

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY,  
IN THE ABUJA JUDICIAL DIVISION,  
HOLDEN AT COURT NO. 18 JABI, ABUJA.  
BEFORE HIS LORDSHIP: HON. JUSTICE O. A. MUSA.**

**Suit No. FCT/HC/CV/2443/2012**

**BETWEEN:**

CHUKWUEMEKA ANAGOR

..... PLAINTIFF

**AND**

EFAB PROPERTIES LTD

..... DEFENDANT

**JUDGMENT DELIVERED ON THE 6<sup>TH</sup> JULY, 2017**

The Plaintiff in this suit filed a writ of summons on the 21/02/2012 on the undefended list against the 1<sup>st</sup> Defendant who filed a notice of intention to defend and upon due consideration by this Court transferred the suit to the general cause list and ordered for pleadings to be exchanged by parties on 10/05/2012.

Upon the application of the 1<sup>st</sup> Defendant herein, the 2<sup>nd</sup> Defendant by leave of the Court granted on the 12/07/2012 was join as a party to this suit. This is the claims of the Plaintiff against the Defendants are as follows:-

- a. An order directing the 1<sup>st</sup> Defendant to immediately refund the Plaintiff the sum of N29,400,000.00k (Twenty Nine Million, Four Hundred Thousand Naira) being the total sum of money paid to the 1<sup>st</sup> Defendant for four (4) shops at EFAB Shopping Mall which the 1<sup>st</sup> Defendant has failed to deliver to the Plaintiff.
- b. Interest at the rate of 21% per annum on the judgment sum from the 3<sup>rd</sup> day of May 2008 until the judgment sum is liquidated.
- c. The sum of N5, 000,000.00k as damages.

Pleadings have been exchanged. The Plaintiff give evidence for himself as PW1 tendered four (4) Exhibits and closed his case. The 1<sup>st</sup> Defendant on its part tendered five (5) Exhibits in all while on the part of the 2<sup>nd</sup>

Defendant, three (3) witnesses were called and it tendered 18 Exhibits and closed its case.

1<sup>st</sup> and 2<sup>nd</sup> Defendants with the leave of Court filed their written addresses which were adopted on the 15/05/2017 while Plaintiff filed his written address on the 03/05/2017 and adopted same on the 15/05/2017. Also in response to Plaintiff's address, the 2<sup>nd</sup> Defendant filed a reply on point of law.

The case of the Plaintiff is that he paid the sum of N29, 400,000.00k (Twenty Nine Million, Four Hundred Thousand Naira) to the 1<sup>st</sup> Defendant via its First Inland Bank Plc Account No. 236435081101.

The payment was in respect of four (4) shops at the EFAB Shopping Mall, Garki Abuja owned by the 1<sup>st</sup> Defendant, the sum paid was part – payment leaving a balance of N600,000.00k (Six Hundred Thousand Naira) which the Plaintiff was required to pay upon the 1<sup>st</sup> Defendant completing the shop and handing over same to him.

The 1<sup>st</sup> Defendant did completed the shops but handed over the shops to the 2<sup>nd</sup> Defendant and despite repeated demands from the Plaintiff, the 1<sup>st</sup> Defendant has refused and or neglected to give him the shops or refund the money he paid.

On the part of the 1<sup>st</sup> Defendant its case is that sometime in December 2007 one **Mr. C. F. Attang** approached it on behalf of the 2<sup>nd</sup> Defendant and paid for six (6) shops in installment at its EFAB Shopping Mall then still under construction. The payments were made in installment as earlier said, and the final payment of which was made on 8/7/2008. And the 1<sup>st</sup> Defendant issued the 2<sup>nd</sup> Defendant the receipt of payment in its name.

That upon the completion of the shops the 1<sup>st</sup> Defendant handed over the shops to the 2<sup>nd</sup> Defendant.

According to the 1<sup>st</sup> Defendant, the Plaintiff it was who brought the bank teller used by the 2<sup>nd</sup> Defendant to pay for the shops and the receipts

were issued to the Plaintiff in the name of the 2<sup>nd</sup> Defendant and that the Plaintiff never at anytime bought any shops from the 1<sup>st</sup> Defendant and the 1<sup>st</sup> Defendant is not owing the Plaintiff.

The case of the 2<sup>nd</sup> Defendant is that the Plaintiff his it staff and upon his business proposal, the 2<sup>nd</sup> Defendant decided to buy six (6) shops at the 1<sup>st</sup> Defendant EFAB Mall Shopping Complex Garki II Abuja.

Towards this, the 2<sup>nd</sup> Defendant paid the 1<sup>st</sup> Defendant for the shops through the Plaintiff's account and receipt were issued to it by the 1<sup>st</sup> Defendant. When the shops were ready, the 1<sup>st</sup> Defendant handed them over to it (2<sup>nd</sup> Defendant).

The 1<sup>st</sup> Defendant in his written address raised one issue for determination namely:-

***“Whether the Plaintiff has proved his case against the 1<sup>st</sup> Defendant to be entitled to the reliefs sought”***

The second Defendant on his part raised three issues for determination namely:-

1. Whether given the facts of this case, there was a contractual relationship between the Plaintiff and 1<sup>st</sup> Defendant which the Court can enforce.
2. Whether the Plaintiff acted as an agent for the 2<sup>nd</sup> Defendant in the process and procedure leading to the purchase of the six (6) shops by the 2<sup>nd</sup> Defendant from the 1<sup>st</sup> Defendant.
3. Whether considering the evidence before this Court including all the Exhibits the 2<sup>nd</sup> Defendant not the Plaintiff is the bonafide purchaser of shops D11, D02, C07, C04, C03 and C08 situate at EFAB Mall Shopping Complex Area II Garki Abuja, the subject matter of this suit.

