

IN THE MAGISTRATES' COURT OF RIVERS STATE
IN THE PORTHARCOURT MAGISTERIAL DISTRICT
HOLDEN AT SMALL CLAIMS COURT BEFORE HIS WORSHIP, G.C. AMADI ESQ.
SITTING AT SMALL CLAIMS COURT, 1, PORT HARCOURT ON WEDNESDAY, THE 6th
NOVEMBER, 2024.

SUIT NO. PMC/SC/227/2024

ENGINEER USIFOH OSAMUDIAMEN DANIEL

}

CLAIMANT

AND

- 1. CITYPRIME PROPERTIES LIMITED**
- 2. CHIEF SILAS SUNDAY UNYENE**
- 3. SILAS SUNDAY UNYENE JUNIOR**

}

DEFENDANTS

JUDGMENT

This is the final judgment in this suit wherein the Small claim before the court, dated and filed on the 18th September, 2024 is for:

- A. An order directing the defendants to refund the Claimant, the sum of N700, 000 which is the price.
- B. An order directing the defendants to refund the Claimant, the sum of N2,804,500 for general damages
- C. An order directing the defendants to pay the Claimant, the sum of N1,095,500.00 as cost of litigation

In proof of their case, the Claimant called two witnesses and the defendant also called two witnesses and a total of fourteen (14) exhibits and one ID were tendered in evidence.

On the 24th day of September, 2024, the defendant counsel applies for plea of not liable to be entered on behalf of the defendant and same was granted and the matter was set down for hearing.

On the 30th September, 2024, the CW1, the claimant on record commenced his evidence in Chief and stated he has the authority of the Law Firm, Ndubueze Linus & Co. to depose this written statement on oath and that he knows the land situate and lying at CVL-A plot No. 125 and 127, City View Layout, Ohia Omarka IPO, Ikwerre Local Government Area, Rivers State, measuring 930.183 SQM and more particularly delineated on survey Plan Number RV/4087/2021/111/PL16 and bounded by Survey Pillar Nos. SC/BK2662, SC/BK2663, SC/BK2662A, SC/ BK2663A, SC/BL1738 and SC/BL1739 dated 28th June, 2021 made and prepared by Surveyor Emma- Wele J.C. of No. 158 Rumuepirikom/twofe Road, Port Harcourt, Rivers State, the subject matter of the failed transaction which I had with the Defendants.



Testifying further, the CW1 testified that sometime in June 2021, he desired to acquire some piece/parcel of land by purchase; to enable him build a residential home for himself and family. That MR. DARLINGTON OKUBO ONISOKIEN, who is aware of his desire to purchase land and to build house for himself and family, informed him of the 1-3rd Defendants, who transacts business of buying and selling of properties as a registered realty estate company in port Harcourt.

That he indicated interest on hearing that the 2nd -3rd Defendants had a registered company in law that transacts realty estate business being the 1st Defendant, agreed to go with Mr. Darlington Okubo Onisoken to visit the Defendants for purpose of purchase of 2 plots of land to build a residential home for himself and family. That she reached to the 1st Defendant, the 3rd Defendant attended to him and informed him that the 1st Defendants is a well-known reputable registered estate company, owned by the 2nd Defendant as the CEO and the 3rd Defendant is the son to the 2nd Defendant and managing Director to the 1st Defendant and that they involves in realty estate business and owns lands in various strategic locations both in the state and outside the state that is for sell. That as a result I should not be afraid to invest his hard earned money in purchase of lands in the Defendants' firm for any reason whatsoever.

Testifying further, the Defendants and thereby developed interest on the bases of assurance given to him by the Defendants through 3rd Defendant, the son of the 2nd Defendant being the owner and Chief Executive Officer (the CEO) to the 1st Defendant and instantly he indicated interest to purchase 2 plots of piece/parcel of land from the Defendants. The 3rd Defendant informed him of the policy of the company that he has to first of all pay consultation fee of N20, 000.00 to enable the Defendant to document his information and process same as sign of his seriousness and interest to do business and to purchase land from the Defendants which I paid the said sum.

That after he has paid the aforesaid consultation fee to the Defendants. The 3rd Defendant informed him on the prices of lands as owned by the Defendants based on their locations.

