated that it is elementary law of contract that a contract is consummated where there is a clear and unambiguous offer with the intention to be legally bound, an acceptance of the said offer without any variation and the fulfillment of the terms of the contract in the form of consideration. Counsel relied on the case of **Wakama v Kalio (1991) 8 NWLR (pt 207) p 123**. Counsel went ahead and contended that, where contracts which are legally enforceable agreements have the implication that where one party is failing in its obligation, as in this case, the other party may approach the court to seek redress because they are legally enforceable. The cases of **Umaru v Sanusi Paris & Anor (2021) LPELR 56309 (CA)**, and **Akinyemi v Odu'a Investment Company Ltd (2012) 17 NWLR (pt 1329) 209 at 236**, was relied on to support counsel's contention. Counsel argued that, it is a principle of law that a party seeking to enforce a contractual agreement must have performed his own obligation under the contract and upon such fulfillment it indicates conclusively that the contract

becomes enforceable. According to the learned counsel, the conditions of the contract in this suit has been met by the claimant by virtue of the payment of the full purchase price for both units of the bedroom and there is no dispute that the claimant had paid the full price for the flats as may be seen by the receipts issued by the defendant.

On the second issue, learned counsel to the claimant submitted that despite the full and complete consideration received by the defendant, the defendant has failed, refused and neglected to fulfill its obligation to hand over the two unit of two-bedroom flat at Brains and Hammers City Life Camp Abuja, and that this failure is a breach of its contractual obligation to the claimant by its failure and refusal to hand over the two units two-bedroom flat to the claimant. Counsel further submitted that the breach of the defendant's obligation is without lawful reason or excuse and there was nothing whatsoever from the defendant to notify the claimant of the reason for the delay if any in almost five years let alone the possibility of agreeing with the claimant on a time for the defendant to fulfill its obligations. Counsel relied on these cases in support of its argument, **Nwaolisah v Nwabufoh (2011) 46 (pt2) NSCQR page 1124 at 1152, Ganbaga v Rabiu & Ors (2014) LPELR-41079 (CA), George v Abak Local Govt & Anor (2020) LPELR-49726 (CA).**

In arguing the third issue, learned counsel to the claimant submitted that, this suit is appropriate for this court to invoke its equitable powers in favor of the Claimant and make orders for specific performance of the obligations of the defendant and to direct the defendant to immediately hand over the two-bedroom flat at Brains and Hammers City Life Camp Abuja to the Claimant. That the Claimant has demonstrated in her affidavit that the defendant currently have properties which fits the description of their obligations to the claimant but has merely failed in its obligations and also is determined to remain in breach unless this court compels the Defendant to fulfil its obligation by orders of specific performance. Counsel relied on the case of **Enwelu v Giumex Investment Ltd (2017) LPELR-42777 (CA)**.

On the fourth issue, learned counsel to the claimant submitted that in alternative to making orders as to specific performance, this suit is also appropriate for the grant of both general damages and punitive damages. Counsel also argued that, general damages is the ordinary consequence of a breach of contractual obligations and that the erring party must compensate for breach of its obligations. He relied on the case of **Emirates Airline v Uzoaku Kenekwuwu Ngonadi LPELR-22053 (CA)**. It was again submitted by the learned counsel to the claimant that, the position of the law with respect to punitive damages is

that the damages awarded on increase scale over and above special or actual or ordinary damages it is awarded by way of punishment of the defendant or as a deterrent and are atonement for the claimant's loss. Counsel cited the case of **GKF Investment Nigeria Ltd v Nigeria Telecommunications Ltd (2009) 13 NWLR (pt 1164) 344 at p377**. Counsel concluded his arguments by submitting that, the claimant has in addition demonstrated that the defendant though in breach never deemed it necessary to notify the claimant and would have continued in its breach unless this court grants these claims and that this case is appropriate for grant of punitive damages.