While the Plaintiff on the other hand raised one issue for determination to wit:-

*“Whether the Plaintiff herein has made out his case upon the balance of probabilities and is entitled to the reliefs sought”*

1<sup>st</sup> Defendant Counsel submitted that it is settled law that he that asserts must prove in order to succeed in his claim. **Isegbkun V. Adelaki** (2003) 2 NWLR (part 1337) p. 165, paragraphs G – H.

Counsel submitted further that it is settled law that an unchallenged, uncontroverted averment stands admitted and will be taken as the true state of affairs. He cited the case of **Salzgitter Stah (Gmbh) V. Tunji Dosunmu Industrial Ltd** (2010) 42 (part 2 NSCQR 1085 at p. 1109, Per C. M Chukwuma – Eneh, Jsc.

Counsel further submitted that the Plaintiff had ample opportunity to cross examine the 1<sup>st</sup> Defendant's witness and produce documents in rebuttal of 1<sup>st</sup> Defendant's claim and assertions, but has failed to do so, i.e. to shake / dislodge the facts placed before the Court by the Defendant.

He referred the Court to the case of **Omodele Ashabieya And 2ors V. Alhaji Risikatu Lopade & 1or** (2011) 11 NWLR (part 1259) page 505 at 534 paragraphs C – D, the supreme Court held as follows:-

*“Where a party fails to adduce evidence in support of any assertion in his pleading he is deemed to have abandoned his pleading on the fact”.*

Again Counsel submitted that the Plaintiff has been unable to discharge the burden of proof placed on him.

On right to comment on documents before the Court, counsel submitted that parties to a suit have all the right to comment on documents already in evidence before the Court. He stated that this position of law was restated by the supreme Court in the case of **General Muhammadu Buhari V. Independent National Electoral Commission & 4ors** (2008) 19 NWLR (part 1120) page 246 at page 392 paragraphs E – H, thus:-

*“Counsel on all sides are free to comment on documents which had been tendered in evidence, including drawing inferences and conclusions at the address stage”.*

Counsel submitted that from Exhibit DB8 – DB18 i.e. judgment in suit No. FCT/HC/CV/1059/2009, it is crystal clear that Plaintiff was staff of 2<sup>nd</sup> Defendant and drew salary monthly.

That it is also on record that Plaintiff has been paying for items on behalf of 2<sup>nd</sup> Defendant e.g. stocks, generators, rents, payment of staff salaries etc.

That he employed staff for and on behalf of 2<sup>nd</sup> Defendant as manager of the 2<sup>nd</sup> Defendant.

Counsel submitted that this judgment, i.e. Exhibit DB8 – DB18 and facts contained therein are res judicata. They operate as estoppel against the Plaintiff. Furthermore they have neither been appealed against, varied, set aside nor overturned by any appellate Court.

In view of the foregoing, counsel stated that the Plaintiff cannot, in the instant case, be permitted or allowed to deny or contradict these facts by his oral testimony.

He referred the Court to the case of **Madu V. Madu** (2008) 6 NWLR (part 1083) p. 296 at 324 paragraphs F – H, the supreme Court held as follows:-

*“Oral evidence cannot be used to contradict contents of documentary evidence. in the instant case, any oral evidence by the respondent or relied upon by the Court of appeal to show that the land in dispute belonged to any person other than the appellant is inadmissible as it amounts to using oral evidence to contradict contents of documentary evidence”.*

Also section 128 (1) of the Evidence Act Cap. 14 2011 provides as follows:-

*“When a judgment of a Court or any other judicial or official proceeding, contract or any grant or other disposition of property has been reduced to the form of a document or series of documents, no evidence may be given of such judgment or proceeding or of the terms of such contract, grant or disposition of property except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under this act; nor may the contents of any such document be contradicted, altered, added to or varied by oral evidence”.*

Counsel submitted that it is settled principle of law that where there is oral evidence as well as documentary evidence, the documentary evidence should be used as a hanger for which to assess the oral testimony.

He cited the cases of **Fashanu V. Adekoye** (1974) 6 sc 83; **Kindey V. Military Gov. of Gongola State** (1988) 2 NWLR (pt. 77) p. 445; **Hawad International Schools Ltd V. Mina Project Ventures Ltd** (2003) 39 WRN 57 at 69 and **Submit Finance Company Ltd V. Hon. Baba & Sons** (2003) 48 WRN 81 at 105.

Counsel then submitted that applying this principle of law to the Plaintiff's evidence before the Court, the Plaintiff's oral testimony/evidence before the Court is inconsistent with the documentary evidence i.e. Exhibit DB8 - DB18 before the Court. I.e. the judgment of Court, payment receipt for purchase of EFAB shops etc.

He stated that it is also settled law that more weight and value is to be accorded documentary evidence than oral testimony, as oral testimony could be deceptive and misleading but documentary evidence cannot. He referred the Court to the case of **Udeora V. Nwakonobi** (2003) 4 NWLR (pt. 811) p. 643 at 674h – 655b.

Counsel submitted that Plaintiff is not a witness of truth as he has not been consistent in his testimony.

He stated that where there is inconsistency and or contradiction in the testimony or evidence of a party, the only option available to the Court is to throw out/discard the entire evidence.

Counsel further submitted that he that alleges must proof Citing section 131 and 132 of the Evidence Act, 2011.