That he told the Defendants that until he sees the proposed lands, he cannot bid price with the Defendants. There upon the Defendants fixed date for inspection of the land with him. Before the inspection date as fixed by the Defendants, The 3rd Defendant called and informed him on the amount that should come with as per inspection fee for the proposed land that intended to purchased being the sum of N30, 000.00 which the 3rd Defendant referred to as logistics for land inspection and I paid the said sum to the Defendants on the inspection day before the parties embarked on inspection.

That he began negotiation with the Defendants after the inspection and parties finally agreed on price per plot of land as situate above to be at the sum of N350, 000.00 per plot and N700,000.00 for 2 plots of land which I paid for.

The receipt of payment of his printed statement of his account from his bank and the receipt issued to him by the Defendants in acknowledgement of his payment and ownership for the purported 2 plots of land are hereby pleaded and marked as "EXHIBITS A AND B" and shall be rely upon during trial.

That the Defendants upon his payment of N700, 000.00 for the purported 2 plots of land as situate above. The Defendants purportedly executed a Deed of Conveyed for the 2 plots of land in his favour signed by the parties and same was witnessed also.

That sometime in September 2021, he visited his land purportedly sold to him by the Defendants with intention to carry on immediate development and to fence same in the



company of his workers whom he has paid advanced fee for their works as he has made all necessary arrangement of materials available for them on site for the work.

That he purchased 5000 pieces of 6 inches hole blocks at the price of N180 per block and N900, 000.00 for 5000 piece of blocks from the invoice receipt issued to him for that purpose by C U Logistics Limited. That he has a receipt showing the following materials and items for fencing of the said 2 plots of land purportedly sold to him by the Defendants:-

- a) 80 bags of cement at the sum of N4, 000. 00 per bag and N320, 000.00 for 80 bags,
 - b) 12mm Rod which is to be used for fence pillars at the price of A2, 000.00 per Rod and #90, 000.00 for 45 pieces of rod for the fencing,
 - c) Half bag of 3inches nail at the sum of N6, 000.00, and
 - d) Half bag of Binding wire at the cost of N12, 000.00.
- All totaling the sum of N428, 000.00.

That he rely also on the invoice receipt issued to him " for cost i incurred on payment for supply of 1 trip of Sharp Sand of Double Azole at the sum of N70, 000.00.

That he shall rely further on the invoice receipt issued to him on payment for supply of 1 trip of 1/4 Sand at the sum of N60,000.00

That he shall also rely during trial on the invoice receipt issued to him on payment and purchased of 135 pieces of Board at the price of N1, 000.00 per board and N135, 000.00 for 135 pieces of board that he purchased for fencing of his aforesaid property sold.

That he went into his 2 purported plots of land with his workers' whom he has advanced payment subject to agreed fee as followings: -

- a) Bush clearing upon which he agreed with the workers at the sum of N150, 000.00 to clear the 2 plots of land and he advanced the sum of N100, 000.00 to remain the balance of N50, 000.00 which Onisokien introduced him to the Defendants to inform him of what is happening on his land.


That Mr. Darlington Okubo Onisokien, the CW2 to call the Defendants immediately to inform them which he told him that he has done that but unfortunately he could not reach any of the Defendants via cellphone. He then advised him to come back and inform the Defendants one on one to have the matter resolved, when he has incurred cost of purchasing materials for fencing which is on ground and advanced part payment to the workers that went to the site with him with an intention to speed up his work.

That he heeded to the advice of Mr. Darlington Okubo Onisokien to him at the Defendants for possible settlement to avoid bloodshed on the land with hostile young men that came to stop his work and him from developing his land.

That he told the Defendants who promised to have the matter settled without delay to enable his workers to go back to commence work on his land since his materials are all still on ground at to site.

That he waited and he had series of meetings with to Defendants to have the matter settled and to Defendants kept promising and giving him hope that the matter will soon be resolved having acknowledged that all his materials were still at to site at to the moment.

