

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA
BEFORE HIS LORDSHIP, HON. JUSTICE A.A.I BANJOKO – JUDGE**

SUIT NO: FCT/HC/CV/77/07

BETWEEN:

MR. ADEWALE GIDEON.....PLAINTIFF

AND

1. THE HON. MIN. OF THE FEDERAL CAPITAL TERRITORY.....1ST DEFENDANT

2. THE FEDERAL CAPITAL TERRITORY AUTHORITY.....2ND DEFENDANT

3. OYEFUGA BUNMI OLUFUNMILAYO.....3RD DEFENDANT

J.K. EKERIGBA FOR THE PLAINTIFF

CHINYERE UCHEGBUNEM (MRS) FOR THE 1ST AND 2ND DEFENDANTS

TAYO ADEYEMO WITH CYNTHIA IGBOKWE (MISS) FOR THE 3RD DEFENDANT

JUDGMENT

The Plaintiff, initially, commenced his action against the 1st and 2nd Defendants through a Writ of Summons dated the 22nd of November 2007 but upon an Order for Joinder granted to the 3rd Defendant, he re-filed his Writ on the 2nd of March 2010 whereupon he claimed against all the Defendants thus: -

1. A Declaration that having compiled with all the Conditions Precedent, to wit: -

- (I). Being a Pensionable Public Servant in the employment of the Federal Government since 2001;**
- (II). Has been officially allocated Flat 4, Block 146, Phase 2, Site 2, Kubwa, Abuja by the Minister of Foreign Affairs, same having been allocated to the Ministry since 1st December 1999;**
- (III). Has been paying the Rent payable thereon to the Federal Government since then and in Legitimate Possession and Occupation of the said Apartment;**

- (IV). Having also procured and completed the Expression of Interest Form, paid the N10, 000.00 and duly submitted same to the 1st and 2nd Defendants; the Plaintiff is entitled to be given the Offer (the Exclusive Right) of Purchase of the said House/Apartment as directed by the Federal Government.**
- 2. An Order of Specific Performance compelling the 1st and 2nd Defendants to Assign and Execute the Sale of Flat 4, Block 146, Phase 2, Site 2, Kubwa, exclusively with the Plaintiff. (Sic).**
 - 3. An Order setting aside the Purported Allocation and/or Sale of Flat 4, Block 146, Phase 2, Site 2, Kubwa, to the 3rd Defendant for being Illegal and Void.**
 - 4. An Order of Injunction restraining the Defendants either by Themselves, their Servants, Agents, Privies or any Person, Body or Authority or by whatsoever name called or acting through them or under their instruction from interfering with the Plaintiff's Right of Purchase of the Property (particulars as adumbrated above) and Possession thereof.**
 - 5. An Order of Perpetual Injunction restraining the Defendants either by Themselves, their Servants, Agents, Privies or any Person, Body acting through them or under their instruction from interfering with the Plaintiff's Right and Interest on the Property forthwith.**

The 3rd Defendant, in her Amended Statement of Defence, counterclaimed against the Plaintiff seeking the following Reliefs, namely: -

- i. A Declaration that the 3rd Defendant is the Beneficial Owner of the Property known as Block 146, Flat 4, Phase II, Kubwa, FCT, having participated in the Bid Process for it, won the Bid for it, effected full payment in respect thereof, and been given the Keys into the Property.**
- ii. A Declaration that the Plaintiff's purported Interests in Block 146, Flat 4, Phase II, Kubwa, FCT is a violation of the 3rd Defendant's Rights in the Property as Beneficial Owner and therefore Illegal.**

- iii. **An Order directing the Plaintiff to yield up possession of, or evicting the Plaintiff from the Property known as, Block 146, Flat 4, Phase II, Kubwa, FCT, Abuja; whose Possession and/or Occupation he holds Illegally and Unconscionably.**

- iv. **An Order of Perpetual Injunction restraining the Plaintiff either by Himself, Servants, Agents, Privies or through any Person or Persons howsoever from Trespassing or Further Trespassing, Encroaching or Further Encroaching on the 3rd Defendant's Property lying and being at Block 146, Flat 4, Phase II, Kubwa, FCT, Abuja.**

- v. **An Order of Court awarding General Damages of N5, 000,000.00 (Five Million Naira only) to the 3rd Defendant against the Plaintiff for wilful and/or flagrant Trespass/Illegal Occupation and/or Possession of the 3rd Defendant's Property known as Block 146, Flat 4, Phase II, Kubwa, FCT, Abuja.**

- vi. **The Sum of One Million, Five Hundred Thousand Naira only (N1, 500, 000.00) as Special Damages (Rents paid to her Landlord in the Period from 2007-2013) against the Plaintiff for denying the 3rd Defendant Possession and Peaceful Enjoyment of the Property she bided for and won.**

At the Close of Pleadings, the facts and evidence distilled by the Parties were as follows: -

The Plaintiff, Mr. Adewale Gideon, prior to his Retirement from the Ministry of Foreign Affairs, was the Allottee over that Property known as Flat 4, Block 146, Phase 2, Site 2, Kubwa Abuja hereinafter referred to as "The Flat" and rents were deducted from his salary. It is his case that he had fulfilled all the Conditions Precedent issued by the ad-hoc Committee for the Sale of Federal Government Houses and was therefore entitled to a Right of First Refusal as well as Purchase of the Flat.

However, he was never issued with a Formal Letter of Offer or given that initial Right of First Refusal. Rather, what he received was a Quit Notice wherein it was stated that the Flat had been sold off to a Third Party and upon this Notice, he wrote Appeal Letters.

Finally, he claimed he was the Lawful Allottee of the Flat having Exclusive Right of Purchase, a Right of First Refusal and consequently, the 3rd Defendant was a Complete Stranger in so far as the Flat was concerned.

On the 2nd of June 2010, he opened his Case and adopted under Oath this foregoing facts as contained in his Witness Statement on Oath dated the 2nd of March 2010 and tendered without Objections **Exhibits A to G2**.