On issuance of purchase receipt of EFAB mall shops in 2<sup>nd</sup> Defendant's name: that it is a settled Supreme Court decision that a certificate of occupancy properly issued by a competent authority raises the presumption that the holder is the owner thereof in exclusive possession of the land. The certificate also raises the presumption that at the time it was issued, there was not in existence a customary owner whose title has not been revoked. The presumption is only rebuttable if it is proved by evidence that another person had a better title to the land before the issuance of the certificate of occupancy, in which case the certificate of occupancy will stand revoked by the Court. He referred the Court to the case of **Grace Madu V. Dr. Bertram Madu** (2008) 6 NWLR (part 1083) p. 296 at 302.

On presumption raised where property is purchased in name of another: the Court will imply or presume in a situation where a purchase of property is made in the name of another that other holds the property for the benefit of the person who advanced money for the purchase of the property. The law in such a situation presumes that the intention was that the property should be held on trust by the third transferee. The same principle applies where the purchase money was provided partly by the person to whom the property is transferred and partly by another or others. In such cases, the transferee holds the property in trust for all the persons who contributed to paying for it with each having beneficial interest proportionate to the amount of purchase money he advanced. In the instant case, although the respondent in his evidence before the trial Court said he paid all the money required for the land, contrary to his assertion, all the receipts are in the name of the appellant. The trial Court was right in its evaluation that the pieces of evidence do not create a resulting trust in favour of the respondent.

In conclusion, counsel submitted that the above highlighted statements of witness are consistent with their testimony in Exhibit DB8 – DB18 before the Court.

That it is settled law that an unchallenged, uncontroverted and uncontradicted averment stands admitted and will be taken as the true state of affairs. Cited the case of **Salzgitter Stah (Gmbh) V. Tunji Dosunmu Industrial Ltd** (2010) 42 (part 2 NSCQR 1085 at p. 1109, Per C. M Chukwuma – Eneh, Jsc:-

*“Where a party fails to adduce evidence in support of an assertion in his pleading, he is deemed to have abandoned his pleading on the fact”.*

Also in **Omodele Ashabieya & 2ors V. Alhaji Risikatu Lopade & 1or** (2011) NWLR (part 1259) page 505 at 534 paragraphs C – D.

Counsel submitted that the burden of proof placed on the Plaintiff will not shift until the Plaintiff have proved its case to the satisfaction of the Court that it is entitled to the reliefs sought.

Counsel submitted that the Plaintiff has not discharged the burden placed on him in this suit.

That a cursory appraisal of Plaintiff's evidence before the Court and Exhibits tendered, points to the fact that his claims cannot stand.

On the part of the 2<sup>nd</sup> Defendant, counsel stated that the Plaintiff counsel submitted that the law is settled that only a party to a contract can enforce it. A stranger to a contract cannot enforce it even if the contract was made for his benefit. He cited the case of **Makwe V. Nwukor** (2001) M.J.S.C.179 at 182 ratio 1.

In the instant case, it is submitted that there was no contractual relationship between the 1<sup>st</sup> Defendant and the Plaintiff over 4 no. shops which this Court can enforce. This assertion is predicated on the facts of this case and evidence adduced by the parties.

Counsel stated that in paragraphs 3 and 8 of witness statement on oath dated 12<sup>th</sup> November, 2012, DW1 vividly captured the procedure for the sale of shops thus:

- a. The prospective purchaser will obtain the 1<sup>st</sup> Defendant's bank account number;
- b. Lodge the purchase price of the shop he intends to buy in the bank;
- c. Submit the bank teller to the 1<sup>st</sup> Defendant ;
- d. The 1<sup>st</sup> Defendant issues receipt acknowledging payment and;
- e. Indicate the shop numbers the purchaser paid for;

Similarly, counsel then submitted that the claim of the Plaintiff when subjected to the procedure outlined by the 1<sup>st</sup> Defendant as the procedure for buying shops, did not comply at all. No shops were selected, even though receipt was issued, it was in the name of the 2<sup>nd</sup> Defendant and no form was purchased nor paid for. He submitted that there was no acceptance of offer by the Plaintiff to buy shops from the 1<sup>st</sup> Defendant and urged the Court to hold. He referred the Court to the case of **Metibaiye V. Narelli Int'l Ltd** (2009) 16 N.W.L.R (pt. 1167) 327 @ 331 ratio 4, C. A. held that:-

*“An acceptance of offer is the reciprocal act or action of the offeree to an offer by which he indicates his agreement to the terms of the offer as conveyed to him by the offeror. An acceptance of an offer may be demonstrated:*

- a. By the conduct of the parties or;*
- b. By their words;*
- c. By documents that have passed between them.”*

Counsel further stated that for an acceptance to be valid and operative, it must be plain, unequivocal, unconditional and without variance of any



sort between it and the offer. He cited the case of **Orient Bank (Nig) Plc V. Bilante International Ltd** (1997) 8 NWLR (pt. 515) 37.

In the case under consideration, in terms of conduct of parties, words and documents between them, the only link of the Plaintiff to the sale or purchaser of shops in EFAB mall is the presentation of photocopy of a bank teller Exhibits AA1 & AA2 to the 1<sup>st</sup> Defendant there is no evidence that the 1<sup>st</sup> Defendant issued a receipt to the Plaintiff acknowledging the payment he allegedly made in respect of (4) shops or that the shop numbers he claimed he paid for were indicated, rather it was additional payment in respect of 6 no shops that were received by the 1<sup>st</sup> Defendant and receipted of payment was accordingly made and forwarded to the 2<sup>nd</sup> Defendant. The Plaintiff did not pay the balance of the purchase price and therefore did not fill any form to that effect. Counsel urged the Court to hold that there was no contract or contractual relationship between the Plaintiff and the 1<sup>st</sup> Defendant which this Court can enforce.

