IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT JABI ABUJA
THIS FRIDAY, THE 22ND DAY OF MARCH, 2019
BEFORE HIS LORDSHIP HON. JUSTICE A. B. MOHAMMED

SUIT NO. FCT/HC/CV/3897/12

BETWEEN:

STOPPY LIMITED - PLAINTIFF

AND

1. HON. MINISTER, FEDERAL CAPITAL TERRITORY
2. FEDERAL CAPITAL DEVELOPMENT AUTHORITY
3. AGRIC. & RURAL MANAGEMENT TRAINING INST.
4. ATTORNEY GENERAL OF THE FEDERATION

} DEFENEDANTS

JUDGMENT
DELIVERED BY HON. JUSTICE A. B. MOHAMMED

The Plaintiff, a limited liability company brought this suit against the Defendants vide a Writ of Summons dated 5th July, 2012 which was subsequently amended by order of Court of 25th November, 2013. The Plaintiff's claims against the Defendants as contained in the Amended Writ of Summons and Amended Statement of Claim dated 21st November, 2013 are as follows:

(a) A declaration that the Plaintiff is the bona fide allotee of the recreational park (Green Area) also known as Plot 164B, Cadastral Zone B01, Gudu District, Abuja vide letter of Temporary Approval to develop a recreational centre dated 6th August, 2007 signed by

one TPL Luka Bulus Achi, Director, Department of Parks and Recreation of the Abuja Metropolitan Management Agency allocating the Park to the Plaintiff.

(b) A declaration that the action of the agents of the 1st and 2nd Defendants in entering into the Plaintiff's Garden and demolishing the Plaintiff's properties, goods and food stuffs on 28th May, 2012 while acting on the prompting and directions of the 3rd Defendant is an act of trespass. And that the demolition of the Garden (being in contravention of FCT Urban and Regional Planning Act) is illegal, null and void.

(c) An order of perpetual injunction restraining the 1st to 4th Defendants, their agents, servants, privies, representatives or by whomsoever from interfering, disturbing or taking any illegal steps whatsoever against the interest of the Plaintiff in respect of Plot 164B, Green Area situate lying and being at Cadastral Zone B01, Gudu District, Abuja allocated to it vide letter of approval dated 6th of August, 2007.

(d) An order of perpetual injunction restraining the Defendants, their agents, servants, privies, representatives from demolishing, destroying the movable and immovable properties on the said Plot of the Plaintiff.

(e) An order of this Honourable Court for the cost of N22,361,400.00 (Twenty Two Million, Three Hundred and Sixty One Thousand, Four Hundred Naira) in favour of the Plaintiff against the Defendants, being the special damages for the value of the

Plaintiff's properties destroyed on the 28th day of May, 2012 as valued and calculated in the Appendix A to the Statement of Claim.

(f) The cost of N30,000,000.00 against the Defendants in favour of the Plaintiff as general damages for trespass.

(g) Cost of this action in the sum of N200,000.00.

Upon being served with the Plaintiff's originating processes, the 1st and 2nd Defendants filed their Joint Statement of Defence with leave of Court on 24th November, 2016, in which they denied the claims of the Plaintiff and averred that the Plaintiff was never allocated the said Plot and that the said Plot was in fact allocated to the 3rd Defendant who was issued with title documents.

The 3rd Defendant also filed a Statement of Defence and Counter Claim dated 23rd January, 2013 and filed on the 25th of January, 2013. In its Counter Claim, the 3rd Defendant counter claimed against the Plaintiff as follows:

(i) A declaration that the Counterclaimant is the legal and lawful owner of Plot 164 within Gudu District, Cadastral Zone B01, measuring 1.31 hectares as evidenced by Certificate of Occupancy No. 1806w-107aO-5dc3r-fa46u-20 dated 15th September, 2006 with attached schedule covering the said Plot 164.

(ii) An order of this Honourable Court declaring an attempt made by the Plaintiff/Defendant to Counterclaim or its agent to subdivide Plot 164 belonging to the Counterclaimant as illegal, null and void.

(iii) An order of this Honorable Court declaring the activities of the Plaintiff/Defendant to the Counterclaim as illegal trespass on the

undeveloped portion of Plot 164 belonging to the Counterclaimant.