Under Cross-Examination by Learned Counsel representing the 3rd Defendant, he stated that he has been occupying the Flat since 1999 he was in employment in Year 2005 but had retired in that same Year.

Under Cross-Examination by Learned Counsel representing the 1st and 2nd Defendants, he agreed residing in the Flat and had stopped paying Rents in the months he retired stating specifically that he retired towards the end of October 2005. According to him, he had filled-in the Form for Purchase of the Flat and had also fulfilled all the Conditions Precedent to enable the Purchase of the Flat and therefore, no fault could be attributed to him.

When shown a filled-in Form that bore his Signature and Passport Photographs, he denied knowledge of the Form and Learned Counsel tendered from the Bar, a Certified True Copy admitted as **Exhibit H**.

The Plaintiff was later recalled to enable the 3rd Defendant through her Counsel to show him some Subpoenaed Documents from the Ministry of Foreign Affairs. These Documents were produced by one, Mr. Yusuf Shehu, an Assistant Legal Officer in the Office of the legal Adviser of the Ministry of Foreign Affairs and they were: -

1. A Letter titled "**Repayment of Gratuity Benefits to Discharged Drivers and Support Staff in the Federal Public Service**", which was admitted with an Overruled Objection as **Exhibit I**.
2. A Memo to the Department Director of Accounts written and signed by the Plaintiff, which was Provisionally admitted as **Exhibit J**.

The Plaintiff was re-sworn and under Further Cross-Examination by Learned Counsel representing the 3rd Defendant, he yet maintained the point that he was still in the Public Service as a Career Civil Servant when he applied for the Flat and had

been so employed during the Monetization Programme before his Retirement in Year 2005.

Shown **Paragraph 1 of Exhibit I**, wherein it was stated that the effective date of his Retirement was 30th October 2004, he denied knowledge of this Exhibit. He also denied **Exhibit J**, whereupon Learned Counsel conducted Comparative Analysis of his Signature between these Exhibits and those contained in the Court Processes filed on his behalf.

There was no Re-Examination and the Plaintiff applied to close his Case.

The 3rd Defendant, Oyefuga Bunmi Olufunmilayo, opened her Case and testified in her regard. She knew the Plaintiff was a Retiree even before the Commencement of the Sale of Federal Government Houses, and so, was disqualified from the Process and was also disentitled to that Right of First Refusal. She stated that the Purpose of the Service of the Quit Notice was to enable the 1st and 2nd Defendants comply with the Legal requirements and to handover the Flat to her.

However, since the Service of the Quit Notice on the Plaintiff, he had remained in the Flat for almost Three (3) Years and Five (5) Months, after she had won the Bid and was offered the Flat. She won the Flat through a Public Bid Procedure and it was therefore absurd to say her identity was unknown, as the Records in the custody of the 1st and 2nd Defendants would attest to her identity.

According to her, she undertook all the Preliminary Steps towards participating in the Sales Programme including the Bid Process stating that, sometimes in Year 2006, the 2nd Defendant advertised for Bid of Federal Government Houses and she obtained the Bid Form and paid Ten Percent (10%) of the Sale Price. She emerged the Winner and then received a Bid Offer from the 2nd Defendant whereupon she made a Part-Payment in Bank Draft dated 25th of May 2007 in the Sum of Two Hundred and Twenty-Eight Thousand Naira (N228, 000.00) to the FCDA. She further made a Final Payment in the Sum of One Million, One Hundred and Forty Thousand Naira (N1, 140,000.00) in Bank Draft dated 13th of July 2007 and was subsequently issued a Handover Form dated 5th of November 2007.

Upon receipt of this Form, she proceeded to visit the Property where she met it under lock and key but upon a second visit, she met and introduced herself to the Plaintiff as the new owner, who begged for more time to vacate the Flat. After this visit, she received a call from 2nd Defendant, who handed over the keys to the Flat and was informed about the eviction of the Plaintiff from the Flat.

She visited the Flat again but discovered that the Plaintiff had broken into the Flat and had moved in. She reported this fact to the 2nd Defendant, from whom she got to know that it was second time the Plaintiff was evicted. She then personally locked the Front and Back Door of the Flat, but the Plaintiff broke the padlocks, moved into the Flat and had remained in the Flat till date to her detriment, that is, she had remained a Tenant till date for approximately Five (5) Years after winning and paying for the Flat.

She opened her case on the 15th of June 2016, and adopted the foregoing facts as contained in her Witness Statement on Oath and tendered with an Overruled Objection Documents, which were admitted into Evidence as **Exhibits K1-3** while **Exhibits L to R6** was admitted without any Objection by the Plaintiff Counsel.

Under Cross-Examination by the Learned Counsel representing the Plaintiff, she was shown **Exhibit L**, to which she stated that she was not a Public Officer at the time she applied for the Flat. She did not have a Copy of the Bid Advertisement or knew how long the Bidding Process took. All she knew was that the Plaintiff had pleaded for more time to remain in the Flat but did not know for how long he remained.

Under Cross-Examination by Learned Counsel representing the 1st and 2nd Defendants, she personally participated in the Bid and was issued a Letter as the Winning Bidder. Even though she received this Letter, she could not take Possession of the Flat as the Plaintiff was occupying it and she reported this fact to the FCDA. The Plaintiff was ejected and she was told to go back to the Flat, where she secured the Flat and bought padlocks. She later got workers to renovate the Flat but the Plaintiff was in the Flat where she also saw Court Processes.

Finally, she stated that she paid for the Flat in full and was not issued with any Certificate of Occupancy for the Flat.

Under Re-Examination by her Counsel, she stated that she applied for the Flat through a Bid to the General Public.

The 3rd Defendant then closed her Case and thereafter, the 1st and 2nd Defendants opened their Case by calling a Sole Witness, Mr. Kaka Senchi, a Chief State Counsel at the Legal Secretariat of the Federal Capital Territory on Secondment to the ad-hoc Committee on the Sale of Federal Government Houses, who adopted his Witness Statement on Oath dated the 22nd of October 2013.