On issue 2: whether the Plaintiff acted as an agent in the process and procedure leading to the purchase of 6 no of shops by the 2<sup>nd</sup> Defendant?

Counsel referred the Court to the case of **Bamgboye V. Unilorin** (1999) 10 NWLR Pt. 622 ratio 2 pg 383 – 384 the Court defined an agent thus:

*“An agent is one who is authorized to act for or in place of another, a representative. The word “agent” denotes one who acts, a doer etc. who accomplishes a thing or things. The agent normally binds his principal and certainly not himself by the contract he makes, an agent is a person authorized by another to act for him, one entrusted with another’s business. An agent means more or less the same thing as a delegate”*

Counsel submitted that the PW1 on record said he was not the branch manager of the 2<sup>nd</sup> Defendant but admitted he was chief operating officer. Whatever his nomenclature may be, there is ample evidence to show that the PW1, acted on behalf of the 2<sup>nd</sup> Defendant either as agent or messenger in the process and procedure leading to the purchase of the 6 no shops from the 1<sup>st</sup> Defendant.

He further stated that under cross examination by the counsel to 2<sup>nd</sup> Defendant, PW1 was asked if in his relationship to the 2<sup>nd</sup> Defendant, you

had authority to collect money from the DW2 Chibuiheuko to execute project for the 2<sup>nd</sup> Defendant, and he answer yes.

Again in paragraph 1 (u) of the witness statement on oath of the DW3, he asserted "that on the 7<sup>th</sup> day of June, 2008, the 2<sup>nd</sup> Defendant gave the Plaintiff through its accountant Chibuiheraiwe (Nee Ukoh) the sum of USD\$ 200,000 to change and pay to the 1<sup>st</sup> Defendant the sum of N29,400,000.00 only as additional payment for the 6 no shops which the Plaintiff only paid as agent of the 2<sup>nd</sup> Defendant and submitted the tellers to the 1<sup>st</sup> Defendant on behalf of the 2<sup>nd</sup> Defendant and receipt no1389 was issued to the 2<sup>nd</sup> Defendant.

He further submitted that under cross examination by the Plaintiff counsel, the DW3 stated that the receipt of payment of the shops from EFAB property brought back in the name of the company as an acknowledgment of payment is the evidence to show that Plaintiff collected money. PW1 under cross examination by 1<sup>st</sup> Defendant counsel as to why PW1, paid the sum of N29,400,000.00 to the 1<sup>st</sup> Defendant without collecting receipt, PW1 in answer stated that "yes, but I have the deposit slips. EFAB issued receipt to **Mrs. Attang** but not me. They are to go and sought it out with her that is 1<sup>st</sup> Defendant." it is submitted that the Plaintiff has admitted that after the deposit of the additional payment for the shops, the 1<sup>st</sup> Defendant issued receipt to the knowledge of the Plaintiff which receipt he forwarded to the 2<sup>nd</sup> Defendant. It is submitted that this is an admission against interest. He referred the Court to section 20 Evidence Act.

In addition, counsel submitted that it is a fact not in dispute to state that the PW1 was an agent of the 2<sup>nd</sup> Defendant in the process leading to the purchase of the 6 no shops in view of the admission of the PW1 that he had on several occasions collected money from the Attang family to purchase items on their behalf. Of particular importance is the fact that the PW1 had on several instances done so through his account as per Exhibit DB14 and the payment thereof. Also, in the process leading to the incorporation of the 2<sup>nd</sup> Defendant, PW1 equally admitted under cross examination that he received money from DW3 through his account to pay the lawyer that incorporated same. All the receipts issued to the PW1 for the transactions done on behalf of the 2<sup>nd</sup> Defendant were dutifully submitted to the 2<sup>nd</sup> Defendant. Similarly, Exhibit HB1 also show that PW1 is and had always been the agent of the 2<sup>nd</sup> Defendant, and that his

collecting money for additional payment of shops for which he already deposited money on behalf of the 2<sup>nd</sup> Defendant is consistent with his role as agent of the 2<sup>nd</sup> Defendant, and urged the Court to so hold.

On issue 3: whether, considering the evidence before this Court, including all the Exhibits, the 2<sup>nd</sup> Defendant not the Plaintiff is the bona fide purchaser of shops D11, D02, C03, C04, C07 and C08 situate at EFAB Mall Shopping Complex Area 11, Garki Abuja, the subject matter of this suit.

Counsel had argued in issue one that there was no contractual relationship between the 1<sup>st</sup> Defendant and the Plaintiff and therefore, all that the Plaintiff did in connection with the sale and purchase of the 6 no shops namely D11, D02, C03, C04, C07 and C08 was to act as agent of the 2<sup>nd</sup> Defendant in the process leading to the purchase of the shops.

That taking a cue from the procedure for the sale of the shops as highlighted by the DW1, one will agree with the submission that the 2<sup>nd</sup> Defendant is the person who accepted the offer of the 1<sup>st</sup> Defendant for the purchaser of 6 no shops. Also, the 2<sup>nd</sup> Defendant was able to prove by credible evidence that they actually made a deposit for the shops and went ahead to complete payment and then fill the form which was the final stage of the transaction.

Consequently, in the case of the Plaintiff, there is ample evidence to show that he never complied with the procedure listed by the 1<sup>st</sup> Defendant for the purchase of shops from them. Besides, what the Plaintiff alleged he paid for was 4 no shops as against that of the 2<sup>nd</sup> Defendant which is 6 no shops. All the Exhibits tendered by the PW1 did not conform with his assertion that he made payment of 4 no shops, as payment of money in the bank by a particular person does not conclusively prove the ownership of the money or the source of the money. Again, the PW1 failed to call as witness both the service providers particularly MTN to prove that the alleged text message reportedly sent to his phone was indeed from them or that the messages was indeed from the telephone handset of Stella, a former staff of the 1<sup>st</sup> Defendant. Neither Stella nor any staff of the 1<sup>st</sup> Defendant was subpoenaed to come and testify in Court in respect of that particular evidence canvassed by the PW1 in Court.