That to his greatest surprise he went to his land after few days and he could not trace any of his materials, except his sharp sand and 3/8 sand which have been partly tampered by unknown persons and he complained to the Defendants who kept promising him and at this time that he may be relocated to another 2 plots of land similar to his land after which they can now know what to do concerning his lost materials. I believed the Defendants but that till date, nothing has



been done to either get him in possession of the land paid for or to have him relocate to another land as promised

Testifying further the Claimant testified that he can no longer trace the whereabouts of the 3rd Defendant who has disappeared into thin air nor is the 3rd Defendant phone number going through till date and all effort I made to have to matter amicably resolve with the Defendants ever since 2021 has proved abortive, that this is because, the Defendants shows no concern in to matter, except giving him an empty promise; while he kept spending money which intended to use in developing his land just to recover it.

That all effort he made to have to matter settled with to Defendants who promise him to settle with the native and to have him take possession of the purported 2 plots of land or he will have him relocate to another land proved abortive. That he engaged the services of the Law Firm of Ndubueze Linus & Co. in 2022 to officially write to 1st-3rd Defendants in demand for him to be granted possession of his land or relocated to another land of proportional value with to purported land sold to him as often promised by the Defendants

That he paid to law firm to sum of N100, 000,00 to write a Pre-Action Notice to the Defendant(s).

That upon to 1st Defendant recovering from his illness, he reneged and refused to effect their promises till date which left him with no option than to instruct to above law firm to institute this action in court against the Defendants as his last hope at agreed professional fee of N500, 000. 00 That he shall rely on to receipt of part payment of sum of N350, 000. 00 which he advanced to the said law firm remaining to balance sum of N150, 000.

That he is entitled to the cost of N1,096,000. 00 against to Defendants as general damages for injuries that I suffered caused by the Defendants action in the above transaction and in this suit and that he is claiming the total sum of N4, 600, 000.00 (Four Million, Six hundred thousand naira) only as pocket expenses and cost in this suit against the Defendants.

To CW1 identifies the Receipt of payment to Ndubueze and CO dated 27th of September, 2023, 14th November, 2023 and 14th August 2024, receipt from C.U Logistics dated 16/9/21, 15/9/21, 15/7/21 and 17/9/21. Pre Action Notice letter from Ndubueze Linus And Co dated 16/11/22, 2/10/23 and Payment receipt from the defendant and statement of account were all admitted in evidence and marked as Exhibits **A,B,C,D,E,F,G,H,I,K,L&M** respectively

During to cross-examination of to CW1 on the 11th October, 2024, testified that the land transaction was done within one week, between the time, he was introduced to the defendant and the time of purchase. That he did not see the 2nd defendant, at any time during the sales of the property, but that the 3rd defendant told him that the 2nd defendant is the CEO of the 1st defendant and a signatory to the account of the 1st defendant. That he does not have any document to show that the 1st defendant is a limited liability Company and the 3rd defendant also showed him some document that shows that the 1st defendant is a limited liability company and that the 2nd defendant is a CEO of the 1st defendant and also a signatory of the 1st defendant account in the presence of the CW2. That however, he did not state this fact in his evidence in chief.

The CW1 is shown his statement, Exhibit J and he states that on the face of Exhibit J, it is not stated that the 1st defendant is a limited liability Company, that it was omitted during printing. That Exhibit L issued to him by the 3rd defendant, bears the company name of the 1st defendant. That Exhibit L is not emanating from the CAC.



That when the issue came up, the PW2 took him to the 2nd defendant and the 2nd defendant acknowledged that the 3rd defendant is his son and is managing the property on his behalf and he is a signatory to the 1st defendant's account and that he knows about the transaction and promised to resolve the matter.

That the 2nd defendant have been promising to relocate him since 2021 till date

The CW1 is shown Exhibit K and he said that the facts within Exhibit K is within his personal knowledge.

That he does not have any resolutions of the 1st Defendant to sell the land to him.

That it is not true that the 2nd defendant denied knowledge of the transaction. That it is not true that the 2nd defendant is not liable for any of his claims because he is a CEO of the 1st defendant and also a signatory to the account of the 1st defendant.