In the 20-paragraph counter affidavit to the Originating Summons filed by the defendant which was dated 2nd of December 2022 and deposed to by one Segun Aribisala of Brains and Hammers City Life Camp, Abuja, the Defendant through the deponent averred that, the claimant is in breach of the terms and conditions of the letter of provisional allocation awarded to the claimant by not making full payment of consideration including legal fees, service fees, service charges, infrastructural leasing charges and other impositions failure to pay this fees especially the infrastructural leasing have affected the infrastructural development of the property and have further aided in delaying the development of the property and have further aided in

delaying the project and unless the full payment for all these fees mentioned is made the property cannot be delivered. It was also averred by the deponent that, the defendant did not and have not deliberately refused, omitted, neglected or have failed to deliver the said two unit houses, the defendant was faced with some challenges which affected the defendant's ability to deliver the said unit of houses as agreed. These challenges were stated and explained in defendant's reply to the claimant's letter of demand. The deponent swore that, after receiving the claimant's letter, the reply of the defendant appropriately gave reasons for the delay and pleaded with the defendant to give them some more time to put things together and deliver the two units of houses. It was also averred that, the defendant has hundreds of other subscribers who have gotten their property after payment without delay and the claimant is aware that other have taken possession while the remaining few would get theirs in a short time and the defendant did not and has not issued the claimant's property to another person or refused to give the claimant the said property. The deponent swore that the defendant has sent several letters and also made several calls to appeal to the claimant not to lose hope but wait a short while to get the said two unit of houses as there is substantial progress on the project.

Furthermore, the deponent averred that, the current value of the property per unit is not N45,000,000.00 (forty-five million naira) as alleged by the claimant as development is still on going in the environment. And that it is not the wish of the defendant to delay the delivery of the said two unit of houses but however maximum efforts are being used to ensure that the claimant gets two-unit houses very soon. The deponent finally swore that the claimant would get the said two unit of houses as soon as possible and upon full payment by the claimant. The deponent concluded by stating that, this action is incompetent and was filed not in compliance with the rules of this honorable court and that the claimant's action ought to be commenced by writ and not originating summons due to its contentious nature.

In the defendant's written address in support of the counter affidavit opposing the originating summons, learned counsel to the defendant formulated this sole issue for the court to determine.

Whether the honorable court can grant the reliefs of the claimant contained in the Originating Summons?

In the submissions, learned counsel argued that the reliefs sought by the claimant against the defendant contained in the originating summons are not grantable by this honorable court on the ground that the said reliefs are against the law thereby making the originating Summons to lack in

merit in its entirety. Counsel also argued that, by order 2 (1) (c) of the rules of this court, the claimant's process before the court is incompetent as the suit ought to have been commenced by writ of summons and not originating summons, therefore the court cannot assume jurisdiction over an incompetent case. Counsel relied on the case of **Madukolu v Nkemdilim (1962) 2 SCNLR 341**, in support of his submissions that the claimant's case was not commenced by due process of law. Another submission by learned counsel to the defendant is that, the relief sought by the claimant against the defendant for an order of specific performance against the defendant to immediately handover the two units of two bedroom flat (Coventry) at Brains and Hammers City, Life Camp Abuja when the full obligation as contained in the provisional offer letter has not been fulfilled makes the procedure to institute the process to be incompetent as question ought to be put to the claimant by way of cross examination. That parties are bound by the agreement they enter willingly or signed and extraneous matters which parties are not in agreement should not and cannot be read into agreement. Counsel relied on the case of **Olamide Larmiu v Data Processing Maintenance & Services Ltd (2005) LPELR SC 157/2001**, in support of his submissions.

Counsel to the defendant argued that, there is no such agreement between the claimant and the defendant that the defendant shall hand over the property to the claimant three months after payment, that this honorable court will not order specific performance when the condition precedent has not been met. Counsel relied on the cases of **Universal Volcanising Nig Ltd v Ijesha United Trading & Transport & Ors (1992) NWLR (pt 266) at 388** and **Nlewedim v Uduma (1995) 6 NWLR (pt 402) at 363**, in supports of his submissions. In concluding his submissions, counsel submitted that, the claimant is in breach of the agreement she had with the defendant as she breached clause 7 of the provisional letter of Allocation, and that based on the cited authorities the court cannot order specific performance in the circumstance of this case.