According to him, at the time the Plaintiff applied and submitted on the 17th May 2005 his Expression of Interest for the Flat, he had already retired, to which he was informed to Bid for the Flat but he failed to do so. He pointed out that the Houses

sold by the Federal Government of Nigeria were not offered to any person who had retired at the time of commencement of the exercise.

Further, the Plaintiff neither had nor submitted the required Documents that would entitle him to a Right of First Refusal as contained in Paragraph 12 of the Guidelines and therefore, a Quit Notice was issued dated 19th of July 2007.

On several occasions, the Plaintiff had been evicted from the Flat but he had continually entered Flat by breaking-in.

Finally, the Plaintiff since Year 2005 had never paid Rents to either the Federal Government of Nigeria or to the 3rd Defendant since Year 2007, when the Flat was sold to her.

Exhibits S to S3, where tendered through this Witness and were admitted, without any Objection. When shown the Two Expression of Interest Forms in Exhibits S1 and S3 dated 17th of May 2005 and 5th of September 2005 respectively, he testified that the last date for Submissions of such Forms was the 30th of May 2005.

Under Cross-Examination by Learned Counsel representing the 3rd Defendant, he confirmed the fact of Sale of Federal Government of Nigeria Houses, stating that the Category of Persons entitled to Purchase included Members of the General Public. A Gazette evidencing this fact was shown, which was admitted without Objection, as **Exhibit T** and according to him, Exhibit T entrenched this fact.

According to him, Retired Persons were covered under this Category, that is, Members of the General Public, but not under the Career Public Servant Category.

Under Cross-Examination by Learned Counsel representing the Plaintiff, he identified the Plaintiff's Name in **Exhibits C1 to C6**, that is Payslips, and whilst noting the Stamps therein, he could not say whether by these Exhibits, the Plaintiff was still in employment. When shown a Copy of the Quit Notice, this Witness stated that the Plaintiff's Name was not mentioned therein.

Referred to Paragraph 8 of the 1st and 2nd Defendants' Statement of Defence pertaining to the several break-ins by the Plaintiff, this Witness answered that he only knew about the Plaintiff's eviction from the Flat and it was not within his Schedule of Duty to report to the Police on the question of the break-in. He then went on to List Documents that needed to accompany an Expression of Interest Form and concluded his testimony by stating that the 3rd Defendant bided for the Flat when it was advertised.

Under, Re-Examination, he stated he could not authenticate the Plaintiff's Payslips in **Exhibits C1 to C6.**

At the Close of Trial, all Learned Counsel representing the Parties regularized and adopted their Final Written Addresses.

Learned Counsel representing the 1st and 2nd Defendants formulated a Sole Issue for Determination, which was: -

“Whether the Plaintiff led credible and compelling evidence showing compliance with the Set Conditions for the exercise of Right of First Refusal in his Favour.”

Learned Counsel representing the 3rd Defendant formulated Three Issues for Determination, which were: -

- 1. “Whether the Plaintiff was entitled/qualified to participate at all in the Purchase of the Subject Property as to be entitled to the Right of First Refusal being claimed.”**
- 2. “Whether the Plaintiff is entitled to the Grant of the Reliefs he is seeking”; and**
- 3. “Whether the 3rd Defendant has established her Case to entitle her to the Grant of the Reliefs sought in her Counterclaim.”**

Finally, Learned Counsel representing the Plaintiff adopted the aforesaid Three Issues as formulated by the 3rd Defendant and therefore, it is unnecessary to restate them again.

Upon a careful consideration of all the above formulated Issues as well as the Submissions and Arguments made in their regard, the Issues for Determination is,

“Whether the Plaintiff has fulfilled the Conditions Precedent placed on him by the Approved Guidelines to qualify him to Purchase the Flat known as Flat 4, Block 146, Phase 2, Site 2, Kubwa, Abuja within the Federal Capital Territory and if so, Whether the Counterclaimant has any Right and Interest in that Flat; and finally, Whether either the Plaintiff or Counterclaimant have entitled himself or herself to the Reliefs sought.”

Now, from the facts and evidence set before the Court, it does appear that the fulcrum upon which the Plaintiff balances his Claims, Rights and Interests as against those of the 3rd Defendant, are based on fulfilment with the Conditions Precedent as prescribed by the Guidelines issued by the ad-hoc Committee on the Sale of Federal Government Houses. The Plaintiff was very unequivocal on his claims in his Writ of Summons, Statement of Claim and Oral Evidence before the Court that during the Sale Exercise by the ad-hoc Committee, he was in active employment, had applied for the Flat and had fulfilled the Conditions Precedent as required. Therefore, he had a Right of First Refusal that would entitle to an Offer of the Flat as opposed to the Quit Notice that was eventually served on him to vacate the Flat.

A careful look at this Quit Notice dated the 19th of July 2007 as informed by **Exhibit F** particularly at Paragraph 2, it did show that the 1st Defendant was aware of the Plaintiff's expressed interest to purchase the Flat but his application had been denied following his noncompliance with the Approved Rules and Guidelines put in place by the Federal Executive Council to govern the qualification process for those considered as Career Public Servants with First Right of Refusal on the Property.

From the tone of this Paragraph in the Quit Notice, it does show that it is the Approved Rules and Guidelines as a WHOLE that disqualified the Plaintiff as no particular Paragraph or Section of the Approved Rules and Guidelines was attributed as the reason for the noncompliance.

The Approved Rules and Guidelines are as contained in **Exhibit L (same as Exhibit S1)** a Copy of the Federal Government of Nigeria Official Gazette No. 82 Volume 92, wherein Statutory Instrument No. 15 contained amongst other Short Titles, the "***Approved Guidelines for the Sale of Federal Government Houses in the Federal Capital Territory to CAREER CIVIL SERVANTS***". As can be seen, this Guideline caters only for Career Civil Servants but it did not go so far as to Define, who a Career Civil Servant is. However, **Preamble 3**, Sets the Target of this Sale of Houses to **ONLY** apply to **ALL** Public Officers, who are not Political Office Holders as described in the Constitution of the Federal Republic of Nigeria, 1999 and **Paragraph 20** of the Guideline whittled down Public Officers to be only Public Servants in Occupation, in instances where Houses were to be offered to them.