After to evidence of CW1, the matter was adjourned for to evidence of CW2, one Darlington Okubo who adopted his evidence on oath and states that he has the consent of the Claimant and Ndubueze Linus & Co. Law Firm being the legal firm representing the Claimant in this suit, which arises as a result of failed land transaction caused by inability of the Defendants to deliver possession and good title to Claimant after the Claimant has fully performed his obligations as undertaken in the transaction that has now woefully failed. That he introduced the Claimant to the Defendants when the Claimant indicated interest to acquire land to build house.

That he is aware that the 2nd-3rd Defendants professes to have a well registered realty estate firm upon which to Defendants carry on their estate business of buying and selling of properties including landed properties.

Testifying further, the CW1 testified that he knows the land situate and lying at CVL-A plot No. 125 and 127, City View Layout, Ohia Omarka IPO, Ikwerre Local Government Area, Rivers State, measuring 930.183 SQM and more particularly delineated on survey Plan Number RV/4087/2021/111/PL16 and bounded by Survey Pillar Nos. SC/BK2662, SC/BK2663, SC/BK2662A, SC/BK2663A, SC/BL1738 and SC/BL1739 dated 28th June, 2021 made and prepared by Surveyor Emma- Wele J.C. of No. 158 Rumuepirikom/wofe Road, Port Harcourt, Rivers State, the subject matter of the failed transaction between the Claimant and the defendants.

That the Claimant has performed all the necessary obligations imposed on him by virtue of the transaction that has wholly failed, because of either the Defendants non-performance of their undertaking to the transaction or to fulfill their promises of relocating the Claimant who has patiently waited for almost 4 years on to Defendants empty promises without any intention to fulfill it to Claimant. That if he sees the said Deed of Conveyance executed in favour of the Claimant by the Defendants, he can identify it because he signed same as a witness and he relies upon same for his evidence in this suit.

That he is aware that the Claimant is not in possession of to 2 plots of land which the Defendants purportedly claimed to have sold to the Claimant in June 2021 till date, because of some group of young men whom the Claimant informed him that stopped the Claimant and his workers from developing his land.

That he remembered that the Claimant called him sometime late 2021 and told him of his challenges that he currently faced on his land by some group of young men, who turned hostile to the Claimant while trying to develop his land.

That he knows that the 3rd Defendant have disappeared in to the thin air and his cellphone number no longer available each time it is been called ever since he got wind of this problem on the land

That he know to Claimant incurred cost because to Claimant informed him that materials which he has purchased and conveyed to site intended to be used in fencing his 2 plots of land are



already at to site with his workers, whom he had made advanced payment of their workmanship. That I know that the Defendants promised and gave to Claimant hope of having to matter resolve immediately without delay of any kind and he knows also that to Claimant as a result of to immediate hope of having the matter resolved as promised by to Defendants made to Claimant to leave his materials on the site with intention to commence fencing of the land immediately the matter is resolved to knowledge of the Defendants.

That it came as a shock information to him, when the Claimant informed him that he visited his land to know the state of his materials and that he discovered that none of the materials were there, except the sharp sand and 3/8 sand which have been partly affected by to activities of unknown persons as a result of the Defendants delay or failure to have to matter resolve amicably or to have to Claimant relocated as they often promised him.

In conclusion, the CW2 states that he knows that the Claimant has suffered losses, damages and have incurred cost in matter of failed transaction and to prosecute this suit against to Defendants.

The CW2 identifies the deed of conveyance and the survey plan and in the absence of any objection, same were tendered in evidence and marked as **Exhibit N**.

During the cross-examination of the CW2 on same date, he stated that when he introduced the Claimant to the land transaction, he did not meet the 2nd defendant because he is not always in the office and that the 2nd defendant was not present during the sale of the land transaction. That he cannot go to the MD, to give him a resolution to sell the land when he is seeing that the MD, who is the son and his father are both signatories to the account.

That the 2nd defendant is the signatory of the 1st defendant also her CEO.

That he does not have document from the CAC to prove these but he has document embodying these in the office.

That the 2nd defendant was not part of the execution of Exhibit N, but his son, the MD was part of it.

That on their 2nd visit to the 2nd defendant's house, they met the 2nd defendant and he promised to resolve the issues and proffer solutions. That he promised to relocate the defendant to another land That the 2nd def's wife was present when he made this promise.