In response to the defendant's counter affidavit opposing the originating summons, the claimant filed a 13-paragraph further affidavit in support of the originating summons. The claimant deposed to the further affidavit and swore that, contrary to the counter affidavit of the defendant, she has paid the full purchase price of the two units of two-bedroom flat in Brains and Hammers City Life Camp Abuja. That it was on the basis of the full payment that the defendant issued the two provisional letters of allocation to cover each unit of the two-bedroom flats paid for. The

claimant swore that, she is aware that all units of two-bedroom flats in the estate have all been occupied by other subscribers as at the time of filing this suit and that the delivery of the property entails the issuing of the final allocation letter and sublease agreement by the defendant, this is different from taking physical possession which will then include payment of legal fees, service charges, infrastructure leasing charges and other impositions. The claimant also averred that, the defendant has refused, omitted, neglected and failed to deliver the said two units of houses by issuing the final allocation letters and sublease agreement till date and that the taking of possession does not arise yet. That the defendant has failed to even merely identify the said two units of the two-bedroom flat the claimant paid for, let alone deliver the final allocation letter and sublease before the issue of possession and payment of service charges, infrastructure leasing charges and other impositions may arise. That the defendant never in any way notified the claimant of any reason whatsoever why there is a delay since receiving payment and issuing provisional letters of allocation and the defendant has never reached out to the claimant in any way via email or text or even a call. The only reaching out done by the defendant was the response to the demand letter of the claimant, and that the defendant has demonstrated its vague non-committal attitude by informing this court that the claimant will get the said two units of the houses as soon

as possible. In concluding the averments, the claimant stated that, this suit was commenced by due process of the law for the determination of the entitlement of the claimant by virtue of contractual instruments between the defendant and the claimant, that the action was rightly commenced by originating summons in compliance with the rules of this court and the suit is for the determination of questions as stated on the face of the originating summons which this court is vested with the jurisdiction to interpret the import of the obligations of the parties by virtue of the documents before the court.

Above is the concise narration of the case before me. Before I delve into the substantive matter, I shall consider the issue raised by the Defendant on the competency of the Claimant's process before this court, hence robbing off this court of jurisdiction to hear the matter. The courts have held that where an issue of jurisdiction is raised, that issue must be disposed of first before the court goes into substantive issue. See the cases of *Awoyale v Ogunbiyi (1985) LPELR-661 SC (pp45-45) paras C-E, Dangote Gen Textiles Product Ltd & Ors v Hascon Associates (Nig) Ltd & Anor 2013 LPELR-20665 (SC) at pp 31-32 paras C-D, and Ajao & Ors v Alao & Ors (1986) LPELR-285 (SC) (pp 32-33) paras F-B.*

The Claimant filed this suit *vide* an originating summons. The law is settled on when and how Originating Summons can be employed. Where the issue involved is one of construction of a written law, instrument, deed, or will or other documents or some question of law is involved or where there is unlikely to be any substantial dispute on issues of facts between the parties, Originating Summons can be employed. See **Order 2 Rule 3 High Court of the FCT Abuja (Civil Procedure) Rules 2018**. See also the case of ***Keyamu v House of Assembly (2002) 12 SC (Pt 1) 190***. The law with respect to abuse of judicial process is well settled in the annals of our jurisprudence. Plethora of pronouncements have been made by apex courts. From the facts of this case before me, the Claimant is asking the court to interpret the letters of allocation and a perusal of the processes before me shows that the parties have agreed on almost all the terms of the contract. The implication of this, is that contentious issues have been virtually eliminated; so, basically, what the Court is left to do at this point is to determine the rights and obligations of the parties by constructing the contents of the letters of allocation which guides the relationship between the parties. See the cases of ***Pam & Anor v Mohammed & Anor (2008) LPELR-2895 (SC) (pp 67-69) paras A-D***, ***Ezeigwe v Nwawulu & Ors (2010) LPELR-1201 (SC) (pp67-69) paras B-A***.

