

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE NYANYA JUDICIAL DIVISION
HOLDEN AT NYANYA ON THE 7TH DAY OF JANUARY, 2019.

BEFORE HIS LORDSHIP: HON. JUSTICE U.P. KEKEMEKE
SUIT NO: FCT/HC/CV/1942/14

BETWEEN
ADENIKE OLULOLA UKET EMMANUEL.....PLAINTIFF

AND

1. **RUFAI SHEHU**
2. **MOHAMMED SHEHU** }**DEFENDANTS**

JUDGMENT

The Plaintiff's Writ of Summons and Statement of Claim dated the 2nd day of July 2014 and filed the same date is for the following reliefs.

1. A declaration that the Plaintiff is the rightful owner of Block 6 Flat 4 Kigoma Street, Wuse Zone 7 Abuja also described as Plot No. 1664, Plot No. 2607, Floor I, within Cadastral Zone AO2, Wuse 1 District, with Certificate of Occupancy No. 1dcfw - fe -15z-5e8dr II d82-10, and file No. OD 30235.
2. A declaration that the Plaintiff is entitled to the peaceful and unencumbered use and occupation of block 6 Flat 4, Kigoma Street, Wuse Zone 7, Abuja also described as Plot No. 1664 Plot No. 2607 Floor I, within Cadastral Zone AO2 Wuse I District, with Certificate of

Occupancy No. 1dcfw - fe -15z-5e8dr II d82-10, and file No. OD 30235.

3. A declaration that the Defendant's encroachment on and continued occupation of the Plaintiff's Block 6, Flat 4, Kigoma Street, Wuse Zone 7, Abuja also described as Plot No. 1664 Plot No. 2607 Floor 1, within Cadastral Zone AO2 Wuse 1 District with Certificate of Occupancy No. 1dcfw - fe -15z-5e8dr II d82-10, and file No. OD 30235. is wrongful and amounts to trespass.
4. An Order directing the Defendants to yield up immediate possession of Block 6, Flat 4, Kigoma Street, Wuse Zone 7, Abuja also described as Plot No. 1664, dwelling Plot 20607, Floor 1 within Cadastral Zone AO2 Wuse 1 District, with Certificate of Occupancy No. 1dcfw - fe -15z-5e8dr II d82-10, and file No. OD 30235 and all its appurtenances with immediate effect to the Plaintiff.
5. An Order of Perpetual Injunction restraining the Defendants whether by themselves, their agents, servants and or privies or any person acting through them by whatever name called from further trespassing or in any way interfering with the Plaintiff's

peaceable enjoyment/ possession and interest on the Plaintiff's Block 6 Flat 4, Kigoma Street, Wuse Zone 7, Abuja also described as Plot No. 1664, dwelling Plot 2607, floor No. 1 within Cadastral Zone AO2, Wuse I District, with Certificate of Occupancy No. 1dcfw - fe - 15z-5e8dr II d82-10, and file No. OD 30235.

6. N20 Million only as General damages for trespass.
7. Cost of N5 Million only as Solicitors fees.

The Defendants filed a Joint Statement of Defence and Counterclaim. The Plaintiff filed a reply to Defendants' Statement of Defence and Defence to Counterclaim. The Plaintiff opened her case and called three witnesses in proof thereto. The first Plaintiff's Witness is the Plaintiff herself. She is Adenike Olulola Uket. She presently resides at Plot 389, Jikwoyi Phase 4, Abuja. She is a civil servant working in the Federal Ministry of Justice Abuja. She remembers deposing to a Witness Statement on Oath sworn to on 2/07/14. She adopted same as her oral evidence. She also recalled deposing to another Witness Statement on Oath dated 2/12/14. She also adopted same as part of her evidence. In her Witness Statement on Oath dated 2/07/14, she stated as follows:

That she is the owner of a 3 bedroom dwelling unit known and situate at Block 6 Flat 4, Kigoma Street, Wuse Zone 7, Abuja also described as Plot No. 1664 dwelling Plot No. 2606 Floor I, Cadastral Zone AO2 Wuse I within the jurisdiction of this Court.

That the identity of the property with Beacon Nos. PB98506, PB98505, PB98501 and PB98502 is further described in the Survey Plan printed on the Schedule annexed to the Certificate of Occupancy No. 1dcfw - fe -15z-5e8dr II d82-10 dated 16th November 2007 evidencing the Right of Occupancy granted to the Plaintiff over the property.

That pursuant to the renumbering exercise carried out by the Federal Capital Territory Administration after the issuance of Certificate of Occupancy in respect of the property it was allocated a Green No. as Block 7 Flat 4. The property still maintains the Beacon numbers and Certificate of Occupancy number referred above at the Abuja Geographic Information Systems Records.

