

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT MAITAMA COURT 4, FCT., ABUJA

BEFORE HIS LORDSHIP: HON. JUSTICE O. O. GOODLUCK

SUIT NO. FCT/HC/CV/2939/2012

B E T W E E N:

INTERLAND RESOURCES NIG. LTD.
(Suing by the Attorney: KOCHI NIG. LTD.)

PLAINTIFF

AND

- 1. THE HON. MINISTER
OF THE FEDERAL CAPITAL TERRITORY**
- 2. FEDERAL CAPITAL DEV. AUTHORITY**
- 3. AJAMA VENTURES NIG. LTD.**

DEFENDANTS

J U D G M E N T

The Plaintiff is a holder of a Certificate of Occupancy in respect of Plot 803 located in the Cadastral Zone B03 within Wuye District FCT, Abuja (hereinafter referred to as Plot 803). Sometimes in 2006 it erected a perimeter fence and moulded ten thousand 9 inch Blocks on the plot, tippers of sand were also purchased by the Plaintiff for filling up portions of the plot. Plaintiff in furtherance of its obligations to the 1st and 2nd Defendants paid the processing fees for the issuance of a Certificate of Occupancy, ground rents e.t.c.

At an unspecified time, the 1st and 2nd Defendants officers entered into the Plaintiff's plot and started to re-measure it by creating and establishing new demarcation beacons. The Defendants officers indicated that they will return back to the Plot 803 to carry out "cement work". Besides, they said that they would mark new beacon numbers on the plot. Disturbed by the conduct of the 1st and 2nd Defendants, the Plaintiff reported to AGIS where he was told that a Committee on Forgery and Falsification of Land titles had been set by the 2nd Defendant. Following investigations Plaintiff learnt that the plot was reallocated to another person, later, he realized that in the Nation Newspaper publication of Thursday 14th November 2010, Plaintiff's plot was listed amongst the 26 plots which had been branded as "forged and fake" by the 1st and 2nd Defendants.

Plaintiff contends that the rebranding exercise carried out by the 1st and 2nd Defendants was with the objective of re allocating its plot to Ajama Ventures Nigeria Limited, the 3rd Defendant who was later joined as a party in this suit by order of this Court.

Aggrieved by the conduct of the 1st and 2nd Defendants, the Plaintiff has now instituted this suit wherein it is praying inter alia for a declaration that it is the beneficial holder of a subsisting Certificate of Occupancy in respect of his Plot 803, Wuye District, FCT Abuja as well as a declaration that the 1st, 2nd and 3rd Defendants are in trespass on Plot 802.

The Defendants vehemently objected to the Plaintiff's claim over the land and respectively filed their defence in opposition to the Plaintiff's claim.

In all, the last set of operational pleadings in this suit are the Plaintiff's Further Amended Statement of Claim dated the 10th February, 18th November, 2010. The Amended Statement of Defence of the 1st and 2nd Defendants dated 13th June, 2016 and the 3rd Defendant's Statement of Defence and Counterclaim dated 12th March, 2015 and Reply to the Defendant's Defence and Counterclaim dated 3rd March, 2015.

At trial, each party called a witness each, all the three witnesses tendered documents which were admitted as Exhibits and were respectively cross examined. Upon the conclusion of trial all the Counsel respectively filed and exchanged final written addresses.

Learned Counsel for the 1st and 2nd Defendants, Chukwuka J. Oliobi Esq. In his Final Written Address dated 3rd May, 2018 formulated three issues for determination, they are;

1. Whether land can be allocated to any person in the Federal Capital Territory without the due approval and authorization of the 1st and 2nd Defendants.

2. Whether the Certificate of Occupancy mistakenly issued by the 1st Defendant is valid in view of the fact that the Right of Occupancy relied on the Plaintiff is forged.
3. Whether the Plaintiff has proved her case to entitle it to the reliefs claimed.

Idris B. Ahmed Esq. the 3rd Defendant's Counsel in his final written address dated the 31st May, 2018 formulated 4 issues for determination they are;

1. Whether from the totality of the Plaintiff's pleadings and evidence led (both oral and documentary) the Plaintiff has proved her case to entitle her to the reliefs claimed.
2. Whether between the Plaintiff and the 3rd Defendant, who has a better title to the plot in the light of Exhibit D.W.2E5 on the land and Exhibit D.W.1D and P.W.1G on the other.
3. Whether signing a witness statement on oath in a solicitor's office is fatal in the interest of substantial justice.
4. Whether the 3rd Defendant/Counterclaim has proved her counterclaim to be entitled to the reliefs claimed therein.