Since Preamble 3 makes reference to the 1999 Constitution for the definition of who a Political Office Holder is, perhaps, just perhaps it may also define who a Public Officer is as well as who is Career Public Servant.

Interestingly, the 1999 Constitution makes no such provision whatsoever but goes onto state in **Section 318** thereof, what “**Civil Service of the Federation**” means, which amongst others, means Service of the Federation in a Civil Capacity as Staff of a Ministry.... and “**Public Service of the Federation**” to mean the Service of the Federation in any capacity in respect of the Government of the Federation, and includes service as Member or Staff of any Commission or Authority established for the Federation by this Constitution and by an Act of the National Assembly.

The Plaintiff fell within the aforesaid Category, as he was a Staff or Member of the Public or Civil Service of the Federation as seen in his Offer of Appointment with the Ministry of External Affairs marked as **Exhibit A**. He was also a Public Servant in Occupation as in **Exhibit B**, his Allocation of Residential Quarters dated 1st of December 1999 over Block No. 146, Flat No. 4, Phase II, Site I Kubwa, at the time it was allocated to him by his Employer, now known as, Ministry of Foreign Affairs. Since this allocation, the Plaintiff has been in occupation before, during and after the Sale Exercise conducted by the ad-hoc Committee on the Sale of Federal Government Houses.

The question then is, was he still a Career Civil Servant at the time he applied to the ad-hoc Committee for the Flat in controversy?

Before considering the Poser, it would be important to tarry awhile and first consider a Preliminary Point raised by Learned Counsel representing the Plaintiff which concerns **Exhibits H, S1 and S3**.

From the evidence adduced, the Court can see several filled-in Expression of Interest Forms in **Exhibits D, H, S1 and S3**, which bore the Plaintiff's Picture(s) and perhaps, his Signature. During Trial, the Plaintiff denied being the Maker of **Exhibits H, S1 and S3** Forms but when these Documents were tendered, his Counsel did not object to their admissibility and consequently the Documents were admitted into evidence. His Learned Counsel in his Written Address now argued the point that the 1st and 2nd Defendants concocted these Exhibits in a desperate bid to justify the unjustifiable and unreasonable refusal to issue the Plaintiff a Formal Offer Letter to the Flat. Learned Counsel then invited the Court to consider **Section 101 of the Evidence Act 2011** in view of the sophisticated handwritings in **Exhibits S1 and S3** viz-a-viz **Exhibit H** and the Court would discover stark differences in the handwritings, which would show that the Plaintiff did not submit **Exhibit S1 and S3**.

Another point raised by Learned Counsel is that the 1st and 2nd Defendants never pleaded **Exhibit S3** and therefore the Exhibit went to no issue and he placed reliance on the Cases of **UWAZUIKE VS A.G. OF THE FEDERATION (2007) 14 WRN**

PG 127, 128 LINES 45-5; ADEKEYE VS ADESINA (2011) 20 WRN PG 24 LINES 20-25.

There is no comeback response to these points as none of the Defendants filed any Reply on Points of Law but it would suffice in the interest of justice to deal with these Preliminary Points.

Now, starting off with of Question of the 1st and 2nd Defendants concocting evidence to justify a cause, it is important to state that an argument of this nature raises an allegation of the crime of forgery and the standard of proof, even though in a Civil Proceeding, still requires proof beyond reasonable doubt. See the Case of **OKEKE & ANOR VS EZE (2013) LPELR-22455 (CA) PER AUGIE JCA (AS SHE THEN WAS); ADELAJA VS FANOIKI & ANOR (1990) LPELR-110 (SC).**

However, Plaintiff in his Pleadings did not raise this, as he was expected to state the Particulars of Forgery in his Pleadings and Learned Counsel's Written Address cannot by any stretch of legal imagination be the appropriate forum to establish this fact. It is simply an argument without substance, cloud without water and certainly not worthy of any consideration. It is only Cogent and Credible Evidence that determine Cases and not the advocacy of Counsel as espoused in a Written Address, which is a poor substitute for Proper Evidence. See the Cases of **ONAH VS OKOM (2012) 8 NWLR PT 1301 PG 169 AT PG 193 PARAS E-G; AYORINDE VS SOGUNRO (2012) 11 NWLR PT. 1312 PG 160 AT PG 501 PARA D; R.E.A.N. LTD VS ASWANI TEXTILE INDUSTRIES (1991) 2 NWLR PT. 176 PG 639 AT PG 672.**

As regards, the Question of Learned Counsel inviting the Court to compare handwriting in Exhibit S1 and S3 in view of **Section 101 of the Evidence Act, 2011 (As Amended)**, it is important to state that Learned Counsel's argument on this point is divergent from that of his Client, the Plaintiff, who had testified in Open Court that he did not make amongst other Documents, **Exhibits S1 and S3**. Who amongst the two would the Court listen to? The Court would better adhere to what had been declared in Open Court than what is obtained in a Counsel's Written Address.

Now, the Plaintiff's denial of being the Maker of **Exhibits S1 and S3**, the Expression of Interest Forms is tantamount to saying that the Documents were forged or fake. In such a situation the burden rested on him, the Plaintiff, to plead as well as proof this allegation during Trial. However, the Plaintiff did not plead this fact in a Reply to the 1st and 2nd Defendants' Statement of Defence nor led any iota of evidence to prove this fact of forgery, as it was expected he ought to have called or summoned a

Handwriting Expert to back-up his Claim and the Records attest to this fact. Reference is made to the Case of **NDOMA-EGBA VS ACB PLC (2005) LPELR-1973 (SC) PER OGUNTADE JSC PG 16 PARAS B-C; PAM & ANOR VS MOHAMMED & ANOR (2008) LPELR- 2895 (SC); IKOKU VS OLI (1962) 1 SCNLR PG. 307.**