That 1st Defendant is a civil servant in the employment of the Federal Government of Nigeria currently posted to the Ministry of Lands, Housing & Urban Development and resides at block 7, Flat 7, Kigoma Street, Wuse Zone 7,

Abuja FCT. The 2nd Defendant is currently in wrongful occupation of the property at the instance of the 1st Defendant.

That sometimes in 2002, the property was allocated to her as Government Quarters through the Office of Head of Service of the Federation as her official residence by virtue of her employment as a career civil servant. She was in occupation of the property until 2005 when the Federal government Implemented its policy to sell off Non Essential Federal Government Houses to career civil servants in occupation including the property in question.

The property was offered to her for purchase in the sum of N3.5 Million by virtue of a letter of Offer dated 16/08/05 after she expressed her interest to purchase the said property. She accepted the Offer in accordance with the Terms of the Letter of Offer and paid N350,000. she subsequently completed payment of the full purchase price after paying the balance of N3,150,000 through a mortgage loan facility which she got from Aso Savings and Loans PLC.

8. The Statutory Right of Occupancy over and in respect of the property was granted and issued to her by the

Hon. Minister of the Federal Capital Territory vide a Certificate of Occupancy No. 1dcfw - fe -15z-5e8dr II d82-10, and file No. OD 30235 registered as No. 24968 in Vol. 125 of the Certificate of Occupancy Register in the Land Registry Office, Abuja and dated 16th November 2007 which was initially in the possession of Aso Savings & Loans Plc but handed over to her upon completion of payment in 2011.

That she lived on the property with her husband until 5/12/10 when they relocated and moved to her husband's House at No. 6 Dan Preston Entor Omatsola Road, Navy Estate, Karshi, Abuja FCT at the insistence of her husband.

She locked up the property and her husband held the keys to the property which remained vacant and unoccupied. She never at any time sold, leased, mortgaged or rented it to the Defendants or any other person whatsoever. She made plans to renovate and use the property for her own benefit, including letting same out. It was delayed when she was transferred to Calabar at the Cross River State Office of the Ministry of Niger Delta Affairs between 2009 and April 2012.

On or about the 12th of June 2012, she discovered that she could not find the original copy of the Certificate of

Occupancy issued to her over the property and all possible search for it proved futile whereupon she entered a caveat with the Abuja Geographic Information System on 15/08/12 before she reported the loss of the Certificate at the Police Station to stall any purported transaction relating to her title over the property.

To further secure her title, she reported the loss at Wuse Zone 3 Division of the Nigeria Police Force on 16/08/12. she was given Police Extract. She applied to AGIS by a letter dated 30/11/12 for the issuance of a Certified True Copy of the missing Certificate of Occupancy in respect of the property but is yet to be issued any in spite of diligent efforts.

In September 2012, she discovered that in her absence, the 1st Defendant had taken exclusive possession of the property and was laying claim to the title over the property including putting the 2nd Defendant in occupation. That she had known 1st Defendant since 2003 as they were neighbours living within the same quarters. That he did not contact her or communicate with her before encroaching upon and laying claim or exercising acts of ownership over her property. That there was no transaction between the Defendants and her or any person for the sale, lease or rent or any form of transfer of rights over the property. She never gave the Defendants

access or any form of authority over the property nor did she authorise any transaction in connection with any transfer of title or possession of the property to the Defendants or any other person. That upon discovering the Defendants' encroachment and up till filing this Suit, she made frantic efforts to reach the 1st Defendant whom she had known to cease the encroachment but all efforts proved abortive. That Defendants without lawful authority have continued with their wrongful occupation and exercise of acts of ownership over the property. That she has been deprived the right to use and enjoy the property which she lawfully acquired from the fruits of her hard-work and meritorious service in the Federal Civil Service by the Defendants.

The Defendants wrongful occupation and exercise of acts of ownership over the property have caused her unquantified damage resulting from her inability to use and enjoy the property for her benefit as owner. That it will serve the interest of justice to grant all her reliefs. In the Plaintiff's Further Witness Statement on Oath, she stated that she did not donate any Power of Attorney or execute any Deed of Assignment or any other document to the 1st defendant or any other person. The Deed of Assignment and Power of Attorney purportedly executed by her was not signed by her. She did not enter into any transaction. She did not transfer