That the 2nd defendant is liable to the claims of the Claimant because he does the signing and he is part of the company.

That he is a family friend of the defendants and for over 20years. That the 3rd defendant is the biological son of the 2nd defendant.

That he does not have the CAC document showing the relationship of the 2nd defendant to the 1st defendant but he has seen the CAC document.

On to 16th October, 2024, to DW1, who is also to defendant on record commenced his evidence and stated that he is adopting his written statement on oath as his evidence before the Court and same is adopted in Evidence wherein he states that during a period between a part of the year 2022 and before this suit, that the Claimant was brought to him by the CW2

That, in to above circumstance, the Claimant reported to him that our son - Silas Sunday Unyene Junior, had sold 2 plot land at City View Layout, Oba Omarka, IPO, to him for N700,000.00 only at N350,000.00 only per plot, under to name of City Prime Properties Limited but some group of people claiming to be its owners, denied the Claimant's possession of the land, and that I should give him his land.

That he replied that he did not know about such transaction, and he was not part of such transaction, That he was not part of any resolution of any company authorizing their son to sell to land to the defendant.



had not seen the 3rd defendant, that the Claimant, should go and look for him

That at the 2nd time, only the Claimant came back to their home and repeated his demand for his 2 plot land in the absence of his spouse and he repeated and maintained did not know about such transaction, and he was not part of such transaction, That he was not part of any resolution of any company authorizing their son to sell to land to the defendant and that the Claimant further retorted that he would not allow his land to go like that, he had bought to 2 plot land and me and my spouse would give him his land and he is a trouble maker, and has a lawyer as a spouse and the Claimant angrily left.

That he has not seen the 3rd defendant and not heard from him.

That another time, the claimant in company with his lawyer came back to

Their home in the absence of his spouse, His lawyer asked him to collect a document from him and keep it for his spouse but he refused to collect it because he did not know its nature, and he asked the Claimant to wait for the 3rd defendant to return home and if he confirms the transaction, he will give the Claimant, one plot of land at another location, at IPO in place of his 2 plots of land, although he has some outstanding balance on the land. That the Claimant angrily rejected his conditional offer.

That he is not the owner or the CEO of the 1st defendant and was not part of any resolution of the company authorizing the sale of the land to the Claimant. That he is not aware of any expenses on the land. That he is neither jointly or severally liable to any claim of the Claimant against him

During to Cross-examination of the 1st defendant, the DW1 on the 21st October, 2024, he stated that he does not have such Company called City Prime Properties Limited, the 1st defendant and that he does not know anything about the 1st defendant. That the 3rd defendant is his biological son. That he has never participated in the decision of the 1st defendant. That he does not know the relationship of the 1st defendant to the 3rd Defendant. That he is not a signatory to the account of the 1st defendant and he does not know anything about it.

That the 3rd defendant is not living with him and he does not know his where about. That he saw the 3rd defendant last around 2022.

That when the Claimant visited him, he never promised to speak with the natives and to reach out for peaceful settlement, so that he can reclaim the land, That he only told the Claimant to wait for the 3rd defendant to return home and if the 3rd defendant confirms the transaction, he will give the Claimant, one plot of land at another location, at IPO in place of his 2 plots of land, although he has some outstanding balance on the land. That on the receipt of the letter, he never asked for time to speak with the natives and to settle amicably with the defendant. That he was invited by the police and he told the police what happened and they never called him again. That he has operation and that is not telling the Court lies.

That he is not aware that there are other pending cases in police in respect of the same land with his son.

That he is not aware that the Claimant have incurred cost because he did not have any transaction with the Claimant. That he is not aware of any company resolution to sell the land to the Claimant.

On the 23rd of October, 2024, the DW2, the spouse of the 3rd defendant stated in evidence in chief and adopts his evidence in Chief wherein she states that during a part of 2022 and before

In his suit, that her husband, the 2nd defendant informed her, that the claimant and CW2 had been to their home, and the claimant informed them that he had bought 2 plot land for N700,000.00 only at N350,000.00 only per plot at City View Layout, Ohia Omarika, IPO, Ikerre Local Government Area, from our son - the 3rd defendant, using the name of the 1st defendant but some group of persons, claiming to be its owners, denied him possession of the land.