The Plaintiff's Counsel, Ademola Adewoye Esq., identified three issues for determination, they are;

1. Whether or not from the totality of evidence before the Court, the Plaintiff has discharged the onus of proof placed upon him by law on the preponderance of evidence led on rented to warrant a grant of the relief sought in this suit.
2. Whether the evidence of the 1st and 2nd Defendants can be relied upon to justify their purported cancellation of Certificate of Occupancy initially issued to the Plaintiff.
3. Whether or not the 3rd Defendant is entitled to the parcel of land in contention.

From the onset, I must state here that parties are consensual on the fact that the Plaintiff was issued with a Certificate of Occupancy, Exhibit P.W.1D by the Minister of the FCT e.t.c., the 1st Defendant vide Exhibit P.W.1D issued in the Claimant's favour is dated the 19th December, 2004. The bone of contention of the Defendants are that the document was forged and accordingly invalid.

I therefore find it expedient to consider the submissions of the Plaintiff on issue two first, that is, whether the cancellation of the Certificate of Occupancy of Plaintiff, Exhibit P.W.1D is justified having regard to the evidence of the 1st and 2nd Defendants.

Counsel for the Plaintiff, A. Adewoye Esq. has submitted that Plaintiff's Right of Occupancy cannot be revoked nor can Plaintiff be

dispossessed of its title to Plot 803 under the guise of mistake forgery or by the issuance of a purported “closure of file” letter. A. Adewoye Esq. submitted that the formal closure of the Plaintiff’s file vide Exhibit P.W.1A and letter of Notification of the 1st and 2nd Defendant indicating that the issuance of the Plaintiff’s allocation was a mistake Exhibit P.W.1A is an afterthought.

Plaintiff’s Counsel reasons that the purpose of both letters Exhibit P.W.1A and P.W.1A¹⁻³ cannot defeat the validity of the Plaintiff’s Certificate of Occupancy.

Learned Counsel for the Plaintiff has rightly submitted that both Exhibit P.W.1A¹⁻³, titled: Closure of file Misc 50118” and Exhibit D.W.1A were written respectively on the 15th June, 2012 and April 2015. Relying on Section 83(3) of the Evidence Act, both documents are inadmissible in evidence having regard to Section 83(3) of the Evidence Act of 2011 provides thus:

“Nothing in this section shall render admissible any statement made by a persons interested at a time when proceedings were pending or anticipated involving a dispute as to any fact which the statement might tend to establish”

Adewoye Esq. argued that the 1st and 2nd Defendants who are the makers of both Exhibits are interested persons in this suit whose objective

was to cover up their acts in anticipation of this suit. Going by the records of this Court, this action was commenced on the 2nd April, 2012 which is the date when the writ of summons initiating this suit was issued. I am not left in doubt that both documents are contemplated by Section 83(4) of the Evidence Act hence they ought not to have been admitted in evidence in the first place by this Court. It is no longer unsettled that documents which are inadmissible in law that are wrongly admitted in evidence can be rendered inadmissible by the same Court that wrongly admitted it in evidence. In line with this hallowed principle Exhibit D.W.1A and P.W.1A3 are hereby rejected on account of their inadmissibility. All evidence in this regard are accordingly expunged.

The 1st and 2nd Defendant's testimony is to the effect that the Plaintiff's Certificate of Occupancy, Exhibit P.W.1D was forged or was fake. In paragraph 11(ii) (iv) of the 2nd and 3rd Defendants' Witness Statement on Oath, dated 24th October, 2017, D.W.1 asserted that the Ministerial Committee on Forgery/Falsification of land titles in the FCT discovered that the Plaintiff's ground rent bills were issued to the Plaintiff in error as the Plaintiff's Certificate of Occupancy is not genuine and has no proprietary value. D.W.1 further asserted in his written statement that the Committee's investigation concluded that the Plaintiff's Certificate, Exhibit P.W.1D was fake as there was no Ministerial Approval for its issuance. It is also asserted by D.W.1 that the Certificate of Occupancy

issued by the 1st Defendant was under the mistaken belief that Plaintiff's legal interest was genuine and that the subsequent issuance of Plaintiff's Certificate of Occupancy was issued by mistake of fact induced by the forgery and faking of land documents over the said plot.

Learned Counsel for the Plaintiff in urging this Court to discountenance the evidence of the 1st and 2nd Defendants on the allegation of forgery noted that a member of the alleged Ministerial Committee on Forgery/Falsification of land documents was not in attendance in Court to testify on the investigations and findings of the alleged Committee. The Report of the Committee was also not tendered in evidence neither is there evidence before the Court that the Plaintiff was ever called to testify before the Panel.