Therefore, the Court finds that in the absence of any evidence adduced to the contrary, the Plaintiff filled-in the Columns in **Exhibits S1 and S3** thereby being the Maker of these Exhibits. The Plaintiff was a literate adult of sound mind and capacity and is deemed to have known the nature and content of the Expression of Interest Forms. The question of whether or not he wrote it with his own handwriting is irrelevant as he signed them with his own hand and his Passport Photographs are affixed on the Exhibits. This Signatures and Passport Photographs point squarely at the Plaintiff and to no other. He is therefore presumed at Law to have understood what he appended his signature upon. Whatever the content of the document is, it will not avail him to deny it or feign ignorance of it. Reference is made to the Cases of **AFRIBANK (NIG) PLC VS ALADE (2000) 13 NWLR PT 685 PG 591 AT PG 602 PARAS C-D; AWOSILE VS SOTUNBO (1992) 5 NWLR PT 243 PG 514; OKOYA VS SANTILI (1994) 4 NWLR PT 251 PG 238**

As regards **Exhibit S3** not pleaded by the 1st and 2nd Defendants, this argument is upheld but it is rather superfluous as there are more than one Expression of Interest Form before the Court to consider and this Exhibit dated the 5th of September 2005 was made after deadline for Submission being the 30th of May 2005 and so, it had no purpose to achieve.

As it stands, the Plaintiff made **Exhibits H and S1, the Expression of Interest Forms**, and they were properly admitted into evidence for the purposes of considering the Claims advanced by him.

Now, turning to the substance, the Plaintiff during Trial tendered into evidence **Exhibit D**, his Expression of Interest Form dated the 17th of May 2005. This Exhibit, including **Exhibits H and S1**, had a Caveat or a Declaration, which states: -

"It is a punishable offence to provide any false information and or make any false statement or claim when completing this form. Where it is subsequently discovered that a Housing Unit was purchased based on false or inaccurate information, the Minister may in his sole discretion, invalidate such transactions. The Minister reserves the right to reject any application form not properly or fully completed and shall not incur any liability for any such rejection."...

The Plaintiff in filling-in **Exhibit D**, did not fill-in the Years to Retirement Column, which failure clearly ran contrary to the Declaration in the Form. The Court observes that there is nothing on the face of this Exhibit to show that it was submitted to the ad-hoc Committee or it emanated from the custody of that Committee. In other words, the Plaintiff did not submit this Expression of Interest in **Exhibit D**, as the Exhibit remained in his private custody. Or perhaps, he submitted it but it was not received by the ad-hoc Committee. What the ad-hoc Committee received from the Plaintiff was Expression of Interest Forms in **Exhibits H and S1**, which documents emanated from the Custody of the 1st and 2nd Defendants. These Exhibits appear to be exact same, they are Certified True Copies and both were dated the 17th of May 2005, and this time around the Plaintiff filled-in, "**Retired**" in the Year to Retirement Column.

These Expressions of Interest Forms in **Exhibits H and S1** explained his taking advantage of the fact that the Forms were "Free" and his attempts at setting the record straight regarding his Status as a Career Civil Servant.

The 1st and 2nd Defendants, particularly the 1st Defendant contended that the Plaintiff did not have or submit all the documents required by him as per the Approved Guidelines. The Court notes that this contention was made without specifically pointing out what Documents the Plaintiff may have had in his possession but failed to submit before the ad-hoc Committee. Their basis for disqualification simply was that the Sale Exercise targeted Career Public Servants ONLY and the Court wonders why the application was still considered in the first place when they minuted on it "To Bid" and "Incomplete Evidence of Rent Deduction". Further, they raised the fact of his Retirement but did not go so far as to establish this fact and it took the 3rd Defendant, who had also made similar allegation, to prove this fact.

Despite the apparent weakness in the 1st and 2nd Defendants' Case, the burden of proof first lay with the Plaintiff to prove possession and submission of the documents that were to be considered by the 1st Defendant's ad-hoc Committee for the Sale of Federal Government Houses as regulated by the Approved Guidelines and more so, in the light of the Declaratory Reliefs sought by him. Further, the Plaintiff had the duty to establish in evidence what the Conditions Precedent were and what he submitted in answer to the Conditions Precedent.

However, this he failed to do.

He simply began to build as seen in **Exhibits A, B, C1-C6 and D** without first laying down the Foundation, that is, the Conditions Precedent as set out in the Approved

Guidelines. He placed his documents on nothing with the expectation that it would stand, very like building Castles in the Air! He never considered it proper to tender the Guidelines nor point out to the Court the Conditions Precedents he was talking about. It is of little wonder that in Paragraph 13 of his Statement of Claim, he rendered an ambiguous assertion when he stated that, “the purported reason of an alleged failure on his part to comply with the approved rules and guidelines for the purchase is **WITHOUT RECOURSE TO RECORDS.**” Only he could explain what he meant to say in that Paragraph.

On Record, it was the Defence that barraged the Plaintiff with Copies of the Approved Guidelines in **Exhibits L** and **S1** otherwise the Court would have not have known what Conditions Precedent he was actually talking about.

Since the Defence had magnanimously built the foundation for the Plaintiff, it would be curious to see whether he fulfilled the Conditions Precedent as alleged by him.

Picking **Exhibit L**, it can be seen that the Plaintiff had his eyes on Paragraph 12 subtitled “Payment Terms and Conditions”, which reads: -

“All purchasers must complete Application Forms with receipt of payment of N10, 000 in favour of the Federal Capital Territory Administration, along with the following:

** Letter of initial employment into the Public Service of the Federation,*

**Letter of last appointment/ promotion in the Public Service of the Federation,*

**4 No. High Resolution Colour Passport Photographs, and*

**Proof of Last 6 (Six) Month Rent Deduction.”*

The Court can see **Exhibit H**- his Expression of Interest Form showing his status as Retired; **Exhibit A**- his Letter of Employment; Four Passport Photographs affixed to **Exhibit H; Exhibit C1 to C6- 6 (Six) Month Rent Deduction** but **NO**Letter of Last Appointment or Promotion.

On a side-by-side cursory glance of these Exhibits against the above Conditions, the Plaintiff substantially complied but did not strictly comply with the standard required by him by the Approved Guidelines.

