

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**  
**IN THE ABUJA JUDICIAL DIVISION**  
**HOLDEN AT GUDU, ABUJA**  
**THIS WEDNESDAY, THE 16<sup>TH</sup> DAY OF JANUARY, 2019**  
**BEFORE HIS LORDSHIP, HON. JUSTICE A. B. MOHAMMED**

**SUIT NO: FCT/HC/CV/2179/17**

**BETWEEN:**

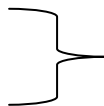
MALLAM AHMED LAWAL

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PLAINTIFF

**AND**

1. MR. MIKE
2. MR. ORJI
3. MR. YEMI



DEFENDANTS

**JUDGMENT**

**DELIVERED BY HON. JUSTICE A. B. MOHAMMED**

The Plaintiff commenced this suit vide a Writ of Summons and a 21 paragraph Statement of Claim all dated and filed on 14<sup>th</sup> June, 2017, claiming against the Defendants the following reliefs:

- a. A Declaration that the Plaintiff is the lawful owner of Plot 574 Chikaore, Bhyazin Kubwa Village Abuja, measuring 960M<sup>2</sup> on F01 Zone grid.
- b. An Order of perpetual injunction restraining the Defendants, by themselves agents, privies, heirs and assigns from trespassing on Plot

574 Chikaore, Bhyazin Kubwa Village Abuja, measuring 960M<sup>2</sup> against the Plaintiff.

- c. The sum of N2,000.000.00 (Two Million Naira) only being damages for trespass by the Defendants against the plaintiff.
- d. 10% interest from the date of delivery of the Judgment till the date the Defendants liquidates same.
- e. The sum of N1,500,000.00 (One Million, Five Hundred Thousand Naira) only being the amount charged as professional fee by the Law Firm of Excelsior Legal Alliance for the prosecution of the suit.

After personal service of the originating processes on the Defendant, proved abortive (see Certificate of Service filed in by Bailiff on 10<sup>th</sup> July, 2017), the Plaintiff obtained leave of this Court on the 27<sup>th</sup> September, 2017 to serve “the Writ of Summons, hearing notices and other incidental processes in this suit on the Defendants by substituted means, by hanging 3 copies each on a 3 feet metal concretely positioned on a conspicuous point on the land in dispute, being Plot 574 Chikakore Bhyazin, Kubwa Cillage measuring 960m<sup>2</sup> on FO1, Zone Grid”; and by dropping “3 copies of each of the said processes at the office of the Divisional Police Officer of the Phase 4 Kubwa Police Station for onward transmission and/or notification of the Defendants on record.”

According to a Certificate of Service filed by the Bailiff of Court, the originating processes and hearing notice were served on the Defendants as per order of Court on the 17<sup>th</sup> October, 2017. Despite such service and the service of several hearing notices at various stages of the proceedings, the Defendants neither appeared nor filed any defence to the Plaintiff's claim. Thus, on the 31<sup>st</sup> of January, 2018, upon being satisfied that the Defendants were on notice, the Court ordered the Plaintiff to prove his case.

The Plaintiff solely testified in proof of his case as PW1. He adopted his statement on oath and tendered six documents which were admitted in evidence as Exhibits PW1A to PW1F. Upon conclusion of the Plaintiff's evidence in chief the Court adjourned the case to the 27<sup>th</sup> of February, 2018 to afford the Defendants the opportunity to cross examine the Plaintiff (PW1) on his evidence. Despite being served with hearing notice, the Defendants were inexcusably absent, as a result of which their right to cross examine PW1 was foreclosed. The Defendants right to defence was similarly foreclosed on the 9<sup>th</sup> of April, 2018 and the matter was adjourned to the 30<sup>th</sup> of May, 2018 for adoption of final written addresses. Hearing notice was rodered to be served on the Defendants.

On the 6<sup>th</sup> of November, 2018 when the final written address of the Plaintiff was eventually adopted, the Defendants have neither appeared nor filed any process in defence of the Plaintiff's claim despite all opportunities granted them to do so.