I am inclined to hold that the testimony of D.W.1 is hearsay in so far as he did not disclose that he was a member of the Committee. His evidence lends itself as one which was related to him by another person. The allegation of falsification of document or the allegation that a document is fake has all the trespass of a criminal offence. This being the case, the onus is on the party who is alleging a criminal offence to prove it beyond reasonable doubt notwithstanding the allegation is in a civil suit. It is also trite that the contents of a document is proved by the presentation of the document itself, a copy of the Committee's report

ought to have been tendered in evidence by a member of the committee. I am thus inclined to allude to the submission of A. Adewoye Esq. That the principle of fair hearing was breached by the 1st and 2nd Defendants. Besides, Defendants contend that the title document was forged because it did not have a Ministerial approval. No evidence was led by the Defendant on the legal implications of a document not having a Ministerial Approval neither did the 1st Defendant appear in Court to deny that he didn't approve the issuance of the Certificate of Occupancy. 1st Defendant's testimony is imperative minded that it is the same person who is alleged to not have given approval that he executed Exhibit P.W.1D.

Learned Counsel for the Plaintiff has also submitted that the Revocation of a Statutory Right of Occupancy is not at the whims and caprice of the 1st and 2nd Defendants, for a revocation to be valid must be issued in strict compliance with the Land Use Act and the 1999 Constitution of the Federal Republic of Nigeria. He posits that there was no valid revocation known to law.

Adewoye Esq. then commended this Court to the decision in **OBIKOYA & SONS LTD. V. THE GOVERNOR OF LAGOS STATE & ANOR. (1987) 1 N.W.L.R. (PART 50) page 385** where the Court held thus:

“Where the enabling statute has given a power categorized condition and obliges it, expressly or impliedly to give notice that it was acting under the statute, the notice, must specify which of the categorized reasons it proposes it act.

It does not matter that the enabling statute does not expressly state that specific ground of the Act must be stated...under the Land Use Act, the reason for revoking a person’s right of occupancy must be stated in the Notice of Revocation notwithstanding that the Act does not expressly state that the specific ground must be stated in the notice”

In fortifying his submission that a holder of a Statutory Right of Occupancy cannot be deprived of his proprietary interest in land except by strict compliance with the provisions of the Land Use Act, Counsel rightly commended this Court to the illuminating remarks of Belgore JSC in the case of **NIG. ENGINEERING WORKS LTD. V. DENAP LTD. (2002) F.W.L.R. page 1062 at 1093 paras. D – F**, his Lordship held:

“Any holder of a right of occupancy, whether evidenced or yet to be evidenced by a certificate of occupancy, holds that right as long as not revoked. Revocation in this instance is that one done in accordance with the law. For nobody will lose his right of occupancy by revocation without his being notified to him in writing. Any other method may be a

mere declaration of intent, it will never be a notice of revocation, it is a nullity”

Applying the foregoing reasoning to the facts and circumstance of this case i am of the view and will so hold that the Plaintiff’s statutory right of occupancy was vested in it vide its Certificate of Occupancy, Exhibit P.W.1D and it remains unfettered by whatever acts perpetrated by the 1st and 2nd Defendant. Plaintiff’s right of occupancy accordingly subsists as a valid legal interest recognised by the Land Use Act. Plaintiff’s issue two is also answered in the negative, I hold that the 1st and 2nd Defendants have palpably failed to justify the cancellation of Exhibit P.W.1D.

I now turn to the 3rd Defendant’s second issue for determination that is between the Plaintiff and the 3rd Defendant who has established a better legal interest having regard to Exhibit D.W.2E5 and Exhibit P.W.1D and P.W.1G.

In arguing issue two, the 3rd Defendant’s Counsel has submitted that the production of a title document does not automatically vest interest in the party producing it. He then commended this Court to the case of **SONGO v. AKURE (2015) 1 N.W.L.R. (PART 1441 CA at 535** where the Court of Appeal cited the decision in **OLANIYAN v. FATOKI (2013) 17 N.W.L.R. (PART 1384) page 477 at 564 paras. A – D** where it was held that:

“A party’s production and reliance on such an instrument inevitably carries with it the necessity for the Court to inquire whether the document is genuine and valid”

Still with the same objective, Idris B. Ahmed Esq. Counsel for the 3rd Defendant relied on the case of **ASHIEK v. BORNU STATE GOVERNMENT (2012) 9 N.W.L.R. (PART 1)** where it was held that mere production of a Certificate of Occupancy does not automatically entitle a party to a claim for declaration.