title of her property in dispute to the 1st Defendant. That the sum of N7 Million paid by the 1st Defendant was received by her in good faith on behalf of her husband who was at that time building a house in Navy Estate Karshi. That her husband informed her that he spoke to a neighbour about a loan to complete his building project. Her husband requested her to issue handwritten receipt acknowledging the money because he was not available at the time. She never authorised the receipt of N2 Million, N1 Million and another N2 Million as part payment for the purchase of her house. That at the time, the N2 Million, N1 Million and another N2 Million was allegedly paid by the 1st Defendant to her husband, she never entered into any transaction with the 1st Defendant to sell her property to him or any other person. She did not authorise her husband to sell her property or receive any money. The letter dated 15/07/10 is strange to her. It was not written on her authorisation or behalf. That she did not engage the legal services of Mr. Ibrahim Salawu who she only know as her husband's lawyer. She never referred 1st Defendant to Mr. Salawu. She is not aware of the payment of N5 Million by the 1st Defendant or the receipt of same by Mr. Ibrahim Salawu and that no such money was received on her instruction. She never handed over her Certificate of Occupancy or other title documents to 1st Defendant or any other person. She did not assign title of her property to 1st

Defendant. She never requested 1st Defendant to assist her to get a buyer.

The PW1 tendered the following documents as Exhibits:

Exhibit A – CTC of Certificate of Occupancy dated 16/11/07 belonging to Claimant.

Exhibit B, Letter of Offer dated 16/08/05 in the name of Witness.

Exhibit C-C1 – Payment receipts in the name of Witness dated 29/09/05 and 12/02/07.

Exhibit D – Photocopy of letter of offer of mortgage Loan.

Exhibit E – Letter by Witness to AGIS dated 15/08/12 titled Caveat.

Exhibit F – Police Extract dated 16/08/12.

Exhibit F1 – Sworn Affidavit of Witness.

Exhibit G – Application for CTC of Certificate of Occupancy.

Under Cross-examination, the witness answered as follows:

She is presently at Plot 389 Jikwoyi Phase 4. She moved to Don- Preston Omatsola Street, Navy Estate in 2010. The house belongs to her husband. He bought the house in 2010. That she moved out of Plot 7 Flat 4 Kigoma Street, Wuse Zone 7. She left Navy Estate November 11, 2012.

The Plot she moved to in Jikwoyi is not her personal house. It is a rented apartment. She had no children with her husband. That she called her husband to ask of the missing Certificate of occupancy and he said he does not know its whereabouts. She does not know what efforts her husband made about the missing Certificate. That she visited the premises in September 2012 and it was still empty. Having been referred to paragraph 18 of her Witness Statement on Oath, she now said the Defendants were in possession.

To a question, she answered that she is not a business partner of the 1st defendant. He is a former neighbour. That she locked up the Flat in issue for 3 years without bordering about it. She did not collect any money from the 1st Defendant except the N7 Million she collected on behalf of her husband. She does not know if her husband has paid back the said loan.

The 2nd Witness is one DSP Olufemi Ayodele (rtd). He described himself as a forensic document Examiner. He is currently residing at No. 27 Akorede Street, Bariga, Lagos. He is in Court as a result of a Subpoena. He is in Court to testify as an Expert and Signature Examiner. He is a trained Forensic Document Examiner. He retired from the Force in 2011. that the Police has continued to retain his services. He tendered Exhibit A – Handwriting Expert Certificate.

A1 – Letter of Authority on Examination and analysis of document dated 21/07/11. That on 25/05/15, a matter was referred to him by the Police Force. He carried out the examination of the two sets of signatures. The 1st set, a signature disputed by the Plaintiff in this case marked D1 & D2 and the admitted signatures marked A1 – A5. Exhibit 1 – 14 are letter of Plaintiff to the Police which was to witness dated 15/05/15, report of handwriting analyst dated 4/06/15 accompanied by disputed signatures and comparison result with attached comparative table of signatures and Deed of Assignment.

The Signatures are signed by the same person.

Under Cross-examination, he said if the signatures are suspected to be forged, it will be irregular. That since he

returned, there has not been an handwriting expert. The only available handwriting expert in service is based in Owerri. He knows Raphael Onwuzuligbo. He is also retired. He does not know if the letter for expert examination was referred to him during the pendency of this case. He never knew Plaintiff's Counsel before the matter was referred to him. It was not his duty to find out if there was any prior expert opinion. That the basis of his conclusion was the differences between the disputed signatures and the reference signatures. The letters A, F and H in the reference signatures are different from the disputed signatures. There is a difference in the Letter A in Exhibit L4 and the letter of Plaintiff to her Counsel.

They are from the same hand. The letter A in the signature specimen and the Deed of Assignment are not the same. He will be surprised if any expert opines that the signatures are genuine. The 3rd Plaintiff's witness is Akachukwu Okechukwu. He is a Legal Officer with the Aso Savings & Loans Plc. He tendered Exhibits J and J1 being Certificate of Compliance and Statement of Account of the Witness. Exhibit K is the CTC of entry of Savings & Loans Plc Certificate of Occupancy Register containing acknowledgement of Plaintiff's receipt of her Certificate of Occupancy. He stated further that on 28/01/17 a mortgage facility of N3,150,000 was granted the Plaintiff which was repaid on 8/02/11.