In another submission, counsel submitted that indeed there was no substance in the tellers Exhibits AA1 and AA2 to support the claim that the Plaintiff paid the sum of N22,500,000.00 for 3 no shops or that he

deposited the sum of N6,900,000.00 for the 4 no shops. He equally failed to tender any payment slip to substantiate the assertion. He therefore submitted that the Court is left with no option than to Act on the evidence before it which is Exhibits DB1 – 7, and Exhibits DB 8 – 15 to hold that the 2<sup>nd</sup> Defendant, not the Plaintiff is the bona fide purchaser of the 6 no shops namely D11, D02, C03, C04, C07 and C08 from the 1<sup>st</sup> Defendants and urged the Court to so hold.

Counsel has further shown that:

1. The Plaintiff had no contractual relationship with the 1<sup>st</sup> Defendant which this Court can enforce.
2. That in the process leading to the purchase of 6 no shops from the 1<sup>st</sup> Defendant, the Plaintiff only acted as an agent of the 2<sup>nd</sup> Defendant.
3. Finally, that the 2<sup>nd</sup> Defendant, not the Plaintiff was the bona fide purchaser of the 6 no shops from the 1<sup>st</sup> Defendant and urged the Court to so hold.

Counsel urged this Honourable Court to dismiss the entire suit of the Plaintiff with substantial cost.

On the part of the Plaintiff, counsel submitted that this case revolves round the ownership of the sum of N29, 400,000.00 (Twenty Nine Million, Four Hundred Thousand Naira) paid to the 1<sup>st</sup> Defendant for the purchase of shops. To ascertain the veracity of the claims of the parties in accordance with the law, it is necessary to first of all draw out the following facts which are not in dispute between the parties:-

- a. On the 3<sup>rd</sup> day of June 2008, the Plaintiff paid a total sum of N29, 400,000.00 (Twenty Nine Million, Four Hundred Thousand Naira) to the 1<sup>st</sup> Defendant. he referred to paragraphs 3, 4, 5, 6, and 7 of the Plaintiff's statement claim; paragraphs 4, 5, 6, 7, 8, and 9 of the Plaintiff's statement on oath dated the 24<sup>th</sup> day of May, 2012; paragraph 7 of the first Defendant's amended statement of defence dated 5<sup>th</sup> day of August, 2013; Exhibit AA1 and AA2 (the First Inland Bank Deposit Slips No. 4433351 and 4433352 both dated the 3/06/2008 showing the said payment).
- b. The said payment was made by the Plaintiff in his own name. He referred to Exhibit AA1 and AA2 (the First Inland Bank Deposit Slips No. 4433351 and 4433352 both dated the 03/06/2008 for the sums of

N17, 700,000 and 11, 700,000 respectively, evidencing the said payments in the name of the Plaintiff).

- c. The payment was part payment for four shops to be built by the 1<sup>st</sup> Defendant. He referred to paragraphs 8 and 9 of the Plaintiff's statement of claim and paragraph 9 of the witness statement on oath both dated 24<sup>th</sup> day of May, 2012.
- d. There is no documentary evidence before the Court or anywhere showing that the sum of \$200,000 (two Hundred Thousand us dollars) was given to the Plaintiff and that he converted same to Naira which he used to pay the 1<sup>st</sup> Defendant on behalf of the 2<sup>nd</sup> Defendant.
- e. There is no evidence before the Court showing that the exchange rate of the dollar and Naira on the 3<sup>rd</sup> day of June 2008 of the sum of \$200,000 (two Hundred Thousand us dollar) would amount to N29, 400,000.00 (Twenty Nine Million, Four Hundred Thousand Naira).
- f. The shops were not delivered to the Plaintiff who made the payment and the money paid was not also refunded to the Plaintiff.

Counsel submitted that with the above undisputed fact, there is nothing more in dispute. The claim of the Plaintiff succeeds. What is very clear now is that the 1<sup>st</sup> and 2<sup>nd</sup> Defendant have connived in this futile venture to rob the Plaintiff of his money.

Counsel further submitted that from the testimony before the Court, DW2 who is an accountant claimed she gave a huge amount of \$200,000 (two Hundred Thousand dollars) to the Plaintiff without showing the Court any form of acknowledgement or receipt of the said money. She however admitted under the heat of cross examination that all monies given to the Plaintiff were acknowledged by the Plaintiff as received. However, no document was shown to the Court where the Plaintiff acknowledged the receipt of the money. Furthermore, no document was shown to the Court to prove that DW2 or the 2<sup>nd</sup> Defendant was ever in possession of such money. In fact the audit report of the 2<sup>nd</sup> Defendant which was tendered by the 2<sup>nd</sup> Defendant's DW2 did not show the existence of any such money in the company. There is no evidence before the Court showing that the exchange rate of the dollar and Naira on the 3<sup>rd</sup> day of June 2008 of the sum of \$200, 000 (Two Hundred Thousand Us Dollars) would amount to N29,400,000.00 (Twenty Nine Million, Four Hundred Thousand Naira). It is absolutely doubtful that a professional accountant like DW2

who has practiced for many years as an accountant would deal with such a huge amount without any form of documentation. This Honourable Court cannot believe such frivolous claim. He urged the Court to discountenance the testimony of DW2 for lack of credibility and reliability and declare that she is not a witness of truth.