In his adopted final address, learned Counsel for the Plaintiff, Eze Vin Martins Esq, raised the following sole issue for determination:

Whether the Plaintiff in this action has discharged the onus of proof on the balance of probabilities or preponderance of evidence.

From the submission of the Plaintiff, the issue is whether the Plaintiff has established his claims against the Defendants and is entitled to the reliefs sought.

Learned Counsel for the Plaintiff had submitted that for the Plaintiff to succeed in his claims before this Court, he has a burden to prove his case on the preponderance of evidence or balance of probabilities. He cited Section 134 of the Evidence Act, 2011. He further submitted that added to the above is the principle that he who asserts must prove and cited Section 131 of the Evidence Act, 2011, as well as the case of **AUDU v GATA (2004) 4 NWLR (pt. 864) 463 at 484.**

Learned Counsel contended that the law is that unchallenged and uncontroverted evidence is deemed admitted and as such the Plaintiff's uncontroverted and unchallenged evidence should be deemed admitted by the Defendants who had refused and/or neglected to file their defence. He relied on the cases of **ISREAL PIUS v THE STATE (2015) ALL FWLR (Pt. 780) 1179; and C.B.N. & 6 ORS v AITE OKOGIE (2015) All FWLR (Pt. 807) 501.**

Learned Counsel submitted that there are five different ways of proving title to land, the proof of any one of which suffices. Counsel listed the five methods as follows:

1. Traditional evidence.
2. Production of Documents of title duly authenticated unless they are documents twenty years old or more produced from proper custody.
3. Acts of possession in and over the land in dispute-extending over a sufficient length of time, numerous and positive enough as to warrant the inference that the persons in possession are the true owners.
4. Acts of long possession and enjoyment of other land so situated and connected with the land in dispute by locality or similarity that the presumption under S. 46 of the Evidence Act applies and the inference can be drawn that what is true of one piece of land is likely to be true of the other piece of land.
5. Proof of possession of connected or adjacent land, in circumstances rendering it probable that the owner of such connected or adjacent land would in addition be the owner to the land in dispute.

He cited and relied on **NNADOZIE v OMESU (1996) 5 NWLR (Pt. 446); and IDUNDUN v OKUMAGBA (1976) 9 – 10 SC 227**, and argued that the Plaintiff has satisfied the requirement of such proof by the production of document as in Exhibits PW1A and PW1B and had therefore proved his title to the land known as Plot 574 Chikakore Byazhin, Kubwa Village, measuring 360M<sup>2</sup> against the Defendants. He cited **HARUNA ABUBAKAR v ABDULLAHI ABUBAKAR (2015) ALL FWLR (Pt. 808) 720**.

On the Plaintiff's claim for perpetual injunction restraining the Defendants by themselves agents, privies, heirs and assigns from trespassing on Plot 574

Chukaore, Bhyazin, Kubuwa Village Abuja, measuring 960m<sup>2</sup>, Counsel submitted that the Plaintiff had shown that the Defendants who specialize in land speculation had been unleashing hell upon him and his family members in their bid to unlawfully grab the land from him. He added that the Plaintiff had stated that the Defendants later employed the Police to harass, intimidate and unlawfully detain him times without number until he filed this suit. Relying on the case of **THE RECTOR, KWARA STATE & 3 ORS v M.T. OLA ADEFILA (2008) All FWLR (Pt. 431) 969**, and submitted that it is unarguable that the Plaintiff had proved that he had been in possession of the land after purchasing same from the vendor vide Exhibits PW1A, PW1B and PW1C, and that the Defendants have been making adverse claim to the said land. Counsel submitted that the Plaintiff has proved his head claim on the balance of probability and urge this Court to so hold and grant same.

On the Plaintiff's claim for Two Million Naira damages for trespass against the Defendants, learned Counsel argued that the Plaintiff had by his unchallenged evidence also proved this head of claim on the preponderance of evidence. He cited **MUSARI v BASIRIYU (2014) ALL FWLR (Pt. 735) 402**.

As for the claim of 10% interest on the judgment sum from the date of delivery of Judgment until same is liquidated by the Defendants, Counsel urged the Court to hold that the Plaintiff is entitled to same and grant it.