Under Cross-examination, he answered that he is a Lawyer in the service of Aso Savings and Loans Plc. That he does not make inputs but he has access to the records and he has produced same before the Court. That Exhibit J1 is a salary account. That other deposits are also made therein. That the Certificate was issued after full payment of the loan. The above is the case of the Plaintiff.

The 1st Defendant's Witness is Architect Shehu Rufai, the 1st Defendant himself. He stated that he is into private practice with a Company called Turnkey Project Limited. That on 4/03/15, he made a Witness Statement on Oath in this matter. In the said Witness Statement on Oath, he deposed that the Plaintiff donated an Irrevocable Power of Attorney for valuable consideration over Block 6, Flat 4, Kigoma Street, Zone 7, Wuse the subject matter of this Suit which was executed by the Plaintiff in his favour sometime in 2010.

That after executing the Power of Attorney in his favour, the Plaintiff further executed a Deed of Assignment in his favour over the same property. He stamped the Deed of Assignment. The said Irrevocable Power of Attorney was for a valuable consideration in the sum of N19 Million only. The sum of N19 Million was paid in various instalments to the Plaintiff,

her husband and her Lawyer with the first instalment of N7 Million received and acknowledged by the Plaintiff herself. That he paid another sum of N2 Million to the Plaintiff through her husband on the 22/01/10 as part of payment. That on 18/04/10, another sum of N1 Million was paid to the Plaintiff through her husband towards her fulfilment of the payment of N19 Million as agreed on for the donation of an Irrevocable Power of Attorney over the Property in issue. The temporary receipt was issued by Mr. Emmanuel Uket, Plaintiff's husband.

That barely one month after the payment of 18/04/10, he made another payment of the sum of N2 Million to the Plaintiff through Mr. Emmanuel Uket Plaintiff's husband.

That on 15/07/10, he received a letter from Plaintiff through Mr. Emmanuel Uket Plaintiff's husband, thanking him for the efforts so far made in the payment and demanding that he completes the payment of the outstanding balance. He called Plaintiff and her husband to discuss the payment of the balance and possession and they informed him they had handed over the transaction to their Lawyer Mr. Ibrahim Salawu and that he should meet him to discuss details. He met with the Plaintiff's Lawyer and made further payment of N5 Million leaving a balance of N 1 Million. The aforesaid balance was paid when the Certificate of Occupancy was

handed over to him. That Plaintiff has transferred title to him. That Plaintiff was his neighbour at the same block before Plaintiff transferred title over Flat 4 of Block 6 and moved out of the flat handing over vacant possession and the title documents to him in the process. He took possession and gave occupation of the property to his brother who is the 2nd Defendant in the matter. The letter of Offer was also transferred to him.

That sometimes in 2009, Plaintiff and her husband had earlier offered the property to him but he did not have money but promised he will contact a friend to buy it. He thereafter decided to buy it after a meeting with the Plaintiff and her husband. That Plaintiff handed over to him all title documents including a document from Aso Savings and Loans titled "In-principle Offer of Mortgage Loan" after he had completed payment. That Plaintiff handed over the Certificate of Occupancy and other title documents personally. That at no time were the said documents missing. That he is in exclusive possession of the property as he was let into possession by the Plaintiff and her family. The transaction was an outright sale. That the Plaintiff is being deceitful. He had to consult a lawyer F.M. Oduma & Co upon being served a Court process. He was charged N2 Million to defend this Suit. He urges the

Court to dismiss the suit and grant his Counterclaim. He tendered

1. Exhibit L-L10- Power of Attorney allegedly donated to the witness by Plaintiff.
2. Acknowledgement of receipt of N7 Million from witness.
3. Temporary Receipt for N2 Million received from witness.
4. Temporary Receipt of N1 Million by Plaintiff.
5. Temporary Receipt of N2 Million from witness by Plaintiff.
6. Letter from Plaintiff dated 15/07/10 to witness titled *'Request for full and final payment'*
7. Receipt dated 29/09/05 from Adhoc Committee on the Sale of FGN Houses in the name of Plaintiff for N350,000
8. Letter of Offer from FCTA to Plaintiff dated 16/08/05.
9. Certificate of Occupancy in the name of Plaintiff dated 16/11/07.
10. Receipt from Ibrahim Salawu & Co. dated 8/11/10 to witness for N5 Million.
11. Receipt from F.M. Oduma dated 6/10/14 for N1.5 Million.