Counsel submitted that it is trite that whoever wants the Court to grant judgment in his favour based on the existence of any fact must prove that such fact exists. The Plaintiff has denied that the 2<sup>nd</sup> Defendant gave him money to purchase shop. The 2<sup>nd</sup> Defendant having failed to prove that it actually gave the Plaintiff the money cannot disprove the claim of the Plaintiff and have judgment in its favor. This he urged the Court to so hold.

That various oral testimony of the Defendants in relation to the fact in issue which is the ownership of the sum of N29, 400,000.00 (Twenty Nine Million, Four Hundred Thousand Naira). Paid to the 1<sup>st</sup> Defendant cannot be allowed to vary the compelling documentary evidence in support of the Plaintiff's claim.

Counsel submitted that the trite position of law is that oral evidence is inadmissible to vary, add or contradict the contents of a document. He cited the cases of **Ogundele & Anor. V. Agiri & Anor** (2009) IpeI-2328 (SC), Per Muntaka Coomassie, JSC at pages 24 -25, paragraphs C – A.; **Union Bank Of Nigeria Ltd V. Professor Albert Ojo Ozigi** (1994) LPELR – 33 89 (SC), Per Adio, JSC at page 15 , paragraphs D – E and **Biosola Nigeria Ltd & Anor V. Afribank Nigeria Plc & Ors.** (2013) LPELR – 22062(CA), Per Iyizoba, JCA at pages 34 -35, paragraphs G – A.

That it is a settled law that where there are both oral and documentary evidences the Court is enjoined to use the latter as a hanger to test the veracity of the former. He cited the cases of **Egharevba V. Osagie** (2009) LPELR – 1044 (SC), Per Ogbuagu, JSC @ pages 34 – 35, paragraphs E – A.; **Jinadu & Ors V. Esurombi – Aro & Anor** (2009) LPELR – 1614 (SC), Per Oguntade, JSC at pages 32, paragraphs A – F; and **Abubakar V. PWaspo** (2012) LPELR – 9786 (CA), Per Ekpe, JCA at page 21, paragraphs C – F.

Counsel submitted that the Plaintiff has proved that he paid for the shops and at no time authorized the 1<sup>st</sup> Defendant to transfer the payment in favour of the 2<sup>nd</sup> Defendant. DW1 (the 1<sup>st</sup> Defendant's manager) corroborated the fact that payment to any person or 3<sup>rd</sup> party. He referred the Court to DW's answer to question put to him by the Plaintiff's

counsel during cross examination. This being the case, the 1<sup>st</sup> Defendant is liable to the claims of the Plaintiff because it has acted without the Plaintiff's authority. This he urged the Court to so hold.

Finally counsel submitted that the Plaintiff has proved that he paid the sum of N29, 400,000.00 (Twenty Nine Million, Four Hundred Thousand Naira) to the 1<sup>st</sup> Defendant as part payment for Four shops with his money and the 1<sup>st</sup> Defendant has failed to deliver the shop to him. The Plaintiff is therefore entitled to the refund of his money and all the reliefs sought.

In response to the lone issue by the Plaintiff and argument in his final written address, the 2<sup>nd</sup> Defendant replies as follows:-

That the Plaintiff argued that the instant suit revolves around the ownership of the sum of N29, 400,000.00 (Twenty Nine Million, Four Hundred Thousand Naira) paid to the 1<sup>st</sup> Defendant for the purchase of shops.

Counsel submitted that the issue before the Court is whether the payment of the sum of N29, 400,000.00 (Twenty Nine Million, Four Hundred Thousand Naira) was in respect of 4 no shops which the Plaintiff claim he made on the 03/06/2008, or additional payment in respect of 6 no shops for which the 2<sup>nd</sup> Defendant had deposited the sum of N15 Million and Exhibit DB9 was issued. He referred the Court to paragraphs 5, 6, and 8 of witness statement on oath the Plaintiff made on 31<sup>st</sup> October, 2012, where the Plaintiff averred that he made full payment for 3 shops on the 3<sup>rd</sup> day of June, 2008, in the total sum of N22, 500, 000 and part payment of N6, 900, 000 to the 1<sup>st</sup> Defendant in respect of the 4<sup>th</sup> shop leaving a balance of N600, 000.

Counsel further submitted that the claim by the PW1 that no shops were allocated to him because they were under construction and no receipts were issued in respect of the payment of N29, 400,000 (Twenty Nine Million, Four Hundred Thousand Naira) amounts to subversion of evidence as Exhibit DB9 paid on the 13/12/2007 had shop numbers on it, as against the purported payment of 03/06/2008. Besides, Exhibit DB10, receipt no 1389, evidencing the payment of N29, 400,000 was issued on the 07/06/2008; as against the claim of the Plaintiff.

Counsel submitted that in all, the payment of N29,400,000.00 (Twenty Nine Million, Four Hundred Thousand Naira) was receipted for in the name of 2<sup>nd</sup> Defendant, and had not only additional payment on it, but also contained the exact no of shops for which the payment was made.

This puts the matter beyond argument that the payment made on the 03/06/2008 by the PW1 was for the 6 no shops which the 2<sup>nd</sup> Defendant had earlier deposited money for, and he urged the Court to so hold.

I have carefully read the processes filed by the parties in this case as well as the Exhibits tendered by the witnesses called in this case. In the same vein, I have watched the demeanor of witnesses and listen to their testimonies while given evidence in this matter. To my mind this case can be decided on the sole issue raised by the Plaintiff to wit:-

*“Whether the Plaintiff herein has made out his case upon the balance of probabilities and is entitled to the reliefs sought”*

This issue is in tandem with the issue for determination as formulated by the 1<sup>st</sup> Defendant and takes care of the three (3) issues distilled by the 2<sup>nd</sup> Defendant for determination.