At this juncture, it is important to wake up from slumber the long tarrying question of the Plaintiff's Retirement as the basis for his not being classified as a Career Civil Servant.

The 3rd Defendant subpoenaed a Witness from the Ministry of Foreign Affairs, the Plaintiff's erstwhile employer, who produced **Exhibit I**, a Certified True Copy of a Letter from the Ministry of Foreign Affairs' Appointment, Promotion and Establishment titled "**RE: PAYMENT OF GRATUITY BENEFITS TO THE DISENGAGED DRIVERS AND SUPPORT STAFF IN THE FEDERAL PUBLIC SERVICE**". This Letter was addressed to the Plaintiff, and in this Letter, the Office of the Head of the Civil Service of the Federation (Establishment and Pension Office) has directed that the Effective Date of the Plaintiff's Retirement from the Federal Public Service was **31st of October 2004**.

The above **Exhibit I**, is an Expose' of the fact that the Plaintiff had retired even before the Commencement of the Sale Exercise of the Federal Government Houses. Since the target audience for the Sale Exercise was Career Civil Servant ONLY, then by the 1st of April 2005 when the Approved Guidelines was issued and published in the Official Gazette on the 15th of August 2005, the Plaintiff failed to qualify as a Career Civil Servant, having retired on the 31st of October 2004. A Simple and Literal Interpretation of the Adjective "CAREER" as advanced by the **Oxford Advanced Learner's Dictionary 7th Edition** means, "the period of time that you spend in your life working or doing a particular thing." This definition is set in the "Present Tense" and in instance of the Plaintiff he was in the period of time of his life a Driver but now Retired and no longer working or doing his occupation as a Driver in the Ministry of Foreign Affairs. His status had changed. If there was any Document to disprove this Exhibit, he had the burden to produce it. The Plaintiff appears to be clutching onto his Six (6) Salary Payslips in **Exhibits C1 to C6** issued and officially stamped by the Ministry to validate the fact that he was still under his Ministry's Employ.

The Court pronounces that Payslips is only a prima facie evidence and not conclusive evidence. The Notice of the Plaintiff's Retirement in **Exhibit I** is conclusive evidence showing that the Plaintiff was no longer in the employ of the Ministry of Foreign Affairs. At best, the Payslips issued by the Foreign Affairs demonstrate acts of incompetence with the Accounts Department of the Ministry or an act of duplicity in aiding the Plaintiff to meet up with the Requirements of the Approved Guidelines.

Further, these Payslips in **Exhibits C1 to C6**, worked against the Plaintiff, as they were documents against interest as there was sufficient proof that the Plaintiff remained in the Flat after his Retirement in 2004 and continued to remain in the Flat after the Quit Notice was served on him on the 19th of July 2007.

In addition, the Plaintiff's denial of being communicated this **Exhibit I**, only goes to show either an act of desperation or *mala fide* BUT definitely he was not ignorant of what he hoped to achieve. It is expected that every Civil Servant should know that every day that goes by their eventual Retirement looms. Someday, you must have to vacate the Public Office and its Benefits for someone else. The Plaintiff was simply trying to bend over backwards to take benefit and advantage of what was not his to have. His Employer has expressly stated in Court through **Exhibit I** that he had retired **as at the 31st of October 2004**. Therefore, he had no business in the Sale Exercise. Honour was expected of the Plaintiff but dishonour was what the Plaintiff brought before the Public.

The Court therefore finds that the Plaintiff was *ab initio* disqualified from the Sale Exercise and was given the option to Bid for the Flat as any Member of the General Public, which he failed to do and therefore, the Quit Notice in **Exhibit F** was proper in order to put up the Flat for an Open Auction.

The Plaintiff had NO Right to the Right of First Refusal and had ignored the advice of the 1st and 2nd Defendants to grab the opportunity to possess the Flat through a Public Auction Sale.

In view of the above pronouncement, the Court would now consider the Counterclaim of the 3rd Defendant and it is important to state that a Counterclaim is a separate independent action where the Parties in the main action are in reverse roles and the Counterclaimant must prove his Claim against the person being Counterclaimed, before he can obtain Judgment on the Counterclaim. Reference is made to the Cases of **OROJA & ORS VS ADENIYI & ORS (2017) LEPLR-41985(SC); OYEGBOLA VS ESSO WEST AFRICA (1996) 1 ALL NLR PG 170; DABUP VS KOLO (1993) 9 NWLR PT 317 PG 254**.

In this instance, the Plaintiff did not file a Defence to the Counterclaim and it is the Position of the Law that a Plaintiff in an action in which the Defendant files a Counterclaim has a duty to file a Reply to the Counterclaim, otherwise he may be presumed to have no defence to the Counterclaim and the Claims therein remain uncontroverted. His Lordship Per **Niki Tobi JSC** in the case of **USMAN VS GARKE (2003) FWLR PT. 177 PG 815 AT PG 836** held, "A Reply to a Counterclaim becomes necessary if the Counterclaim raises a fresh or new issue. Where the Counterclaim has not raised a fresh or new issue, a Reply is not necessary. In other words, where the issues raised in the Counterclaim are already covered by the

Statement of Claim, a Reply is otiose.” See also the Case **OGBONNA VS A.G. IMO STATE (1992) 1 NWLR PR 220 PER AKPATA JSC.**

By the above Dictum, the Counterclaim raises new facts or issues, which shall be considered hereunder and the Plaintiff did not file a Reply, and consequently he is presumed to have no defence to the 3rd Defendant’s Counterclaim and the Claims are deemed uncontroverted and unchallenged. The Law is Trite that Pleadings and evidence that are not challenged by the adverse party are deemed to have been admitted and the Oral Evidence made is deemed sufficient proof of his Case.