Under Cross-examination, he answered that during the sale, he was the Plaintiff's neighbour. That the property was introduced to him by Mr. and Mrs. Uket.

To a question, he answered that they were living in a flat below his. That they invited him to their house. That the property in issue was the 4th he was buying in the neighbourhood. That it was when he made final payment that he saw the title documents for the first time. To another question, he answered that all the documents were handed over to him. That the 1st N7 Million was handed over to the Plaintiff and she gave a receipt. That the subsequent payments were to Mr. Uket and their lawyer. That Exhibit L2 – L4 did not show that they were received on behalf of the Plaintiff. That exhibit L5 did not show that the money was for the building of his house.

To another question, he answered that it was the Plaintiff who introduced him to the Lawyer. That it was at the conclusion of the transaction that he knew property belongs to the Plaintiff until then he was dealing with the family.

To another question, he said he had no doubt about the transaction because they lived together for about 10 years. When he paid, the Plaintiff and her husband were all there.

That it was Mr. Uket who brought the title documents to his Flat. He signed his part and the Lawyer took the documents to the other party. It is Mr. Uket who still brought the signed copy.

To another question, he answered that the money was paid to both Plaintiff and her husband. He registered the title in his name. He wrote to AGIS after the Certificate of Occupancy was handed over to him. That it was at that point, he heard of caveat.

The 2nd Defence Witness is Emmanuel Uket. He stated orally that he is a civil servant. That on the 6/03/14, he made a Witness Statement on Oath. He adopted same as his oral evidence. He stated that he is the husband of the Plaintiff in this matter. That he partook in the transaction between Plaintiff and to 1st Defendant in respect of Block 6 Flat 4 Kigoma Street, Zone 7, Wuse the subject matter of this Suit. That in 2009 the Plaintiff and himself offered to sell flat 4 Block 6 Kigoma Street but the 1st Defendant said he had no money. He promised to contact a friend but could not find someone. That in 2010 the 1st Defendant informed the Plaintiff and him of his intention to acquire it for himself. He met the 1st Defendant and they negotiated the sum of N18 Million as purchase price of the subject matter and the 1st Defendant agreed to pay by instalment. On 8/01/10, the 1st Defendant

paid an initial sum of N7 Million to the Plaintiff. The 1st Defendant paid the sum of N2 Million through him on 22/01/10 as part payment. On 18/04/10. 1st Defendant paid another sum of N1 Million through him to the plaintiff. The 1st Defendant made another payment of N2 Million through him. Sometimes in July 2010, the Plaintiff instructed him to write a letter to the 1st Defendant thanking 1st Defendant for the efforts so far made towards the payment of the purchase price and demanding the balance. They handed over the transaction to their lawyer Mr. Ibrahim Salawu since payment was taken too much time. There was an increase of the amount by N1 Million making the total purchase price N19 Million. That upon completion of payment, all title documents including the receipt No. 04324 dated 20/09/05 from the FGN were handed over to the 1st Defendant. That Plaintiff also handed over all relevant title documents. The family was living in the flat but had to relocate from it and deliver vacant possession upon full payment of the purchase price and irrevocable Power of Attorney executed in favour of the 1st Defendant.

Upon being crossexamined by the Plaintiff's Counsel he said he made several acknowledgement receipts in favour of 1st Defendant. He stated he was acting on behalf of the family. That the Plaintiff is his wife and the property is family property.

The property was allocated to his wife and he witnessed it. The 3rd Defendant's Witness is Ibrahim Salawu, Legal Practitioner of Suite 6403 Global Plaza, 366 Awolowo Way Jabi, Abuja. He knows the Plaintiff. He also knows Emmanuel Uket her husband. He is close to DW2 and he got to know plaintiff as his wife. He recalls making a Witness Statement on Oath on 6/11/17. He also made Additional Statement on 28/10/16. He adopted same as his oral evidence.

Exhibit J1 was a deposit made by him. Exhibit J9 is a receipt he issued. In his Written Statement on Oath, dated 6/11/14, he stated that sometime in 2011, he prepared an Irrevocable Power of Attorney for valuable consideration and Deed of Assignment in respect of Block 6, Flat 4, Kigoma Street, Zone 7 Wuse, the subject matter of this Suit for N19 Million. That the sum of N5 Million as part payment was received by him in respect of the property. That after completion of payment an Irrevocable Power of Attorney and Deed of Assignment were duly signed and executed by the Plaintiff and the 1st Defendant. In his Further Statement of 28/10/16, he said he deposited N2,792.116.67 into Plaintiff's account No. 001001019676013 with Aso Savings & Loans Plc on the Plaintiff's instruction and the remaining balance of N5 Million was given to Plaintiff's husband in cash.