Drawing lessons from this decision, the 3rd Defendant’s Counsel has argued that this Court ought to satisfy itself that the Plaintiff’s document is genuine and valid. He contends that the Plaintiff has failed to persuade the Court in this respect. I am however unable to endorse the submissions of the learned 3rd Defendant’s Counsel. Suffice to say that a presumption of regularity of the Certificate of Occupancy, Exhibit P.W.1D lies in favour of the Plaintiff. See Section 146 of the Evidence Act. The 2nd and 3rd Defendants have failed to impugn the genuineness of Exhibit P.W.1D, indeed, their reliance on Exhibit P.W.1A¹⁻² and Exhibit D.W.1B¹⁻² purporting that the Certificate of Occupancy was issued under a mistake or that the file has been closed has been rejected by this Court. The assertion of the 1st and 2nd Defendants that Plaintiff’s Certificate of Occupancy is fake or not genuine is also unreliable and incredible. This

Court reiterates its finding on the Plaintiff's second issue for determination which is to the effect that the 1st and 2nd Defendants have not proved the allegation forgery or that the certificate is fake, accordingly Plaintiff's Certificate of Occupancy remains of valid and subsisting document, the presumption of regularity not having been rebutted.

I have carefully examined Exhibit D.W.2E5, titled: "Offer of Terms of Grant/Conveyance of Approval dated 20th May, 2003 which bears "M/S Ajama Ventures Nig. Ltd." At the bottom of the document. By any stretch of imagination, Exhibit D.W.2E5 cannot be placed on the same pedestal as Plaintiff's Certificate of Occupancy. It is a letter of offer of Plot 803 which by virtue of Clause 4 therein, the 3rd Defendant is expected to signify his acceptance of the 1st Defendant's offer of conveyance of Plot 803 subject to the terms noted in the letter. It conveys no legal or proprietary interest whatsoever, consequently the 3rd Defendant cannot ascribe any legal right of ownership of Plot 803 on account of Exhibit D.W.2E5.

Exhibit P.W.1G is also a letter of offer addressed to the Plaintiff. It creates no legal right other than to evidence that Plot 803 was offered to the Plaintiff by the 1st and 2nd Defendants.

In all, I hold that the Plaintiff has established a superior interest in Plot 803 having presented this Court with his Certificate of Occupancy Exhibit P.W.1D which was not impugned by the Defendants.

In the light of my consideration of the evidence before this Court I hold that the Plaintiff has a better title to Plot 803 which is the plot which is the subject matter of this suit.

On the 3rd Defendant's issue three, that is, whether signing a witness statement on oath in a solicitor's office is fatal to the 3rd Defendant's case. I must say here that I have read the decision in **BUHARI v. INEC (2008) 19 N.W.L.R. (PART 1120) page 246, UDEAGHA v. OMERAGA (2010) 11 N.W.L.R. (PART 1204)** where it was held that *"A written statement on oath has to be sworn before a Commissioner of Oaths, Justice or peace or any person authorized by law. It is not unusual in practice for a deponent to a written statement on oath to sign same before his Counsel. That is not proper but then failure to depose to a written statement on oath before a Commissioner for Oath does not render the deposition invalid once the deponent adopts same at trial"*

This being the case I am of the view that the irregularity does not fetter the admissibility of the evidence contained in the written statement, the moment the witness takes the oath whilst in the witness box and

applies to the Court that the facts disclosed in the written statement be adopted as his examination in chief. This Court's answer to the 3rd Defendant's issue three is accordingly answered in the affirmative. Failure to depose to the unwritten statement before a Commissioner for Oath does not render the statement invalid where the witness subsequently swears at trial before his application for the adoption of his statement as his testimony is sought in open Court.

That said, I now turn to 1st and 2nd Defendants' issue one that is, whether land can be allocated to any person in the Federal Capital Territory without the due approval and authorization of the 1st and 2nd Defendants. I must say here that I do not consider this issue raised by 1st and 2nd Defendants' Counsel of any use to this Judgment. Having held that the 1st and 2nd Defendants have failed to establish that the Certificate of Occupancy, Exhibit P.W.1D was not issued by 1st Defendant or that it was fake or not genuine, this issue stand as an academic discourse. Answering it one way or the other is of no use to the resolution of the real issue in determination in this suit. I reiterate that the 1st and 2nd Defendant palpably failed in impugning the validity of Exhibit P.W.1D.

Issue 'b' or issue two canvassed by C. I. Oliobi Esq., Counsel for the 1st and 2nd Defendant to my mind is subsumed in Plaintiff's second issue for determination this is because the 1st and 2nd Defendants in

furtherance of their assertion that Plaintiff's Certificate was issued under a mistaken belief contends that documents submitted by the Plaintiff were forged. As already noted in this Judgment, an allegation that a document is forged and fake because it lacks the Ministerial Approval must be proved beyond reasonable doubt as it connotes a criminal offence.