Turning to the Plaintiff's claim for one Million Five Hundred Thousand Naira (N1,500,000.00) only being the amount charged as professional fee by the law

firm of Excelsior Legal Alliance for the prosecution of the suit, learned Counsel submitted that the Plaintiff is entitled to same as same has also been proved on the preponderance of evidence. He referred the Court to Exhibit PW1F, which is the receipt of payment by the Plaintiff to the law firm of Excelsior Legal Alliance as fees for the prosecution of this suit against the Defendants. He cited **U.T.B. v OZOEMENA (2007) All FWLR (Pt. 358) 1014 at 1049; and INTERNATIONAL OFFSHORE CONSTRUCTION LIMITED & 3 ORS v SHORELINE LIFTBOATS NIGERIA LTD. (2003) 16 NWLR (Pt. 845) 157 at 179,** and urged the Court to grant the Plaintiff his claims in its entirety.

As has been earlier stated, the Plaintiff's pleadings and evidence in this case has been unchallenged and uncontroverted by the Defendants who neither appeared nor filed any defence throughout the proceedings despite opportunities granted them to do so. It is an elementary principle of law that failure to file a defence to a claim means no issue is joined on the claim and the failure would amount to an admission of the claim. See: **OKOEBOR v POLICE COUNCIL & ORS (2003) 12 NWLR (Pt. 832) 444, per Niki Tobi JSC,** where he held that:

The basic principle of law is that where a defendant fails to file a defence, he will be deemed to have admitted the claim or relief in the statement of claim...

See also: **EGESIMBA v ONUZURUIKE (2002) LPELR-1043(SC), per Ayoola, JSC at page 14, para. F; AJIBADE v MAYOWA (1978) 9-10 SC 1; OKE v AIYEDUN (1986) 4 SC 61; MOSHOOD v BAYERO (2001) 52 WRN 42; OLORUNWA v AKINDUN (2016)**

**LPELR-40866(CA), per Akinbami, JCA at page 37, paras. C – D; and EMODI & ORS v EMODI & ORS (2013) LPELR-21221(CA), per Akeju, JCA at page 23, paras. C – E.**

It is also settled law that unchallenged and uncontroverted evidence is deemed admitted and such evidence will be regarded as establishing the fact which it contains. See: **MILITARY GOV. OF LAGOS STATE & ORS. v ADEYIGA & ORS (2012) LPELR-7836(SC), per Adekeye, JSC at pages 46 – 47, paras. F – C; LEADWAY ASS. CO. LTD. v ZECO NIG. LTD. (2004) LPELR-1773(SC), per Katsina-Alu, JSC (as he then was) at page 13, paras. C-E; and CBN & ORS. v OKOJIE (2015) LPELR-24740(SC), per Rhodes Vivour, JSC at pages 33 – 35, paras. B – E.**

Flowing from the above authorities, I hereby regard the unchallenged and uncontroverted evidence led by the Plaintiff in this case as unchallenged and uncontroverted. The question then is whether the evidence led by the Plaintiff which I have regarded as established has proved the Plaintiff's claim to for declaration of ownership of Plot 574 Chikakore, Bhyazin Kubwa Village, FCT as well as the other reliefs he claims against the Defendants.

On the Plaintiff's claim for declaration of ownership of Plot 574 Chikakore, Bhyazin, Kubwa Village, Abuja, it is trite law that proof of ownership of land is established in any of the following five ways:

- (1) by traditional evidence;
- (2) by production of documents of title which are duly authenticated;



- (3) by acts of selling, leasing, renting out all or part of the land, or farming on it or on a portion of it;
- (4) by acts of long possession and enjoyment of the land; and
- (5) by proof of possession of connected or adjacent land in circumstances rendering it probable that the owner of such connected or adjacent land would, in addition, be the owner of the land in dispute.