That he replied to the claimant to go and look for to 3rd defendant because he was not aware of that transaction, he was not part of the sale of land transaction, he was not part of any resolution of any company authorizing to 3rd defendant to sell to land to the claimant, and so had not seen to 3rd defendant

That to claimant retorted that he had paid to N700,000.00 for to 2 plot land into to 1st defendant's account, therefore, he should give him his land. That the 2nd defendant asked the Claimant for the 3rd defendant to return from wherever, he has run to and for him to ask him about to transaction and if he confirms it, he would give to the claimant his one plot land at a different location at IPO in place of his 2 plot land, though he has some outstanding balance to pay for the land. That the Claimant angrily rejected his conditional offer.

That the 2nd defendant retorted that since the claimant rejected his conditional offer of one plot of his land, of which price was over N1,000,000.00 only per plot, he should stop disturbing him and wait for to 3rd defendant. That the Claimant's lawyer gave him a document, which is now exhibit "K" in this suit and Claimant and his lawyer left.

On application and in the absence of any objection, the letter from Ponyx Hospital was admitted in evidence as Exhibit O

At the close of the evidence of DW2, the Claimant was not present in Court and in line with Article 9 of the Practice Direction of the small claims Court, they were foreclosed from cross-examining the DW2 and the matter was adjourned for final address.

On the next date adjourned for judgement, the Claimants came to Court and made two application. The first application is for a motion ex parte dated and filed on the 25th of October, 2024 for the order of Court mandating the United Bank Of Africa Plc to produce CTC as to the account as to the name of the directors of the 1st defendant who are signatories of the 1st defendant as to the transaction and to enable the Claimant to cross-examine the DW2 in the interest of Justice and an Order mandating the UBA to give to the applicants all other document used to open the 1st defendants account details including copies of CAC document

In her ruling, the Court held that parties have joined issues and have closed their case and there is no application from the Claimants counsel to reopen their case and so it is not possible at this time to grant the motion Ex parte before the Court as parties have closed their case and the matter is for adoption of final address.

At this point, the Claimant applies that the order foreclosing him from cross-examining the DW2 should be rescinded and that the Claimant should be allowed to cross-examine the CW2.

In granting this application, the Court noted that this is the 50th day since filing as against the 60 days stipulated to conclude hearing under the Small Claims Court Practice Direction. However in granting the application, cost of 15,000 Naira was awarded against the Claimant, to cater for the transportation of the DW2 back to the Court for cross-examination and the matter was adjourned to the 30th October, 2024 for cross-examination of CW2

On the 30th day of October, 2024, the DW2 was cross examined in chief and stated that it is correct that himself and the 2nd defendant have some plots of land at IPO.

That she is not aware that the Claimant was denied access to the land at POS. That it is true that the Claimant approached him and complained about the transaction with her son. That after several weeks, they offered the Claimant one plot and he refused the said one plot. That she does not know where her son is. That she saw him last, two years or more ago. That he has communicated with his son for 2 years and more and they are also aware, he was born March 27, 1993.

Yes that she has a home at NO 7 Living Gospel Mission, Borokiri, Port Harcourt. That her name is Mrs. Evelyn Silas Unyene and 08138094660 is her phone number. The Claimant counsel applies to show the PW1, the CAC document.

The Claimant applies to tender the CAC document as an ID before the court and in the absence of any objection, same was tendered in evidence as an ID.

The DW2 testifies that his name and ID is on the directors column and it is the same contact address.

In conclusion, the DW2 testifies that they have nothing to do with the transaction and the matter was adjourned for final addresses on the 4th of November, 2024.

On the 4th November, 2024, the Claimant informs the Court that the document marked ID 1 have now been certified and the DW2 having identify it earlier, he applies to tender said document from the bar.

The 2nd defendant counsel objects on the ground that the document is not relevant to this case because the Claimants case is that the 2nd defendant is the owner or CEO of the 1st defendant and the document sought to be tendered does not prove that point and that secondly, the Claimant did not serve the 1st defendant in this suit and that service is fundamental and that the Court should decline jurisdiction and strike out the suit.