It is my considered view and I so hold that this suit was properly instituted; especially as there are no contentious issues that will require this Court into go into the calling of witnesses to give oral evidence.

I shall now return to the substantive suit. And to unravel this matter one way or the other, I shall adopt the formulated issue of the learned Counsel to the Defendant which is:

“Whether the honorable court can grant the reliefs of the claimant contained in the Originating Summons?”

In resolving this issue, let me start off by asking if there was a contract and or whether same has been breached? May I observe that, there are documents regulating the relationship between the Claimant and the Defendant, thereby making this whole issue none contentious.

What is a contract and what are its ingredients for same to remain valid and enforceable in law?

Contracts are legally binding agreements between two or more persons by which rights are acquired by the party in return for acts and forbearances on the part of the other. It is a bilateral affair which requires the ad-idem of both parties. For a contract to be valid in law, there shall be offer, acceptance, intention to create legal relationship and parties

must have the required capacity. See the cases of *Neka B.B.B. Manufacturing Co Ltd v ACB Ltd (2004) LPELR-1982 (SC) (pp35-36 paras E-A)*, *Omega Bank (Nig) Plc v O.B.C Ltd (2005) LPELR-2636 (SC) (pp40-40 paras D-E)*, *Dangote Gen Textiles Product Ltd & Ors v Hascon Associates (Nig) Ltd & Anor (2013) LPELR-20665 (SC) (pp24-24 paras D-D)*.

The fulcrum of the Claimant's case from the totality of the exhibits before me is hinged on the alleged non-performance on the part of the defendant. The parties went into a contract by virtue of the Claimant's compliance with the terms of the two offer letters which was titled **"Indicative Offer to Purchase A Two-Bedroom Flat at Brains and Hammers City, Life Camp Abuja."** The Claimant complied with the terms of the offer letters by making a payment of N14,557,017.00 (Fourteen Million, five Hundred and fifty-seven thousand and seventeen naira only) for each unit of the flat. The defendant acceptance this offer and acknowledged the payment of the claimant for a two unit two-bedroom flat by issuing the Claimant two allocation letters which had reference numbers of each of the flat in Brains and Hammers City Estate Life Camp Abuja. Then the Defendant undertook to deliver possession to the Claimant upon payment of the full purchase price in the sum of **N29,114,034 (Twenty-Nine Million Naira, One Hundred and Fourteen**

Thousand and Thirty-Four Naira Only). The Claimant has averred to have reached out severally to the Defendant, because the Defendant has refused to comply with the terms of the agreement by delivering possession to the Claimant. The contract was entered by both parties on the 20th of December 2017 and the Claimant has performed her part of the agreement by paying the full purchase price and the letter of allocation was given to her by the defendant on 8th and 9th of January 2018. The Claimant averred that it has been five years with no performance on the part of the Defendant.

On their part, even though the Defendant is not contesting that both parties entered into the contract, it is not contesting the fact that the Claimant has paid the purchase price, it is not contesting the acknowledgement of the purchase price paid by the Claimant and issuing of the allocation letters. The Defendant is of the view that in line with paragraph 7 of the provisional letter of allocation, the Claimant has breached the terms and condition of the letters of allocation by not making full payment of consideration which includes the legal fees, service charges, and infrastructural leasing fees and that none payment of these fees especially the infrastructural leasing fees have aided in delaying the defendant's project. The Defendant stated in its affidavit that the delay in delivering the property to the Claimant is because they

were faced with some challenges, infrastructural problems which the Federal Government failed to deliver on the said project, compelling the defendant to have to undertake same at a very great expense. Problems like the covid 19 pandemic and hyperinflation of building materials also have affected the delivering of the property to the claimant.