See: **IDUNDUN & ORS v OKUMAGBA & ORS (1976) LPELR-1431(SC), per Fatayi-Williams, JSC (as he then was) at pages 23 - 26, paras. C – C; MOGAJI & ORS. v CADBURY NIGERIA LTD. & ORS. (1985) LPELR-1889(SC), per Obaseki, JSC at pages 72 – 73, paras. G – E; LAWSON v AJIBULU (1997) LPELR-1766(SC), per Ogundare, JSC at page 22, paras. B – D; BALOGUN & ORS. v AKANJI & ORS. (2005) LPELR-722(SC), per Oguntade, JSC at page 12, paras. A – C; and ARUM v NWOBODO (2013) LPELR-20390(SC), per Rhodes-Vivour, JSC.**

In the instant case, the Plaintiff has in his oral evidence before the Court stated in paragraphs 6 – 21 of his adopted witness statement of oath dated 14<sup>th</sup> June, 2017 and adopted on 31<sup>st</sup> January, 2018, testified as follows:

6. That I am the owner of the land known as Plot 574 Chikakore Bhyazin, Kubwa Village FCT measuring 960 m<sup>2</sup> vide Power of Attorney, executed between me and one (Mrs. Badejo Olubunmi Adedoyin) the original allottee of the Letter of Allocation granted her by the Minister of the FCT dated 7<sup>th</sup> November, 1997. The Power of

Attorney, Receipt of Payment and Letter of Allocation are attached as Annexures A1, A2 and B.

7. That at the time Mrs. Badejo divested her interest on Plot 574 Chikakore Bhyazin Kubwa Village FCT to me, the land sales transaction between me and her was receipted. The Receipt of payment is attached as Annexure C.
8. That I have been in actual possession of Plot 574 Chikakore Bhyazin Kubwa Village measuring 960 m<sup>2</sup> located within the Cadastral Zone of F01 grids and within coordinate beacons of FCT PB9996, PB9995, PB9994, PB9993 since 24<sup>th</sup> July, 1998 which was the date the original allottee (Mrs. Badejo) transferred her interest on the land to me.
9. That I constructed a bungalow on the plot of land where I and my family members have been occupying since August 2000 without any interference until the sudden appearance of the Defendants who are purporting to be the title holders.
10. That sometime in 2013, the Defendants and others who came under the aegis of Incorporated Layout Landlords Association, Kubwa, Abuja, initiated a suit against the Minister of the FCT, the Federal Capital Development Authority (FCDA) and Bwari Area Council in Suit No. FCT/HC/CV/2907/13 whereby they relied on the title documents

granted to them by the Chairman of the Bwari Area Council (3<sup>rd</sup> Defendant) vis-à-vis to their landed properties.

11. That consequent upon the pleaded facts in paragraph (10) above, the Court presided over by JUSTICE Y. HALILU on 5<sup>th</sup> February, 2014 entered judgment against the Plaintiffs on the ground that the Bwari Area Council (3<sup>rd</sup> Defendant in the suit) did not have the power grant interest in the land within the Federal Capital Territory. The C.T.C. of the aforesaid judgment is attached as Annexure C.
12. That sometimes in 2014 after the FCT High Court judgment pleaded in paragraph (11) above, the Defendants in company of other persons at large trespassed into my Plot of land known as Plot 574 Chikakore Bhyazin Kubwa Village claiming that they are the allottees (owners) of the land without any proof to back-up their claim.
13. That the Defendants who trespassed into my land in litigation were confronted by me to produce the title documents under which they lay claim to be allottees, but they could not produce any such title documents.
14. That precisely on 29<sup>th</sup> June, 2015 to my surprise, the Defendants in company of two other men at large re-surfaced into my land where I had farm plantation and forcefully planted maize on it.

15. That the Defendants at their last incursion into my land in company of a police officer (Ahmed) issued threats and warned that they would forcefully evacuate me and members of my family if we fail to leave the land.
16. That in January, 2016 the 3<sup>rd</sup> Defendant with the aid of hired police officers from Kubwa Division harassed, intimidated and put me in the cell and was made to part with some amount of money before I could secure my release.
17. That the Defendants engaged the services of a private surveyor (Nuhu) who mischievously carried out survey on the land and cut my land and purportedly allocated it to the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants and left only a portion for me.
18. That since 29<sup>th</sup> June, 2015, I and my family members have been living in fear of further imminent swoop of attack by the Defendants and his (sic) their cohorts.
19. The Defendants' incessant trespass on my land known as Plot 574 Chikakore Bhyazin Kubwa Village, measuring 960 m<sup>2</sup> had exposed me and my family members to harrowing fear and trepidation even as they later resorted to using one police officer (Ahmed) who had at one time ordered my arrest and detention at the Kubwa Phase 4 Police Station.