It is settled law that he who asserts must prove. In other words the burden of prove is not static as it shift from side to side. In the case of **Aminu V. Hassan** (2014) 5 NWLR (pt. 1400) 287 @ 316. the supreme Court **Per Peter Odiu J.S.C** held:

*“That the burden of proof rests upon the party who substantially asserts the affirmative before the evidence is gone into. The position therefore is that the burden of proof lies on the person who would fail, assuming no evidence had been adduced on either side. Also in respect of particular facts, the burden rest on the party against whom judgment would be given if no evidence were produced in respect of those facts. Once that party produces the evidence that would satisfy the Court then the burden shift on the party against*



*whom judgment would be given if no more evidence were adduced”*

Generally in civil matters, proof is based on the preponderance of evidence adduced at the trial see the cases of **Odutola V. Aiyeleru** (1985) 1 NWLR (pt. 11) 92 and **Osuji V. Ekeocha** (2009) 16 NWLR (pt. 7166) 8. Further section 134 Evidence Act.

In the instant case, the burden of prove lies on the Plaintiff. The Plaintiff in his amended pleading asserts that the four (4) shops situate at EFAB Shopping Mall Garki – Abuja belongs to him. By asserting as he did, the burdens on the Plaintiff are as I see it are as follows:-

1. That he had an agreement to purchase four (4) shops from the 1<sup>st</sup> Defendant at EFAB Shopping Mall Garki – Abuja.
2. That the price per unit of the shops is N7, 500,000.00k (Seven Million, Five Hundred Thousand Naira).
3. That he paid to the 1<sup>st</sup> Defendant a total sum of N29, 400,000.00k (Twenty Nine Million, Four Hundred Thousand Naira) leaving a balance of N600, 000.00k (Six Hundred Thousand Naira) towards purchasing the shops.
4. That he paid for the shops in his name.
5. That the 1<sup>st</sup> Defendant has refused to give him the shops he paid for.
6. That he has made a demand on the 1<sup>st</sup> Defendant to give him the shops or refund his money and the 1<sup>st</sup> Defendant has refused.

It is only when the Plaintiff has cross these hurdles that the burden of proof in the instant case will shift to the Defendants. It is to be noted that the Plaintiff must rely on his case and give cogent and compelling evidence in support of his pleadings to enable him get judgment in his favour.

This is so because the Plaintiff cannot rely on the weakness of the defence to prove his case. See the cases of **Okedare V. Adebara** (1994) 6 NWLR

(pt. 349) 157 and **Motunwase V. Soroungbe** (1988) 4 NWLR (pt. 92) 90. “A party can only rely on the weakness of the defence where the Defendant case supports his case. See the cases of **Eze V. Atasie** (2000) 10 NWLR (pt. 676) 470 and **Shittu V. Fashawe** (2005) 14 NWLR (pt. 946) 671.

Whether the Plaintiff has prove this state of affairs as outlined above can only be glean from the set evidence adduce by him before the Court. I must make haste to say, that all through the pleadings before this Court, the Plaintiff never make any allusion as to the 2<sup>nd</sup> Defendant being liable to him in anyway. So there seems to be no claims against the 2<sup>nd</sup> Defendant in this matter. Be that as it may and put in a nutshell, the case of the Plaintiff bothers on breach of contract and this Court will proved to examine the pleadings of the Plaintiff and the evidence proffered in order to arrive at a conclusion as to whether the Plaintiff has proved his case.

From the pleadings and reliefs claim by the Plaintiff, the Plaintiff asserts that the 1<sup>st</sup> Defendant is in breach of the contract between it and the Plaintiff in relation to the four (4) shops which according to the Plaintiff he paid for but the 1<sup>st</sup> Defendant refused to hand over to him after completing the building. Was the question is, was there any contract between the parties? According to the Plaintiff, he bought the shops at the rate of N7, 500,000.00k (Seven Million, Five Hundred Thousand Naira) per shop. He claimed that he had paid the total sum of N22,500,000.00k (Twenty Two Million, Five Hundred Thousand Naira) to the 1<sup>st</sup> Defendant as full payment for three (3) of the shops while making a part payment of N6,900,000.00k (Six Million, Nine Hundred Thousand Naira) as part payment for the fourth shops leaving a balance of N600,000.00k (Six Hundred Thousand Naira).

According to the Plaintiff, he made this payment to the 1<sup>st</sup> Defendant through its account No: 236435081101 which the 1<sup>st</sup> Defendant maintained with Finbank. It is the Plaintiff's evidence that the duplicate

copies of the deposit slip number: 4433351 and 4433352 which he uses to make the payment were handed over to the 1<sup>st</sup> Defendant.

In prove of the payment, the Plaintiff tendered Exhibits AA1 and AA2 i.e. the said Exhibits AA1 and AA2 are the bank slips /teller.

However, the 1<sup>st</sup> Defendant in its defence had pleaded that its standard procedure is when money is paid into its account, the person/client who pays the money gives them a copy of the bank teller where upon a receipt is issued to the person. And that in the present case it was one **Mr. C. F. Attang** who approach it for the said shop in issue and not the Plaintiff. In essence the 1<sup>st</sup> Defendant dispute that there is any agreement between it and the Plaintiff for the purchase of any shops in issue. In the case of **Ogbonna V. Ogbuji** (2014) 6 NWLR (pt. 1403) 205 @ 227. The Court of appeal defines an agreement as follows:

*“Agreement is a mutual understanding between two or more persons about their relative rights and duties regarding past or future performances; a manifestation of mutual assent by two or more person”.*

There is no dispute to the facts that the Plaintiff took tellers or bank slips to the 1<sup>st</sup> Defendant purporting to be purchasing a shop in issue but was there an agreement between them for the Plaintiff to purchase the shops? This is the fulcrums upon which this case is hinge. Where there is no agreement between parties there cannot be a breach of any such agreement.