Clearly from this ensuing evidence before the court, there is no gain saying that both parties had an understanding which contractually speaking has been consummated, which eventually the defendant has breached. This can easily be deduced from **Exhibit Z4** and **Exhibit Z5** attached to the Originating Summons. The Defendant is claiming that, it did not breach the terms of the allocation letters but it was the Claimant who had not paid the service charges, legal fees and infrastructural leasing fees that made the defendant not deliver the property to the claimant. From the above i hold the considered view that the Claimant has performed her own part of the contract with the uttermost faith and dedication but the Defendant has not done same. Should the payment of the service charge, legal fees and the infrastructural leasing fees be a condition precedent to the Defendant performing its own part of the contract? No, the agreement does not specify such, the performance of a party in a contract is the fulfilling of the promise made in the agreement. For parties to perform a contract successfully, they have to

deliver the results they have promised in the agreement and this is usually within a certain time frame. According to the evidence given by the claimant and from the dates on the allocation letters, this agreement was entered into five years ago, and there is no clear communication from the defendant to the claimant for the delay in delivering the property to the Claimant. The defendant is clearly and loudly in breach of the agreement it entered with the Claimant; the defendant has not performed its own part of the contract. In the case of ***Pan Bisbilder (Nig) Ltd v FBN Ltd (2000) LPELR-2900 (SC) (pp 31-32 paras G-A)***, the Supreme Court per Emmanuel Olayinka Ayoola JSC held that:

“A breach of contract connotes that the party in breach had acted contrary to the terms of the contract either by non-performance, or by performing the contract not in accordance with its terms or by a wrongful repudiation of the contract. A party who had performed the contract in consonance with its terms cannot be said to have been in breach thereof.”

See also the cases of ***Ahmed & Ors v CBN (2012) LPELR-9341 (SC) (pp 12-13 paras F-B)***, and ***KLM Royal Dutch Airlines v Idehen (2017) LPELR-43575 (CA) (pp22-22 paras C-F)***.

In compliance with the above and the exhibits placed before me, in which the court has the onerous duty of considering all documents placed before it in the interest of justice, I have closely examined these documentary evidence and in the course of its evaluation, it is instructive to state here that going by the contract executed between the parties, certain conditions can be deduced from the agreement as thus:

1. There was an enforceable and valid contract entered into by both the parties.
2. The Defendant has defaulted in delivering the property to the Claimant after full payment of the purchase price and after several meetings and written letters of demand by the claimant.
3. It has been five years from the payment of the purchase price by the claimant and the defendant has still not met up to their own part of the contract.
4. The Defendant is alleging that the Claimant has not paid full consideration i.e. the legal fees, service charge, infrastructural leasing fees, hence its refusal to deliver the property.
5. The none payment of these fees has not been communicated to the claimant in any of the defendant's reply to the claimant's letter of demand.

The law is sacrosanct that a person seeking to affirm a contract must show that all the conditions precedent has been fulfilled and he has either performed or that he is ready to perform and willingly to perform all the terms that ought to have been performed by him. See the case of ***F.B.D. Financial Service Ltd v Adesola (2000) 9 NWLR (Pt. 668) 170 at 182.*** From the above contention of both parties, it is obvious that the Defendant has breached the provisions of the agreement between the parties. And I am in agreement with the Claimant that from the agreement duly executed by the parties which is binding on the parties, the failure and refusal of the Defendant to handover the two units of the duly completed two-bedroom flat (Coventry) at Brains and Hammers City Estate Life Camp Abuja till date is a breach of the Defendant's contractual obligation to the Claimant.

It is for the above reason that I hereby answer all the questions formulated by the Claimant in her Originating Summons in the affirmative. It remains to be added that this Court will not grant Relief Number (iii), that is, an Order of specific performance sought by the Claimant. This is because the Defendant claimed that the reason it has not been able to provide the two units of two-bedroom flats which the Claimant had paid for since 2017 is because the government has not provided infrastructures to enable the Defendant perform its obligations

to the Claimant. Though, it promised to provide the buildings “as soon as possible”, there is no certainty to this assurance, as the timeline remains vague and indeterminate. This Court will not grant an Order that will remain in the realm of academic utility. In view of this, therefore, this Court will grant the relief sought in the alternative, that is, Relief Number (vi).