20. That the unlawful actions of the Defendants made me to write a petition to the Commissioner of Police, FCT Command on 13<sup>th</sup> December, 2016. The letter dated 13<sup>th</sup> December, 2016 is attached as Annexure D.
  
21. That unless this Court comes to my aid, the Defendants would continue to trespass on my land and also use the Police to unlawfully harass, intimidate, arrest and detain me.

In addition to the above oral evidence, the Plaintiff had tendered the following documentary evidence:

Exhibit PW1A: Irrevocable Power of Attorney donated by Badejo Olubunmi Adedoyin to the Plaintiff on 24<sup>th</sup> August, 1998;

Exhibit PW1B: Letter of Allocation granted to Mrs. Badejo Olubunmi Adedoyin by the Hon. Minister of Federal Capital Territory on 7<sup>th</sup> November, 1997;

Exhibit PW1C: Receipt of Payment for the Land purchased from Mrs. Badejo Olubunmi Adedoyin by the Plaintiff;

Exhibit PW1D: Certified True Copy of the Judgment of the FCT High Court delivered by Hon. Justice Y. Halilu on 5<sup>th</sup> February, 2014;

Exhibit PW1E: Plaintiff's Petition against the Defendants addressed to the Commissioner of Police, FCT Command, dated 13<sup>th</sup> December, 2016; and

Exhibit PW1F: Receipt of Payment of Professional Fees to the law firm of Excelsior Legal Alliance by the Plaintiff for the prosecution of this suit.

It is trite law that where, as in this case, there are oral and documentary evidence the Court is enjoined to use the documentary evidence as a hangar to test the veracity of the oral evidence. See: **EGHAREVBA v OSAGIE (2009) LPELR-1044(SC), per Ogbuagu, JSC at pages 34 – 35, paras. E – A; KIMDEY & ORS. v MILITARY GOV. OF GONGOLA STATE & ORS. (1988) LPELR-1692(SC), per Nnaemeka Agu, JSC at page 54, paras. A – B; and CAMEROON AIRLINES v OTUTUIZU (2011) LPELR-827(SC), per Rhodes-Vivour, JSC at page 23, paras. A – D.**

In the instant case Exhibit PW1B, the original Letter of Allocation dated 7<sup>th</sup> November, 1997 and titled ALLOCATION OF PLOT OF LAND MEASURING 960M2 TO BADEJO OLUBUNMI ADEDOYIN supports the Plaintiffs oral assertion that Mrs. Badejo Olubunmi Adedoyin is the original allottee of Plot 574, Cadastral Zone F01 at Chikakore, Bhazin, Kubwa Village of FCT, within the coordinates beacons of FCT PB9996, PB9995, PB9994, PB9993. (See paragraphs 1 and 2 of the said Exhibit PW1B).

In addition, Exhibit PW1C, titled LAND SALE RECEIPT supports the Plaintiffs oral assertion that he purchased the said plot of land from Badejo Olubunmi Adedoyin. The exhibit shows that on the 24<sup>th</sup> of July, 1998 the Plaintiff, Mallam Ahmed Lawal paid the sum of N40,000 (Forty Thousand Naira Only) to Badejo Olubunmi Adedoyin through an agent Alhaji Sanni Aliyu, as purchase price for the said land.

Further, Exhibit PW1C, is an Irrevocable Power of Attorney donated by Badejo Olubunmi Adedoyin to the Plaintiff, Mallam Ahmed Lawal which mandated him to take possession of the said Plot of land.