Reference is made to the Cases of **ASIKA VS ATUANYA (2008) 17 NWLR PT. 1117 PG. 484; IFETA VS S.P.D.C. LTD (2006) 15 NWLR PT 983 PG 585; OMMAN VS EKPE (2000) 1 NWLR PT. 641 PG. 374 PARA G; NZERIBE VS DAVE ENGINEERING CO. LTD (1994) 8 NWLR PT. 361 PG 124.**

Now, the 3rd Defendant tendered into evidence the Approved Guidelines for those Category of Persons who were classified as “General Public” as seen in **Exhibit L, Public Notice No.2, Approved Guidelines for the Sale of Federal Government Houses in the Federal Capital Territory to the General Public and Public Office Holders** published in the **Federal Republic of Nigeria Official Gazette No. 82 Volume 92.**

From this Gazette, the Sale starts off with an Advertisement and thereafter listed out the Conditions of Sale in Paragraphs 6 to 11, particularly Paragraphs 8 and 9, where the General Public were to participate by first paying an Application Fee in the Sum of Ten Thousand Naira (N10, 000.00) and then there would be an Open Auction by way of Competitive Bidding. The Bid is accompanied with a Ten Percent (10%) Bond and the Highest Bidder would be automatically declared as the Preferred Bidder, to whom an Offer of the Property would be made. Finally, the Preferred Bidder is expected to pay the Balance in Bank Drafts within 180days.

The Court can see that the 3rd Defendant did fill-in the Bid Application Form in **Exhibit M** and had paid the 10% Bid Bond and a Receipt was issued to her by the ad-hoc Committee in **Exhibit K1**. This Bond covered the Sum she used when she bid for the Flat in the Sum of One Million, Five Hundred and Twenty Thousand Naira (N1, 520, 000.00) only. She subsequently made Two (2) other Payments through a Bank Draft in the Sum of Two Hundred and Twenty-Eight Thousand Naira (N228, 000.00) and finally, the Sum of One Million, One Hundred and Forty Thousand Naira (N1, 140, 000.00) as evidenced in **Exhibits O and P** and Receipts were issued to her as seen in **Exhibits K2 and K3.**

On the 23rd of February 2007, the 1st Defendant issued her a Letter of Offer to Winning Bidder now in evidence as **Exhibit N**, which she executed on the 15th of March 2007. According to the 1st and 2nd Defendants, the Flat was sold to the 3rd Defendant.

From the above, the 3rd Defendant complied with the Conditions Precedent placed on her by the Approved Guidelines and on the 5th of November 2007, the 1st Defendant issued her a Hand-Over Form in **Exhibit Q**. By this date, the Plaintiff's continued occupation of the Flat made him a Trespasser against the Beneficial Interest of the 3rd Defendant.

The 3rd Defendant claimed Special Damages in this regard and it is settled principle of law that special damages must be specifically pleaded and proved in order to entitle a Plaintiff or Counterclaimant to the said damages. In the cases of **UBN PLC VS AJABULE & ANOR (2011) LPELR 8239 S.C; ALHAJI OTARU & SONS LTD VS IDRIS (1999) 6 NWLR PT 606 AT PG 330**, it was held that, Special damages claim denotes those pecuniary losses which have crystallized in terms of cash and value before the Trial. It is the kind of damage, which though based on the discretion of the Trial Court; such must be backed up by credible evidence adduced before the Trial Court, which strictly proves the Plaintiff's entitlement to the Award. It is therefore a Settled Principle of Law that Special Damages must not only be specifically pleaded with relevant particulars, but must also be strictly proved with credible evidence.

However, even though the 3rd Defendant failed to specify the length of time she gave the Plaintiff to vacate the Flat, she did show that since the handing over of the Flat, she had suffered monetary losses from the rents she continued to pay as a result of the failure of the Plaintiff to vacate the Flat. She pleaded this fact and tendered into evidence Receipts in **Exhibits R1 to R6** evidencing Rent Payments for the Apartment she was never bargained for. Therefore, she is entitled to be compensated for the unnecessary expense she had to undertake as a result of the failure of the Plaintiff to obey the Order in the Quit Notice given to him by the 1st and 2nd Defendants.

As regards, General damages in the Sum of Five Million Naira (N5, 000, 000.00), the Law is Well Settled as seen in the Cases of **YALAJU-AMAYE VS ASSOCIATED REGISTERED ENGINEERING CONTRACTORS LTD. & ORS (1990) LPELR-3511(SC)**, that" ... General Damages is the kind of Damage, which the Law presumes to flow from the wrong complained of. They are such, as the Court will award in the circumstances of a Case, in the absence of any yardstick with which to assess the

Award, except by presuming the Ordinary Expectations of a Reasonable Man. Further reference is made to the Cases of **LAR VS STIRLING ASTALDI LTD (1977) 11/12 S.C.53; OMONUWA VS WAHABI (1976) 4 S.C. 37" PER KARIBI-WHYTE, J.S.C. (P. 47, PARAS.A-B); UBN PLC VS AJABULE & ANOR (2011) LPELR-8239(SC)**, where **PER MOHAMMED, J.S.C (P. 27, PARAS B-E)** further held that, "It is settled law that General Damages are always made as a Claim at large. The Quantum need not be pleaded and proved. The Award is quantified by what in the opinion of a Reasonable Person is considered adequate loss or inconvenience, which flows naturally, as generally presumed by Law, from the Act or Conduct of the Defendant. It does not depend upon calculations made and figures arrived at from specific items. **See also the Cases of ODULAJA VS HADDAD (1973) 11 S.C. 357; LAR VS STIRLING ASTALDI LIMITED (1977) 11- 12 S.C. 53 AND OSUJI VS ISIOCHA (1989) 3 N.W.L.R. (PT. 111) 623; and the Case of ELF PETROLEUM VS UMAH & ORS (2018) LPELR-43600(SC)**, where **OGUNBIYI, J.S.C. (PP. 27-28 AT PARAS C-A)**, held that, "the Measure of General Damages is awarded to assuage such a Loss, which flows naturally from the Defendant's Act. It needs not be specifically pleaded. It suffices if it is generally averred. They are presumed to be the direct and probable consequence of that complained of. Unlike Special Damages, it is generally incapable of exact calculation. See the following authorities of **FEDERAL MORTGAGE FINANCE LTD VS HOPE EFFIONG EKPO (2004) 2 NWLR (PT 865) 100 AT 132, DUMEZ VS OGBOLI (1972), 2 SC 196; AND WASO VS KALLA (1978) 3 SC 21.**"

It is clear that the Plaintiff despite being served with the Quit Notice dated 19th of July 2007 by the 1st and 2nd Defendants, the Agents for the Owners of the Flat in question, and having absolutely No Rights to the Flat, since he was not given any Letter of Offer in the first place, unreasonably held on to what he had Claim to. It remained uncontroverted that despite being evicted at least on Two Occasions, had muscled his way back into the Flat to regain unlawful possession and in the process of taking these Actions, he had No Regard whatsoever for the 3rd Defendant, who had expended funds to purchase a Residence of her own, and had ensured Due Diligence in her purchase. He also had No Regard to whatever expenses she had undergone in pursuing her Rights and in the interim, finding an alternative accommodation.