The onus lies of the 1st ad 2nd Defendants to establish how the file number MFCT/LA/94/MISC/1115 was falsified by the Plaintiff. The witness ought to have shown the regular manner files were referenced and that the allegedly falsified file was not in consonance with the 2nd Defendant laid down procedure for filing its records. Besides, the onus lies on the party asserting that there is no Ministerial Approval to elicit credible evidence on the process that the Ministerial Approval takes and establish before this Court particularly through the Minister himself that the approval was not given by him. It is wondered how the 1st Defendant conveyed Exhibit P.w.1D and in the same breath deny its approval.

This Court reiterates that the allegations of forgery having not been proved beyond reasonable doubt against the Plaintiff, the issue of mistake in the acceptance of the ground rents e.t.c. cannot be arise. Again, I hold that the presumption of regularity in the issuance of Exhibit P.W.1D has not been rebutted by the 1st and 2nd Defendants. What was the mistake in

the offer made to 1st Defendant was a plot other than Plot 803 offered to the Plaintiff?

Particulars upon which an allegation by mistake is being predicated have not been pleaded nor elicited in evidence elicited.

I will now take the 1st and 2nd Defendants' issue one for determination as well as the 3rd Defendant's Counsel's first issue for determination. All these three issues for determination turns to whether the Plaintiff has made out a case entitling it to the reliefs sought having regard to the evidence and documents tendered at trial.

The 3rd Defendant has submitted that the documents tendered by the Defendants is superior to that of the Plaintiff more so as the Plaintiff's documents are forged.

Again, this Court will reiterate the fact that the Defendants have failed to establish forgery or that the Plaintiff's Certificate of Occupancy was issued under a mistake.

Plaintiff relied on Exhibit P.W.1D, a Certificate of Occupancy which I have hitherto held is superior to a letter of offer. None of the Defendants have been able to impeach Exhibit P.W.1D having hitherto evaluated the evidence led by parties in this Judgment. Plaintiff in my view and I will so hold has creditably and persuasively proved his title or legal interest in Plot 803. Having tendered Exhibit P.W.1D in proof of ownership, the

onus shifted to the Defendants to show a better title. It is trite that the burden of proof shifts and it will continue to shift until the last side is unable to give further evidence. Section 136(1) of the Evidence Act provides thus:

“The burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person, but the burden may in the course of a case shift from one side to the other. In considering the amount of evidence necessary to shift the burden of proof regard shall be had by the Court the opportunity of knowledge with respect to the fact to be proved which may be possessed by the parties respectively”

Applying the foregoing principle to the instant case, the burden of proof of ownership first lies on the Plaintiff. It discharged the burden when he presented its Certificate of Occupancy, Exhibit P.W.1D, thereafter, the burden shifted to the Defendant who contended that it was fake or forged to prove, beyond reasonable doubt through credible evidence the forgery.

Besides, I consider it noteworthy to state here that the 1st and 2nd Defendants failed to comply with the rules of this Court in asserting fraud

or forgery against the Plaintiff. Order 15 Rule 3(1) of the High Court of the FCT Civil Procedure Rules of 2014 provides thus:

“Order 15(3) in all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, wilful default or undue influence and in all other cases, in which particulars may be necessary, particulars (with date and items if necessary) shall be stated in the pleading”

The 1st and 2nd Defendants failed in this regard, particularly on the investigation allegedly conducted by the Monitoring Committee which alleged forgery. In the case of **OTUKPO v. JOHN & ANOR. (2012) L.P.E.L.R. 25053** SC it was held that:

*“Fraud is defined as an intentional perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him or to surrender a legal right. It is something dishonestly and normally wrong fraud has to be pleaded with particulars and established in evidence. A person alleging fraud is not only required to make the allegation in his pleading but must set out particulars of fact establishing the alleged fraud, so that the Defendants goes into Court prepared to meet them. **OLUFUNMISE v. FALONA (1990) 3 N.W.L.R. (PART 136) page 1; NTUKS v. N.P.A. (2007) 13 N.W.L.R. (PART 1051) page 332** where a person alleging fraud does not specifically plead it, a*

Court cannot of its volition raise it, as a Court is bound to consider only issues raised on the pleadings before it”

Having failed to plead the particulars of fraud the imaginary onus of proof remained static of the side of the Defendant. I am disinclined to endorse the submission of the 3rd Defendant’s Counsel that it is the Plaintiff that will loose if no evidence is led. Having established its title, the burden of proof shifted to the Defendants hence it behoves on the Defendants, to lead credible evidence of forgery failing which Judgment will be given against them.