It is trite that ownership of land would be proved once any one of the five ways is established. See: **AYANWALE v ODUSAMI (2011) LPELR-8143(SC), per Adekeye, JSC at pages 26 – 27, paras. G – B.** From the unchallenged and uncontroverted oral testimony and documents placed before the Court by the Plaintiff herein, it is evident to me that the Plaintiff has satisfied three out of the five ways of proving ownership of land as stated in **IDUNDUN & ORS. v OKUMAGBA & ORS; MOGAJI & ORS. v CADBURY NIGERIA LTD. & ORS.; LAWSON v AJIBULU; BALOGUN & ORS. v AKANJI & ORS.;** and **ARUM v NWOBODO (supra).** The Plaintiff has not only produced the title document to the said land (Exhibit PW1B), he had also testified that he had been in actual possession of the said land since 24<sup>th</sup> July, 1998 and that he had constructed a bungalow on the land where himself and his family had ben occupying since August, 2000.

Whilst considering the legal effect of unchallenged and uncontroverted evidence, His Lordship Adekeye, JSC held thus in **MILITARY GOV. OF LAGOS STATE & ORS V. ADEYIGA & ORS (supra):**

The position of the law where evidence is unchallenged or uncontroverted is that such evidence will be accepted as proof of a fact it seeks to establish. A trial court is entitled to rely and act on the uncontroverted or uncontradicted evidence of a plaintiff or his witness. In such a situation, there is nothing to put or weigh on the imaginary scale of justice. In the circumstance the onus of proof is naturally discharged on a minimum proof. (Pp. 46-47, paras. F-C)

I therefore have no hesitation in finding and holding that the Plaintiff has by his unchallenged and uncontroverted testimony established his ownership of Plot 574, Cadastral Zone F01 at Chikakore, Bhazin, Kubwa Village of FCT, within the coordinate beacons of FCT PB9996, PB9995, PB9994, PB9993. Accordingly, I find and hold that the Plaintiff is entitled to the declaratory relief he claimed in relief (a) of his Statement of Claim.

With regard to the Plaintiff's claim in relief (b) for perpetual injunction restraining the Defendants from trespassing upon the land, it is settled law that a Plaintiff seeking the equitable relief of perpetual injunction must establish to the satisfaction of the Court that he has a vested right worthy of protection from irreparable damage unless the injunction is granted. See: **THE RECTOR, KWARA STATE POLYTECHNIC & ORS. v ADEFILA & ORS (2006) LPELR-8248(CA), per Agube,**



**JCA at page 72, paras. C – F.** It is therefore, only grantable where the Plaintiff has established his right. See: **IBRAHIM COUNCILLOR JIMLARI v JAURO SANTI TIPPI (2010) LPELR-4356(CA), per Yahaya, JCA at page 20, paras. B – D.** It is therefore a consequential order which naturally flows after the grant of a declaratory relief.

I have earlier held that the Plaintiff had vide his unchallenged and uncontroverted oral and documentary evidence established his entitlement to declaratory relief as to the ownership of Plot 574, Cadastral Zone F01 at Chikakore, Bhazin, Kubwa Village of FCT. The Plaintiff has in paragraphs 10 – 20 of his adopted witness statement on oath which I have reproduced above, testified that the Defendants have been trespassing upon his land and harassing, intimidating him and his family, and that unless the Court comes to his aid, the Defendants would continue to trespass on his land and also use the Police to unlawfully harass, intimidate, arrest and detain him. It is therefore clear based on the evidence led by the Plaintiff that he is deserving of the protection of his vested right on the subject property. I therefore find and hold that the Plaintiff has established his entitlement to the perpetual injunction against the Defendants which he sought in relief (b) of the Statement of Claim.