This is very unfair. Very unfair and unfortunate indeed!

Therefore, this Court has no hesitation whatsoever in finding for the 3rd Defendant on this Claim.

The 1st and 2nd Defendants had urged the Court in Paragraph 5 of the Statement of Defence to deny the Plaintiff's Claim in its entirety and Order Payment by the Plaintiff for the benefit of the 3rd Defendant the Sum calculated as Rent payable from the period of July 2007 when the Flat was purchased by the 3rd Defendant to date. Learned Counsel representing the 1st and 2nd Defendants had also urged the Court to dismiss the Suit for being frivolous, lacking in merit and being an Abuse of Court Process with Substantial Cost.

In the first place, the Plaintiff did not counter this Claim with any substantial evidence and this Claim needs no Documentary Evidence, as the facts are very clear that at the time when the 3rd Defendant was lawfully allocated the Flat, and given a Handover Note, she was entitled to Lawful Possession. By the Finding of the Court that the Plaintiff ought not to have had Possession in the first place but did, he is also entitled to pay for the Possession he enjoyed, as this Case now took a Period from 2007 to 2019 to conclude because of Several Delaying Tactics employed. That means, the Plaintiff enjoyed an Extra Twelve (12) Years Grace, wherein he occupied the Flat without paying Rent to his Erstwhile Employers, the 1st and 2nd Defendants and particularly, the 3rd Defendant. Equity will not permit him to escape Liability and therefore, the Court Orders for the Payment of the Sum calculated as Rent payable from the period of July 2007 when the Flat was purchased by the 3rd Defendant to the date of this Judgment and the Calculation of this Payment Sum is to be made by an Established Realtor supplied by the 1st and 2nd Defendants.

In Conclusion and without further ado, in relation to the Reliefs sought by the Plaintiff the Court finds as follows: -

A Declaration will not be made that the Plaintiff complied with all the Conditions Precedent necessary for the Purchase of the Flat 4, Block 146, Phase 2, Site 2, Kubwa, Abuja, as the Plaintiff failed to satisfy the Court on the Required Legal Burden of Proof.

An Order of Specific Performance compelling the 1st and 2nd Defendants to Assign and Execute the Sale of Flat 4, Block 146, Phase 2, Site 2, Kubwa, exclusively for the Plaintiff will not be made by this Court based on the reasons cited in Decision 1, above.

An Order will not be made by this Court setting aside the Purported Allocation and/or Sale of Flat 4, Block 146, Phase 2, Site 2, Kubwa, to the 3rd Defendant for being Illegal and Void.

An Order of Injunction will also not be made restraining the Defendants either by Themselves, their Servants, Agents, Privies or any Person, Body or Authority or by whatsoever name called or acting through them or under their instruction from interfering with the Plaintiff's Right of Purchase of the Property and Possession thereof.

An Order of Perpetual Injunction will also not be made restraining the Defendants either by Themselves, their Servants, Agents, Privies or any Person, Body acting through them or under their instruction from interfering with the Plaintiff's Right and Interest on the Property.

As regards the 3rd Defendant's Reliefs as per the Counterclaim, the Court finds as follows: -

This Court makes a Declaration that the 3rd Defendant is the Beneficial Owner of the Property known as Block 146, Flat 4, Phase II, Kubwa, FCT, having participated in the Bid Process for it, won the Bid for it, effected full payment in respect thereof, and been given the Keys into the Property.

An Order is also made directing the Plaintiff to yield up immediate possession of Block 146, Flat 4, Phase II, Kubwa, FCT, Abuja.

An Order of Perpetual Injunction is made restraining the Plaintiff either by Himself, Servants, Agents, Privies or through any Person or Persons howsoever called from Trespassing or Further Trespassing, Encroaching or Further Encroaching on the 3rd Defendant's Property lying and situated at Block 146, Flat 4, Phase II, Kubwa, FCT, Abuja.

An Order of Court is made awarding General Damages of N5, 000,000.00 (Five Million Naira only) to the 3rd Defendant against the Plaintiff for wilful and/or flagrant Trespass/Illegal Occupation and/or Possession of the 3rd Defendant's Property known as Block 146, Flat 4, Phase II, Kubwa, FCT, Abuja.

The Sum of One Million, Five Hundred Thousand Naira only (N1, 500, 000.00) is Ordered against the Plaintiff, being the refunds of Rents paid by the 3rd Defendant to her Landlord for the Period from 2007 to 2013. The Court has found that the Plaintiff denied the 3rd Defendant Possession and Peaceful Enjoyment of the Property she bided for and won, and this is based on Receipts in Exhibits evidencing the Payments the 3rd Defendant made.

Finally, the regards the Claim by the 1st and 2nd Defendants, the Law is Trite that Costs follow the Event in Litigation, which a Successful Party is entitled to. Reference is made to the Case of **N.N.P. VS CLIFCO NIG LTD (2011) LPELR – SC 233/2008**. Therefore, the Court will Order the Cost of Two Hundred Thousand Naira (N200, 000).

The Claim of the Plaintiff fails in its entirety, the Claim of the 1st and 2nd Defendants for Cost and Rents succeeds and the Claim of the 3rd Defendant in the Counterclaim succeeds.

HON. JUSTICE A.A.I. BANJOKO

JUDGE