Under Cross-examination, he answered that he was invited by the Plaintiff's husband to conduct the transaction. That he met the Plaintiff in the course of the transaction. That the discussions were held in their house. That at the beginning, he never knew the property was in her name but soon afterwards, the instructions given to him by her husband to her knowledge was not challenged by her.

He later answered that he got to know of the title of the Plaintiff at the beginning of the transaction. On being shown Exhibit L9- he said no reference was made on it to the Plaintiff. That the discussion on this transaction was held in her house and in her presence and with her consent. There is a deposit slip he handed over to Mr. Uket. That Plaintiff confirmed receiving the alert in her house. He further answered that there was no written confirmation. That he prepared the Power of Attorney and handed over same to Mr. Uket who later called him to say the wife was back and that she had signed it.

The 4th Defendant Witness is Mr. Raphael Onwuzuligbo (ASP) (Rtd). He is a Forensic Document Examiner formerly attached to the Forensic Science Lab, D Department Force CID Alagbon Close, Ikoyi, Lagos. He enumerated all the training he received in the analysis of documents. That he has about

26 years experience in document examination. He stated that on 13/02/15, his office received a letter from F.M. Oduma & Co with some attached documents marked XX1, A1, A2, A3, A4 and another A5 requesting for examination and comparison of the questioned signatures in the relevant columns of the document marked XX1 with the standard signatures in the relevant column of documents marked A1, A2, A3, A4, A5 and to determine if they were signed by one person. He carried out the scientific examination and comparison of the signatures on the questioned documents marked XX1 with the standard signatures in the relevant column of documents marked A, A1, A2, A3, A4, A5 and A5 via a video spectra comparison and other distinguished apparatus. He found inherent features of identity between the questioned signature and the standard signature. That the person who signed the signatures in the relevant column of documents marked XX1 also signed the standard signatures in the document marked A5. That during the course of analysis, he looked at all the signatures carefully, there is no evidence of simulation, no hesitation and no irregular stroke which form the element of ungenue signature. The master pattern of these signatures are the same. He used a comparative table which he arrowed the signatures as arrow 1 – 12 illustrating evidence of identity.

He took into consideration what is called document examination “natural variation which means that the positioning and different location from where somebody can sign the signature can only affect the pictural appearance but cannot affect the inherent features and master pattern of individuality which is traceable to only one person. Two individuals cannot have the same master pattern. Exhibits M and M1 are the copy of the request letter from F.M. Oduma & Co. dated 12/02/15 and a copy of the Deed of Assignment between Plaintiff and 1st Defendant. Exhibits N and N1 are the result of document examination dated 24/02/15 and the comparative table. His conclusion is that the signatures are from one and the same person.

Under Cross-examination, he answered that the report is comprehensive. He mentioned a Master Pattern. It is called Inherent Features. They are from a particular person. The basis of his conclusion is that it is one and the same person who signed the questioned signatures and the standard signatures.

To a question, he answered that it is not easy to imitate. The above is the case of the Defence.

Parties were ordered to file Written Addresses.

The 1st and 2nd Defendants' Written Address is dated 17/05/18 but deemed properly filed on 21/05/18. He canvassed that the question before the Court is Whether the Plaintiff sold the subject matter to the 1st Defendant and whether she signed the Power of Attorney Exhibit L. He canvasses that from the totality of Pleadings and evidence, the plaintiff has failed to prove that she did not sell the property to the 1st Defendant. That the Exhibits did not support Plaintiff's claim. He urges the Court to dismiss the Suit for lacking in merit. He also urges the Court to grant the Counterclaim

The Claimant's Counsel on the other hand adopted his Written Address dated 17/05/18 but deemed properly filed on 21/05/18.

Learned Counsel posited two issues for determination.

1. Whether the Claimant is entitled to the reliefs sought.
2. Whether the Defendants have not made out a Counterclaim.

That Exhibit I -14 is in Police Letter headed paper. That it is the inadvertence of Counsel. That it does not derogate the value of the contents.

That Claimant's story is more believable. He urges the Court to grant the relief. The Defendant also filed a reply on point of law. I have read same and considered the Written Addresses of Counsel including the three issues raised by the 1st and 2nd Defendant's Counsel and the two raised by the Plaintiff's Counsel. The issues for determination in my view which encompass all the issues submitted for determination are:

1. Whether on the preponderance of evidence the Plaintiff has proved her claim so as to entitle her to the reliefs sought.
2. whether the Defendants are entitled to their Counter claims.