In her ruling the Court held that the certified copy of the CAC document is not only relevant but is fundamental in the Claimant prove of his claim before the Court because it seeks to establish a link between the 1st defendant and the 2nd defendant whom the document sought to be tendered portrays as a director of the company.

On the second objection, the Court held that the rules of this Court allow that a process meant for an incorporated trustee can be served personally on her partner and the managing director and the 2nd defendant being the director of the 1st defendant according to the document sought to be tendered having been served with the process, the 1st defendant is deemed to have been properly served.

The said CAC document was admitted in evidence as Exhibit P

Furthermore, the 2nd defendant and the Claimant's counsel adopted their respective final addresses before the Court and the matter was adjourned for Judgment.

That said, I will proceed to consider to case of the parties in to light of the relevant laws. I have noted to essence of the claim and the defence and have also taken cognizance of the evidence of the claimant and to defendant and their witnesses before to court.

In their written address before the Court, the 2nd defendant have submitted that the Claimant have failed to prove the following assertions. That the 2nd defendant is the CEO and owner of the 1st defendant and that the 2nd defendant promised to give him the land or relocate him to another land. The Claimant submits that there is no privity of contract between the Claimant and the 2nd defendant and that the 2nd defendant is not vicariously liable as there is also no evidence of master and servant relationship between the Claimant and the defendant.

On the other hand, the Claimant in their final address submits that there is contract between the Claimant and the defendants and that the 2nd and 3rd defendant were acting in accordance with the provisions of CAMA 2000 are officers of the 1st defendant and her Alter Ego and so are estopped from denying liability.

ISSUE FOR DETERMINATION:

Whether The Claimant Has Proved His Case To entitle him To The Following orders:

- A. An order directing the defendants to refund the Claimant, the sum of N700, 000 which is the price.
- B. An order directing the defendants to refund the Claimant, the sum of N2,804,500 for general damages
- C. An order directing the defendants to pay the Claimant, the sum of N1,095,500.00 as cost

It is important to note that the Claimants via the CW1 and CW2 have asserted that the 2nd defendant is liable in this case because he is the CEO to the 1st defendant and also a signatory to the 1st defendant's account. The CW1 and the CW2 as a witness, asserted that they do not have in their possession, the Corporate Affairs Commission documents, evidencing that the 2nd defendant is the CEO of the 1st defendant, but that they both sighted the said CAC document. However, during the evidence of the DW2 the Exhibit P, the CAC form CAC 1.1 which showed that the 2nd and 3rd defendants and DW2 are directors of the 1st defendant was tendered.

It is trite and in accordance with the Evidence Act, that the existence or non existence of a document can only be proven by the production of the said document in evidence.

The 2nd defendant's counsel have submitted that the Claimant could not prove that the 2nd defendant is the owner and CEO of the 1st defendant. However, it is the stance of the Court is that the Claimant have proven a more important fact by Exhibit P, that the 2nd defendant and the 3rd defendants are directors of the 1st defendant and the prove of that fact as in Exhibit P before the Court is enough to find the 2nd defendant and the 3rd defendant liable to the Claim as the principal officers of the 1st defendant.

The Claimant tendered a CTC document, CAC 1.1, a glance at the said Exhibit P clearly shows that the 2nd and 3rd defendants and the DW2 are directors and the Alter ego of the 1st defendant.

Exhibit N is the deed of conveyance executed by the 1st defendant. Exhibit L before the Court is a receipt for the purchase sum on the letter head of the 1st defendant and Exhibit M shows the transfer of N700,000 to the 1st defendant's account.

It is thus, the conclusion of this Court, that on the strength of Exhibits, L and M, N and O, that the Claimant have successfully proven before this Court that the 2nd and 3rd defendant are directors of the 1st defendant and jointly and severally liable with the 1st defendant to the claim before the Court.

Furthermore, it is also important to note that the 3rd defendant never appeared in this matter to defend the claim against him despite being served with the processes of this Court. Before the court adjourned the matter for hearing and heard the matter, the court always satisfied itself that:

1. The processes have been duly served on all the defendants
2. That the time before the date of service and the date of hearing was sufficient for the 3rd defendant to have appeared had they intended to do so.