On the face of it and from the view point of the Plaintiff, it would seem that once the Plaintiff brought the teller then, there was an agreement for him to purchase the shops established. But is that the case?

I do not think so. In the evidence of DW1, he stated before the Court that the Plaintiff brought two bank tellers to the 1<sup>st</sup> Defendant and introduced

himself as manager of the 2<sup>nd</sup> Defendant and informed the 1<sup>st</sup> Defendant that the tellers were payments for the shops purchased by the 2<sup>nd</sup> Defendant.

Further, he said he instructed one **Kenneth Ezesili** to collect the teller and issued receipt in the name of the 2<sup>nd</sup> Defendant and gave to the Plaintiff. This piece of evidence was not contradicted by the Plaintiff.

Further under cross examination the Plaintiff admitted that he was the chief operating officer of the 2<sup>nd</sup> Defendant. The 2<sup>nd</sup> Defendant in its own evidence had given evidence that the Plaintiff was its employee and tendered Exhibits i.e. (Two Identity Cards) issued to one **Ifeanyi Ankwe** and **Yakubu Garba** in which the Plaintiff signed as chief operating officer. Furthermore, the 2<sup>nd</sup> Defendant in its evidence told the Court that it had transferred into the Plaintiff's account various sums of money for payment for the shops. It tendered the Zenith Bank Plc statement of account as Exhibit DB8, DB18 i.e. judgment in suit no HC/FCT/CV/1059/2009. This piece of evidence were not contradicted nor discredited by the Plaintiff in anyway.

I shall hereafter make reference to Exhibit DB8 –DB18 which is the judgment in suit no: FCT/HC/CV/1059/2009. Annexure to this judgment is a statement of witness on oath.

In the said case, the Plaintiff herein was the 2<sup>nd</sup> Plaintiff therein. In the said Exhibit, the Plaintiff deposed to the facts in that case that the 1<sup>st</sup> Defendant therein bought shops no; 16, 17, 18, 19, 22, 42, 274, 275 and 290. He went further to give a breakdown of how payments were made for those shops by the said 1<sup>st</sup> Defendant.

The Plaintiff herein in the said Exhibit DB8 – DB18 i.e. judgment in suit no: HC/FCT/CV/1059/2009 did say that the 1<sup>st</sup> Defendant did incorporate the 2<sup>nd</sup> Defendant in the instant case. The question that comes up in this case is shops number 16, 17, 18, 19, 22, 42, 274, 275 and 290 mentioned in

Exhibit DB8 – DB18 i.e. judgment in suit no: HC/FCT/CV/1059/2009 are the same shops in issue in this suit. Also the question that readily come to mind is, did the 1<sup>st</sup> Defendant herein repurchase the said shops from the Defendant in Exhibit DB8 – DB18 (supra) and sold same to the Plaintiff.

No such evidence is before this Court which means at all material time the shops in issue had been sold by the 1<sup>st</sup> Defendant to some other person other than the Plaintiff. this much I hold is the evidence of the Plaintiff himself as contained in Exhibit DB8 – DB18 i.e. judgment in suit no: HC/FCT/CV/1059/2009.

The witness statement on oath in Exhibit DB8 – DB18 (supra) was adopted by the Plaintiff in that suit as his evidence.

I hold therefore that it is evidence which this Court can look at in determining this suit. The law is that a Court of law in reaching a decision in a suit before it is enjoined to take cognizance of all the documents in its file see the case of **Agbo V. The State** (2007) 10 WRN 95 @ 107. Furthermore evidence at variance with the Exhibit is not to be believed by the Court see the case of **Ukaegbu V. Nwololo** (2009) 3 NWLR (pt. 1127) 194 @ 209 paragraphs E – F.

In the instant case therefore, I am unable to see my way through how the Plaintiff can turn around after admitting that the property in issue had been purchased by some other person from the 1<sup>st</sup> Defendant and now said the property belong to him and should be given to him. That would amount to a “Double Speak” a legal summersault of a monumental dimension. A witness cannot blow hot and cold at the same time, it is interesting to note that the same Plaintiff who is claiming payment of the shops in issue was said to have been issued a receipt by the 1<sup>st</sup> Defendant when he submitted the said bank teller. The receipts were in the name of the 2<sup>nd</sup> Defendant and they were given to the Plaintiff. There is no evidence before the Court to show that he protested the issuance of the

receipts in the name of different persons. In fact, he did not even mention that a receipt was issued by the 1<sup>st</sup> Defendant when he took the teller to them. He only said he demanded for receipts and none was given to him. I find the evidence of the Plaintiff unbelievable. No reasonable Court can rely on the Plaintiff's evidence to give judgment in his favour. I found that the Plaintiff did not prove his case and I so hold. In the light of this, I hold that the Plaintiff's case is liable to been dismissed and I hereby dismissed same.

Sign  
Hon. Judge  
06/07/2017

**APPEARANCE:**

**James Obinna Esq.** for the 1<sup>st</sup> Defendant

**Goodluck J. Agbo** for the Plaintiff

**A. E. Ezeamaka Esq.** for 2<sup>nd</sup> Defendant