Learned Counsel for the Plaintiff has rightly submitted that there are five ways of proving title to land and commended this Court to the case of **IDUNDUN v. OKUMAGBA (1976) 9 – 10 SC.** One of the five ways enunciated in the **Idundun case supra**, is the production of title documents which are duly authenticated. Adewoye Esq. has submitted that one of the five ways of proving title will suffice for the Plaintiff to sustain its claim for declaration of title to Plot 803. In the instant case the Plaintiff presented its Certificate of Occupancy issued in its favour in respect of Plot 803.

Plaintiff’s Counsel has rightly submitted that where title to land arises in litigation, the Court is concerned with the relative strength of its case and not on the weakness of the Defendants’ defence. He posits that

a party who can prove a better title succeeds and commended this Court to the decision in **ONAGORUWA v. AKINREMI (2001) 5 M.J.S.C. page 69 at 71.**

In all, I am satisfied that the Plaintiff has successfully proved its case for declaration of title. This Court's answer to issue three formulated by the 1st and 2nd Defendants is answered in the affirmative. I hold that the Plaintiff has proved its case entitling it to the reliefs claimed.

I will now proceed to examine the Plaintiff's reliefs.

Leg 1 succeeds. It is hereby declared that the Plaintiff is the rightful owner and beneficial holder of the Certificate of Occupancy dated 19th December, 2004 in respect of Plot 803, located in Cadastral Zone B03 within Wuye District, FCT, Abuja.

It is hereby declared that the action of the Defendants, their agents or any person acting under them to in creating fresh beacons with intent to reallocate Plot 803 located in Cadastral Zone B03, Wuye District, FCT, Abuja in favour of the 3rd Defendant or any other person constitute trespass and is unlawful.

The Defendants, their agents or officers are hereby ordered to remove forthwith the new demarcation beacons erected on Plot 803, located in the Cadastral Zone B03 Wuye District, FCT Abuja or any part thereof to the 3rd Defendant.

The 1st and 2nd Defendants are hereby ordered to register the Power of Attorney donated in favour of the Plaintiff's Attorney.

General damages in the sum of ₦7.5 Million naira is hereby awarded against the 1st and 2nd Defendants.

**O.O. Goodluck,
Hon. Judge.
4th October, 2019.**

JUDGMENT IN THE COUNTERCLAIM

The 3rd Defendant vide his Statement of Defence dated 12th March, 2015 is counterclaiming and is praying for;

1. A declaration that the 3rd Defendant/Counter Claimant is the bona fide allottee vested with title over Plot 803, Cadastral Zone B03, Wuye District, FCT, Abuja having been granted same by the 1st Defendant/Defendant to counterclaim.
2. A declaration that the purported interest claimed by the Plaintiff/Defendant to counterclaim is fake, forged, null void and does not compete with the 3rd Defendant's counterclaimant's title.
3. An Order of perpetual injunction restraining all the Defendants to the counterclaim their agents or assigns from trespassing into the

defendant/Counterclaimant's plot without its consent
ALTERNATIVELY.

4. An order compelling the 1st Defendant to counterclaim to grant the 3rd Defendant/counterclaimant an alternative plot of equal size with the plot in dispute and same must be located within a lucrative Commercial District.

In reaction, the Plaintiff filed a defence to the counterclaim wherein it stoutly denied the counterclaimant's claim to plot 803 contending that the 1st and 2nd Defendants have no legal interest to convey the Counterclaimant. Plaintiff reiterated that the 3rd counterclaimant was never issued with a valid letter of offer or any valid title.

From the onset it must be noted that this Court reiterates all the pronouncements and evaluation of evidence in the substantive suit for the purposes of this Counterclaim.

It will be recounted that issues were formulated by Counsel in this suit regarding the counterclaim, the counterclaimant raised a lone issue on the counterclaim that is, issue 4 to wit: whether the 3rd Defendant/Counterclaimant has proved her counterclaim to be entitled to the relief claimed therein.

The 1st and 2nd Defendants' Counsel did not address the 3rd Defendant's counterclaim in its three issues for determination which has been exhaustively considered in the substantive Judgment.

The Plaintiff/Defendant to counterclaimant in his written address also raised an issue which borders on the counterclaim that is, issue 3, whether or not the 3rd Defendant is entitled to the parcel of land in contention.

A. A. Ibrahim Esq., Learned Counsel for the 3rd Defendant/Counterclaim has rested the Counterclaimant's interest in Plot 802 on Exhibit D.W.2E5, a document dated 20th May, 2003, titled offer of Terms of Grant/Conveyance of Approval.

Before i proceed to examine the contents of Exhibit D.W.2E5 I am compelled to state here that the counterclaimant has the same onus of proof of establishing title to Plot 803 as the Plaintiff, in so far that the relief being sought is declaratory.