Accordingly, all the reliefs sort by the Claimant are hereby granted on the following terms:

- 1. THAT there is an enforceable contractual obligation against the Defendant by virtue of the Claimant’s compliance with the terms of the two offer letters titled “Indicative Offer to Purchase A Two Bedroom Flat Coventry At Brains and Hammers, Life Camp Abuja” both dated 20th December 2017 evidenced by the Claimant’s compliance with the terms of the two provisional letters of allocation dated 8th January 2018 and 9th January 2018 by prompt payment of the full purchase price in the cumulative sum of ₦29,114,034.00 (Twenty-Nine Million, One Hundred and Fourteen Thousand and Thirty-Four Naira only) for two units of two bedroom flat (Coventry) at Brains and Hammers City Life Camp Abuja at the rate per unit in the sum of ₦14,557,017.00 (Fourteen Million, Five Hundred**

and Fifty-Seven Thousand and Seventeen Naira only) and the allocation of House No F2519 with Reference Number 00007096 and House No F2517 with Reference Number 00007095.

2. THAT the failure and refusal of the Defendant to hand over the two units of duly completed two bedroom flat (Coventry) at Brains and Hammers City Estate Life Camp Abuja till date is a breach of the Defendant's contractual obligation to the Claimant having regards to the Claimant's compliance with the two letters stating the terms of the indicative offer to purchase a two bedroom flat (Coventry) at Brains and Hammers City Life Camp Abuja both dated 20th December 2017 and compliance with the terms of the two provisional letters of allocation dated 8th January 2018 and 9th January 2018 evidenced by the Claimant's prompt payment of the full purchase price in the cumulative sum of ₦29,114,034.00 (Twenty-Nine Million One Hundred and Fourteen Thousand and Thirty-Four Naira only) for two units of two bedroom flat (Coventry) at Brains and Hammers City Life Camp Abuja at the rate per unit in the sum of ₦14,557,017.00 (Fourteen Million Five Hundred and Fifty-Seven Thousand and Seventeen Naira only) and the allocation of House No F2519

with Reference Number 00007096 and the allocation of House No F2517 with Reference Number 00007095.

3. THAT the Defendant is hereby ordered to refund the sum of **₦29,114,034,00** (Twenty-Nine Million, One Hundred and Fourteen Thousand, Thirty-Four Naira) Only to the Claimant being the money she paid to the Defendant as the full purchase price for the two units of two-bedroom flat (Coventry) at Brains and Hammers City, Life Camp Abuja. This Court settled on this sum because there is evidence that the Claimant did make this payment to the Defendant. Conversely, the Claimant did not lead evidence to show that the current market value of each unit of the flat is **₦45,000,000.00** (Forty-Five Million Naira only)
4. THAT the Defendant is hereby ordered to pay the Claimant the sum of **₦5,000,000.00** (Five Million Naira) as general damages for breach of the Defendant's contractual obligation to the Claimant.
5. THAT the Defendant is hereby ordered to pay the Claimant the sum of **₦10,000,000.00** (Ten Million Naira) as punitive damages for the Defendant's deliberate failure and refusal to discharge its contractual obligation to the Claimant for over

five (5) years after the Claimant had made full payment for the properties afore-described.

6. THAT Relief number (vii) is hereby refused. This is because there is no category of damages known as ‘general and punitive damages’. It is either general damages or punitive damages; and this Court has already granted general damages and punitive damages. Granting this nebulously defined ‘general and punitive damages’ will amount to a repetition.

This is the Judgement of this Honorable Court, delivered today, the 26th of September 2023.

HON. JUSTICE A. H. MUSA
JUDGE
26/09/2023

APPEARANCE:

For the Claimant:

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Adewale E. Odeleye, Esq.

For the Defendant:

Kehinde Jolade, Esq.