It suffices to note at this point that none of the facts stated by the Claimant's witness was controverted in evidence or denied by the 3rd defendant and so will be deemed by this court as admitted. The law is that facts admitted need not be proved by evidence. Please refer to the case of Ayoko V. Bello (1992)10 NWLR (Pt 218) pg 360 Ratio 2: O.A.A Cooperative Society Vs. NACP Ltd (1999) 2NWLR (Pt 590) Pg 234, Ratio 4 to the effect that what is not denied is deemed admitted and what is admitted need not be proved.

On the undisputed and clear evidence before the court, the court will hold that the Claimant has discharged the burden of proving that he is entitled to his claim before the Court as against the 1st and 3rd defendant only

On To Claim For General Damages

It is certainly undisputed from evidence before the Court that the Claimant's claim for general damages arose directly from the conduct of the defendants who sold land to the Claimant and made him incur expenses on to land and cannot peaceably enjoy same. These expenses and other inconveniences can be gleaned from the Exhibits D-H before the Court. The Claimant testifying as CW1 had stated in his evidence on oath and had itemized all the inconveniences and hardships, he suffered which were not denied by the defendants in evidence.

The correct assessment for general damages remains an award that compensates the injured party and restores it to the position it would have been had to breach or injury not occurred.

As a result, the assessment of damages is based purely on damages flowing naturally from a breach. See *Stepin Okongwu V NNPC* (1989) 4 NWLR (Pt 115) 296 @ 306h-307a; *GFK Investment Ltd V Nigeria Telecommunications Plc* (2009) 15 NWLR (Pt 1164) 344; @ 384D-E.

On to undisputed and clear evidence before the court, the court will hold that the claimant has discharged to burden of proving that he is entitled to his claim for general damages before the Court. Consequently, the Court orders the defendants to pay to the Claimant, the sum of N2,000,000 (Two Million Naira) as general damages.

On To Claim For Cost Of Litigation

On the cost of litigation, the Appellate Courts have reiterated times without number, that cost of litigation is in the class of special damages that must be strictly proven. Please refer to the case of *Lonestar Drilling Nig. Ltd v. New Genesis Executive Security Ltd* [2011] LPELR - 4437 CA; *International Offshore Construction Ltd & 3 Ors. v Shoreline Lifeboats Nig. Ltd* [2003] 16 NWLR [Pt. 845] p. 157

To Claimant in this case have testified that he agreed with his lawyers the sum of N500,000 to which he has made a part payment of N350,000 and to show proof of the payment of N350,000, the Claimant tendered Exhibit A, B and C respectively. It is the stance of this court that the claim for cost of litigation being in a class of special damages, the balance sum of N150,000 is unproven. So judgment to the sum of the proven N350,000 only will be entered for the defendant as cost of litigation.

IT IS THUS ADJUDGED that the 1st and 3rd defendants to pay to the Claimant, N700, 000 (Seven Hundred Thousand Naira) only as to refund for the original purchase price of the land.

AND, IT IS ALSO ADJUDGED that the defendants to pay to Claimant, to sum of N2, 000,000 (Two Million Naira) as to general damages

AND IT IS ALSO ADJUDGED that the defendant to pay to the Claimant, to sum of N350 (Three Hundred and Fifty Thousand Naira) as cost of litigation.

AND IT IS ORDERED that the defendants to pay to Claimants, the cumulative sum of N3,050,000 (Three Million, and Fifty Thousand Naira) Only

- a) The sum of N700,000 (Seven Hundred Thousand) Naira which represents refund of original purchase price of the land
- b) The sum of N2,000,000 (Two Million Naira) as to general damages
- c) To sum of N350,000 (Three Hundred and Fifty Thousand Naira) for cost of litigation

AND IT IS FURTHER ORDERED that the defendants do pay to the Registrar of this court, to total sum of N3,050,000 (Three Million and Fifty Thousand Naira) above mentioned with immediate effect.

TAKE NOTICE -That if payment is not made as above ordered, a warrant or warrants may issue requiring an officer of to court to levy to sum above mentioned, to the claimant together with further costs.



G.CHINYERE AMADI ESQ.
CHIEF MAGISTRATE G.D.I