On issue 1, Defendants' Counsel submits that from the totality of the Pleadings, evidence and Exhibits, the Plaintiff has failed woefully to prove that she did not sell the property to the 1st Defendant. That Exhibit A – G only shows how the Plaintiff acquired the property in dispute. That a close examination of Exhibit H, H1, 1 – 14, F & J1 do not support Plaintiff's Claim. That Exhibit F & F1 are an after thought. That Exhibit 1 – 14 are written on the letter headed paper of the Police while the Expert is a retired Policeman. That Claimant cannot maintain an action in law for a declaration of title and trespass against the 1st Defendant who is now vested with title. Plaintiff has divested her interest in the property.

The Claimant on the other hand submits that relevant documentary evidence were tendered which are Exhibit A – K. He urges the Court to regard PW1 as a witness of truth and accord the weight of probative value to her evidence. That the expert evidence of PW2 is believable, comprehensive and complies with the principle of law laid down in MUHAMMED & ANO VS. ADUDA & ORS (2009) LP ELR – 4554 at 33. He urges the Court to discountenance the evidence of DW4 and the Exhibits tendered.

I have earlier reproduced the reliefs sought by the Claimant in this case. Relief 1, 2 and 3 are declaratory reliefs while relief 4 is for possession. Relief 5 is for perpetual injunction while 6 & 7 are for damages and cost.

In a declaratory action such as this the onus of proof lies on the Plaintiff and he must succeed on the strength of his own case and not on the weakness of the Defence except where the case for the Defence supports the Plaintiff's case.

ABASI VS. ONIDO (1998) 5 NWLR (PT. 548) 89.

UCHE VS. EKE (1998) 9 NWLR (PT. 564) 24.

NKWO VS. IBOE (1998) 7 NWLR (PT. 558) 354.

In civil case, the onus of proving an allegation is on the Plaintiff and the onus does not shift until he has proved his claim on the preponderance of evidence and balance of probabilities. It is after the burden of proving the case has been discharged in accordance with the above principle of law that the burden shifts and continues to shift. Where a party fails to discharge this burden then the opponent needs not prove any fact and the party alleging cannot rely on the opponents case.

A party must prove its case with credible evidence of its witness and is not at liberty in law to make a case or rely on the weakness of its opposite party in order to succeed.

See ***IMAN VS. SHERIFF (2005) 4 NWLR (PT. 914) 80.***

ELIAS VS. OMO-BARE (1982) 5 SC 25.

AGBI VS. OGBEH (2006) 11 NWLR (PT. 990) 65 SC.

In proof of her case, the Claimant called three witnesses. I have in this judgment summarised their evidence. The PW1 who is the Claimant tendered her title document Exhibit A – G. what Exhibit A, B & C showed is that the property was allocated to her.

Exhibit D showed the source of the fund for payment of the property in issue. Exhibit F & F1 is to show that her original

documents were stolen while Exhibit G is an application for CTC of Certificate of Occupancy.

From the Pleadings and evidence from both parties, before the Court, there is no doubt and it is not contested that the Claimant owned the property in issue. The issue is whether she is entitled to the peaceful and unencumbered use of the said property.

The PW1 in her evidence said she lived on the property with her husband until 2010 when they relocated and moved to her husband's house at No. 6 Dan Prestan Enitor Omatsola Road, Navy Estate, Karshi, Abuja. She locked up the property and her husband held the keys. That she never sold the property which remained vacant and unoccupied. That she never at any time sold, leased, mortgaged or rented it to the Defendants or any other person whatsoever. That she made plans to renovate and use same for her own benefit.

On or about the 12th of June 2012, she discovered that her original C of O was missing. She entered a caveat at AGIS. Reported to the Police and swore to an Affidavit of Loss. Then in September 2012, she suddenly discovered that the 1st Defendant has taken exclusive possession in her absence

claiming title to the property. That there was no transaction between her and the 1st Defendant.

The 2nd Defendant's witness is a handwriting expert and a signature examiner. He tendered Exhibits 1 – 14 to show that the signatures on the Deed of Assignment and the Irrevocable Power of Attorney are not the same with the claimant's standard signature.

The Plaintiff PW1 said she was living in the property with her husband and later relocated with her husband to her husband's new property. She locked the house and handed over the key to her husband. The Certificate of Occupancy got missing. There was no allusion to her husband as the person who would have taken the said document. The PW1 discovered her C of O missing in 2012. She discovered the same year that her property was being occupied by an alleged intruder.

There is no evidence that she reported a case of criminal trespass to the Police. Exhibit 1 – 14 is dated 15/5/15. Exhibit 11 & 12 are dated 4/06/2015.

The 1st Defendant on the other hand called four witnesses. The DW1 tendered Exhibits L – L10 showing how the

transaction between him and the Claimant was executed. He also tendered receipts of payments made to Claimant personally or through the husband.

Exhibit L1 – Receipt of N7 Million paid to the witness and acknowledged by her.

Exhibit L2 – Temporary receipt for N2 Million.