On the Plaintiff's claim for the sum of N2,000,000.00 (Two Million Naira Only) against the Defendants being damages for trespass to land, it is settled law that for a Plaintiff to have a successful claim to damages for trespass, he must establish that at the time of the trespass he had possessory right over the land to which his claim relates. See: **IWENOFU v IWENOFU (1975) LPELR-1565(SC), per Fatayi-Williams, JSC (as he then was) at page 13, para. A; SHITTU v EGBEYEMI & ORS.**

**(1996) LPELR-3060(SC), per Adio, JSC at page 13, paras. F – G; AKINKUGBE v EWULUM (2008) Vol. 6 MJSC 134, per Aderemi, JSC at page 154, paras. C—D; and WUSU & ORS. v DAVID & ORS. (2014) LPELR-22426(CA), per Oseji, JCA at pages 37 – 38, paras. G – C.**

The Plaintiff herein had in his uncontroverted evidence shown that he had been in exclusive possession of the subject plot since 24<sup>th</sup> July, 1998 and that ha had even constructed a bungalow on the said plot of land in which he has been living with his family peacefully until sometime in 2014 when the Defendants in company of other persons started trespassing on to the land. [See paragraphs 12 – 20 of Plaintiff's (PW1's) adopted witness statement on oath which I have also reproduced in the earlier part of this judgment]. From the testimony of PW1 as contained in those paragraphs it seems to me that the Defendants have continued to trespass upon the Plaintiff's land and harass, threaten and intimidate him, to the extent that they even used the Police to unlawfully arrest and detain him. Given the circumstance as borne by the evidence in this case, I am of the view that the Plaintiff has established his claim for the sum of N2,000,000.00 damages against the Defendants.

On the Plaintiff's claim for the sum of N1,500,000.00 (One Million, Five Hundred Thousand Naira Only) against the Defendant, being solicitor's fee for the prosecution of this suit, the Plaintiff has stated in paragraph 21 of the Statement of Claim and paragraph 22 of his witness statement on oath that the action of the Defendants forced him to engage the services of the law firm of Excelsior Legal Alliance who charged him the sum of N1,500,000.00 (One Million, Five Hundred

Thousand Naira Only). The trite position of law is that it is unethical and against public policy to pass solicitor's fees to an opponent where the said fees arose after the occurrence of the cause of action. See: **GUINNESS NIGERIA PLC v. EMMANUEL NWOKE (2000) LPELR-6845(CA), per Ibiyeye, JCA.** In line with this settled legal position, I hereby hold that the Plaintiff is not entitled to relief (e) of his Statement of Claim.

As for relief (d), relating to 10% interest on the judgment sum from the date of judgment till the said sum is liquidated, Order 39 Rule 4 of the High Court of the Federal Capital Territory (Civil Procedure) Rules, 2018 empowers the Court to grant post judgment interest "at a rate of not less than 10% per annum to be paid upon any judgment." This differs from the provision of Order 39 Rule 7 of the old Rules of this Court of 2004 which provides that such interest shall be "at a rate not exceeding 10% per annum to be paid on any judgment, commencing from the date of it or afterwards, as the case may be." Hence, whilst the old 2004 Rules provides 10% as the maximum, the current Rules of 2018 provides 10% per annum as the minimum post judgment interest that is to be awarded by the Court. This being the case, I hereby hold that the Plaintiff is entitled to the 10% post judgment interest claimed by the Plaintiff, being the minimum that could be awarded by the Court.

From all the foregoing, I hereby resolve the sole issue for determination in the affirmative and hold that the Plaintiff has established his claim against the Defendants and is entitled to the reliefs sought in this suit. Accordingly, judgment is hereby entered for the Plaintiff against the Defendants as follows:

1. It is hereby declared that the Plaintiff is the lawful owner of Plot 574 Chikakore, Bhyazi, Kubwa Village, Abuja measuring 960m<sup>2</sup> on Cadastral F01 Zone Grid.
2. The Defendants are hereby restrained by themselves, agents, privies, heirs and assigns from trespassing on Plot 574 Chikakore, Bhyazi, Kubwa Village, Abuja measuring 960m<sup>2</sup> against the Plaintiff.
3. That Defendants are hereby ordered to pay to the Plaintiff the sum of N2,000,000.00 (Two Million Naira Only) being damages for trespass by the Defendants against the Plaintiff.
4. The Defendants shall pay 10% interest per annum on the judgment sum effective from today until the judgment sum is fully liquidated.

**HON. JUSTICE A. B. MOHAMMED**

JUDGE

16<sup>TH</sup> JANUARY, 2019

**Appearances:**

Eze Vin Martins Esq, for the Plaintiff.

Defendant absent and unrepresented.