There are a plethora of judicial pronouncements on the ways of proving title. In the celebrated case of **IDUNDUN v. OKUMAGBA supra** . It was held that title to land can be established in any of the following ways.

- a) By traditional evidence

- b) By production of documents of title which are duly authenticated
- c) By various acts of ownership and possession numerous and positive to warrant interference of ownership.
- d) By acts of long possession and enjoyment of land
- e) By proof of possession of adjacent land to the land in dispute in such circumstances which render it probable that the owner of the adjacent land is the owner of the land in dispute.

In the instant case the Counterclaimant presented documents, principally Exhibit D.W.2E5 in proof of his claim to Plot 803. I have carefully examined the document and I am of the view and will so hold that Exhibit D.W.2E5 does not confer any proprietary or valid ownership of Plot 803 in favour of the Counterclaimant.

The document lends itself as a conveyance of an approval of an offer of a Grant of Right of Occupancy in respect of Plot 803 on the terms and conditions noted therein.

It is noteworthy to state that in paragraph 4 of Exhibit D.W.2E5 the counterclaimant is to signify its acceptance of the offer of the grant with two months from the date the letter of offer is issued which date is the 20th May, 2003.

It is noted that by the Counterclaimant's letter of acceptance, Exhibit D.W.2E7, one Dr. Abdullahi of Bendel Street, Area 2 vide a letter dated acceptance of offer of Grant of Occupancy within the Federal Capital Territory indicated his acceptance of the offer in Exhibit D.W.2E5. It is necessary to state that the letter of offer, Exhibit D.W.2E5, purportedly addressed the offer to M/s Ajama Ventures Ltd. At best, the offers and acceptance letters, Exhibit D.W.2E5 and Exhibit D.W.2E7 creates a contractual relationship between the 1st Defendant and the counterclaimant or putting it another way an agreement to convey or sell Plot 803.

The agreement to sell does not put the counterclaimant on the same pedestal as a holder of a Statutory Right of Occupancy under the Land Use Act. In other words, an agreement to sell land does not make the Counterclaimant a holder of Certificate of Occupancy, it conveys no legal interest. Unless and until the 1st Defendant confers his legal right in Plot 803 by the conferment of a Certificate of Occupancy, the legal right in Plot 803 will still reside in the 1st Defendant. Going by the evidence led at trial the Plaintiff/1st Defendant to the counterclaim has validly established his legal interest in Plot 803 vide the presentation of Exhibit P.W.1D, a Certificate of Occupancy dated 19th December 2004 wherein Plot 803 was conveyed to the Plaintiff.

The counterclaimant's Counsel has sought to impugn the Plaintiff's legal right to Plot 803 on grounds of fraud and mistake in the issuance of Exhibit P.W.1D in favour of the Plaintiff. However, it must be emphasised that it has long been settled that the Counterclaimant in the instant cannot rely on the weakness of the 1st Defendant to the Counterclaim. Plaintiff's case in strengthening its case before the Court.

In effect, the counterclaimant has the evidential burden of first establishing his legal interest in Plot 803 in any of the 5 ways enunciated in the **IDUNDUN'S case supra**. This he has palpably failed to do.

Abdulkarim Ibrahim Esq. has also relied on Section 133(2) of the Evidence Act of 2011 which provides thus:

"If the party referred to in sub section 1 of this section adduces evidence which ought reasonably to satisfy the Court that the fact sought to be proved is established, the burden lies on the party against whom Judgment could be given if no more evidence were adduced and so on successively, until all issues in the pleadings have been dealt with"

The Counterclaimant's Counsel went on to submit that with the collective documentary evidence tendered by the counterclaimant, Exhibit D.W.2A1, D.W.2A3, D.W.2B1, D.W.2B2 and D.W.2B3 the counterclaimant has discharged the burden of proof of establishing a better title. There is undoubtedly no merit in Ibrahim Esq's submission

mindful that the totality of the aforestated Exhibits does not translate to a Statutory Right of Occupancy which can only be evidenced by a Certificate of Occupancy as provided in the Land Use Act. This being the case, the Counterclaimant failed to establish a valid and legal interest in Plot 803.

In effect, the counterclaimant cannot hinge on Section 133(2) of the Evidence Act having failed to reasonably satisfy this Court with the fact that it is under an obligation to prove and effective valid title to Plot 803 for Judgment to be given in his favour.

Similarly, Leaned Counsel's reference to Section 133(1) of the Evidence Act is also misplaced, regard being had to the fact that as counterclaimants the burden of first proving title lies on the Counterclaimant. Having failed to discharge the burden of proof of ownership, the imaginary pendulum of proof never shifted to the Plaintiff/Defendant to Counterclaim, accordingly Judgment cannot be given in Counterclaimant's favour in the absence of cogent, credible and plausible proof of title.