Exhibit L3 – Receipt for N1 Million by Plaintiff.

Exhibit L4 – Is another receipt of N2 Million by witness to Plaintiff.

Exhibit L5 – Letter asking for full and final payment.

Exhibit L9 – Is another receipt for N5 Million.

The Claimant received some part of the payment for the property while the husband and lawyer received the balance all totalling N19 Million. The DW2 is the Claimant's husband. They are still living together. He gave evidence that the property was sold by his wife to the 1st Defendant. He gave a graphic description of how he met the 1st Defendant with his wife to negotiate for the purchase of their house and the payment he received either personally and or by his wife. He also gave evidence of how Plaintiff instructed him to write Exhibit L5. The PW1 and DW2 I want to repeat are husband and wife.

I have taken a cursory look at the Exhibits M M1, N & N1 tendered by another expert called by the defence, DW4. I have also studied and perused the signatures on the Deed of Assignment and the Irrevocable Power of Attorney. The two expert opinions given by the PW2 and DW4 are contradictory. The result of the forensic document examination of PW2 is Exhibit 12. PW2 retired from the Force in 2011. The Exhibit L2 is on Police letter headed paper and signed by the PW2. I cannot therefore place any weight on it.

From the evidence and examination of the Exhibits before me, it is my view that the evidence of the 1st Defendant is more probable. The Claimant in my view has failed to prove her case so as to entitle her to judgment. The case fails and it is accordingly dismissed.

On issue 2 whether the Defendant are entitled to their Counter claim. The Defendants Counterclaim is as follows:

1. A declaration that the Counterclaimant has a valid irrevocable power of attorney over the said dwelling unit Block 6, Flat 4 Kigoma Street, Wuse Zone 7 Abuja with Certificate of Occupancy No. 1dcfw - fe -15z-5e8dr II d82-10 and with reference file no. OD30235.
2. An order of Perpetual Injunction restraining the Plaintiff/Defendant to Counterclaim, agents, servants,

privies, assigns howsoever called from interfering with the possession and quiet enjoyment of Flat 4, Block 6, Kigoma Street, Wuse Zone 7, Abuja.

3. An order mandating the Plaintiff/Defendant to counterclaim to remove the caveat placed on the property without any justification.
4. An order compelling the Defendant to counterclaim to do every thing necessary for the Counterclaimant to register his title with the appropriate government agencies and perfect the transfer of Flat 4 Block 6, Kigoma Street, Wuse Zone 7, Abuja.
5. N5 Million as general damages for disturbing Counterclaimants quiet enjoyment.
6. N2 Million as cost of the action.

I have earlier summarised all the evidence in this case. In my humble view the Counterclaimants have proved their case on the preponderance of evidence and balance of probabilities and are therefore entitled to judgment.

The Counterclaimant claims general damages. General damages are those damages which the law implies in every breach and every violation of a legal right. It is the loss which flows naturally from the Defendant's act and its quantum need not be pleaded or proved as it is generally presumed by

law. The manner in which general damages is quantified is by relying on what could be the opinion and judgment of a reasonable person in the circumstances of the case.

In awarding general damages, I shall make my own assessment of the quantum of the damages in the light of the evidence before me. I shall not base same on speculation. The evidence is that the Defendant/Counterclaimant has been in exclusive possession. This piece of evidence is not controverted.

In essence their possession was not disturbed. In the circumstance, the Defendant/Counterclaimant did not suffer any damages. The Claim for damages therefore fails.

Consequently, judgment is entered in favour of the counterclaimant against the Defendant to Counterclaim as follows:

1. It is hereby declared that the counterclaimant has a valid irrevocable Power of Attorney over the said dwelling unit block B, Flat 4, Kigoma Street, Wuse Zone 7 Abuja with Certificate of Occupancy No. 1 dcfw - fe -15z-5e8dr II d82-10 and with reference file No. OD 30235.
2. An order of Perpetual Injunction is hereby issued restraining the Plaintiff/Defendant to counterclaim,

against, servants, privies, assigns howsoever called from interfering with the possession and quiet enjoyment of Flat 4, Block 6, Kigoma Street, Wuse Zone 7, Abuja.

3. The Plaintiff/Defendant to the Counterclaim is hereby ordered to withdraw the caveat placed on the aforesaid property at Abuja Geographic Information System.
4. The Plaintiff/Defendant to Counterclaim is further ordered to sign all letters necessary to enable the Counterclaimant register his title in respect of the subject matter with appropriate government agencies.
5. Cost of N200,000 is assessed and awarded in favour of the Counterclaimant against the Defendant.

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HON. JUSTICE U.P. KEKEMEKE
(HON. JUDGE)
07/01/19