In sum, my answer to issue four formulated by the counterclaimant is answered in the negative, I hold that the counterclaimant is disentitled to the reliefs sought.

That takes me to the three issues for determination formulated by the Plaintiff, that is, whether the 3rd Defendant is entitled to the parcel of land in contention.

The Plaintiff's Counsel, A Adewoye Esq., has noted that the counterclaimant's relief is for a declaration of title. He rightly noted that a party seeking for a declaration relief must elicit evidence in proof of his claim notwithstanding an admission of the claim by the adverse party.

He commended this Court to the decision in **DUMÉZ NIG. LTD. v. NWAKHOBA (2009) ALL F.W.L.R. (PART 461) page 842 paras. F – G** per Mohammed JSC.

The mandatory requirement of the Plaintiff to plead and prove his claim for declaratory reliefs on the evidence called by him without relying on the evidence of the Defendant is indeed well settled.

Plaintiff's Counsel further submitted that even where there is a default of pleading by the Defendant to the Counterclaim Plaintiff (in this case the Counterclaimant must lead evidence in proof of its title to land in order to succeed in obtaining a declaratory relief see the case of **WALTER STANER v. MAIR (1974) 3 ALL ER 217 at 251** where Buckley LJ held inter alia:

"It has always been my experience and I believe it to be the practice of long standing that the Court does not make a declaration of right either

by admission or in default of pleading. But only if the Court is satisfied by evidence”

Flowing from the foregoing reasoning the Counterclaimant cannot succeed in its claim to title in the absence of satisfactory proof of ownership of land vide any of the five ways of establishing ownership. Of equal important is the fact that this Court has hitherto held that the Plaintiff is the holder of the Statutory Right of Occupancy of Plot 803 having presented a valid and subsisting Certificate of Occupancy, Exhibit P.W.1D, the 1st Defendant has by Exhibit P.W.1D divested himself of his legal interest in Plot 803 by conferring it to the Plaintiff as far back as in 2004, consequently the 1st Defendant no longer has any interest to convey to the counterclaimant by way of the reliefs sought in this counterclaim. In the case of **ADELAJA v. FANOIKE & ANOR. (1990) L.P.E.L.R. 110 – SP 25 paras. D – F** it was held thus:

“It is settled that a person can only convey to another that which he has nemo dat quod non habet”

The foregoing hallowed principle was re-echoed by Ogunwumiju JCA in **ABAZOWU & ORS. V. SILAS OAEROFOR & ORS (2006) L.P.E.L.R. 41518 CA page 22-24 paras. E – D.**

“Besides, it is settled law that after a party has effectively divested of his interest in land or other res no right normally vests in him to deal

with such land or res any further for “neon dat quod non habet”... no one can give which he does not have”

Flowing from the foregoing reasoning and applying same to this counterclaim, I hereby hold that the Counterclaimant’s claim fails and is accordingly dismissed.

By way of an aside, it is noted that the Counterclaim sought for an alternative relief which for an order to compel the 1st Defendant/Defendant to Counterclaimant to grant the 3rd Defendant/Counterclaimant an alternative plot of equal size with the plot in issue and same must be located within a lucrative commercial district.

A careful examination of the Counterclaimant’s pleadings does not elicited any fact(s) in support of this leg of relief. It is not the Counterclaimant’s case that parties agreed that by the terms and conditions of the offer of Plot 803 in the event that the agreement to sell Plot 803 does not crystallize. The Counterclaimant’s redress as this Court sees it is for the breach of contract, that is, the conveyance of the same Plot 803 to another party is predicated on damages for breach of contract.

However, the Counterclaimant has not sought for damages from the 1st Defendant in his Counterclaim. It is no longer unsettled that the Court cannot give a relief that it is not sought by a party. Tobi JSC of Blessed

memory once held that the Court is not a Father Xmas, here this Court is not a Mother Xmas, consequently, this Court is inhibited from awarding damages in favour of the Counterclaimant as same has not been sought.

**O. O. Goodluck,
Hon. Judge.
4th October, 2019.**

APPEARANCES

Plaintiff is represented by Sir David E. Osunde.

**Ademola Adewoye Esq. with me is Nathaniel Eje Esq.: For the
Plaintiff.**

**C. A. Ogbodo Esq. Holding brief for Chukwuka J. Oliobi Esq. For the
1st and 2nd Defendants.**

**Abdulkarim A. Ibrahim Esq. with me is Sheriff S. Adukke Esq.: For
the 3rd Defendant.**