(iv) An order of perpetual injunction restraining the Plaintiff/Defendant to the Counterclaim, their agents, servants and representatives from disturbing the Counterclaimant's peaceful possession and enjoyment of Plot 164 and or from carrying on illegal bar and joint upon Counterclaimant's Plot 164 within Gudu District, Cadastral Zone B01, Abuja.

(v) An order of the Honourable Court awarding in favour of the Counterclaimant the sum of N5,000,000.00 (Five Million Naira) against the Plaintiff/Defendant to the Counterclaim as general damages.

(vi) Cost of action in the sum of N500,000.00.

In response to the 3rd Defendant's Counter Claim, the Plaintiff/Defendant to the Counterclaim filed a Statement of Defence to the Counterclaim on 22nd February, 2013. The 3rd Defendant responded by filing a Reply to the Plaintiff's Statement of Defence to the Counterclaim, dated 16th April, 2013 and filed on 17th April, 2013.

Briefly, the facts of this case as revealed by the pleadings of the parties are that the Plaintiff claimed to be a bona fide allottee of a Plot in a Green Area known as Plot 164B, Cadastral Zone B01, Gudu District, Abuja by virtue of a Letter of Temporary Approval to develop a Recreational Centre dated 6th August, 2007 and issued to her by the Department of Parks and Recreations. According to the Plaintiff, there is a Plot 164A adjacent to her Plot which is purely residential and owned by the 3rd Defendant and which was demarcated

by a sewage line and a fence erected by the 3rd Defendant. The Plaintiff alleged that after she had paid all the relevant fees and invested millions of Naira and was operating a Park thereon, some people came and installed beacons on a part of the Plot. That subsequently she received a quit notice from the 1st and 2nd Defendants to leave the premises and despite her protests, the 1st and 2nd Defendants later went ahead to demolish the structures she had erected on the Plot causing her loss of her properties as well as her business.

The 1st and 2nd Defendants on the other hand have maintained that there is no Plot called Plot 164B and that the Plaintiff was occupying and operating the Park illegally without any proper allocation to her from the 1st Defendant and that the Plaintiff erected the structures thereon without the necessary approval required by law. The 1st and 2nd Defendants averred that there was no Plot 164A and 164B, as the entire Plot in the area which is Plot 164 belonged to the 3rd Defendant to whom a Certificate of Occupancy had been issued. The 1st and 2nd Defendants further maintained that even if the Plaintiff was allocated the said Plot she never complied with the terms of the allocation purportedly given to her in that she never obtained approval before erecting structures on the Park and was therefore operating the Park contrary to the Parks regulations applicable in the FCT and as such the structures were liable to be removed.

The 3rd Defendant also maintained that it was allocated Plot 164, Cadstral Zone B01 within Gudu District, Abuja by the 1st Defendant for institutional use as far back as 1993 and it was subsequently issued with a Certificate of Occupancy by the 1st and 2nd Defendants. That considering its available resources at the time, it developed a portion of the Plot and erected a fence to prevent flood coming into the developed portion from the stream that enetered and passed through

the undeveloped portion of the said Plot of land. The 3rd Defendant averred that following burglaries by unknown persons who entered its premises from the undeveloped portion of the Plot, it became aware of the Plaintiff's trespass upon the undeveloped portion of the Plot and the use of the place by the Plaintiff for illegal Bar and Joint activities. That when all peaceful appeals upon the Plaintiff were abortive, the 3rd Defendant complained to the 1st and 2nd Defendants about the illegal activities of the Plaintiff upon its Plot 164, Cadastral Zone B01, Gudu District, Abuja.

Trial commenced on the 29th of January, 2014. In proof of its case and in defence of the 3rd Defendant's Counterclaim, the Plaintiff called a sole witness, the Managing Director of the Plaintiff/Defendant to the Counterclaim, Ngozi Anene, who testified as PW1. She adopted her two witness statements on oath and through her, the following documents were admitted in evidence without objection:

(i)	Exhibit PW1A	-	Copy of Plaintiff's application for lease of a garden in FCT, dated 23/10/06;
(ii)	Exhibit PW1B	-	Original Letter of Temporary Allocation/ Approval to Develop a Recreation Centre
(iii)	Exhibit PW1C	-	Site Plan of the Park from AGIS.
(iv)	Exhibits PW1D(i) – D(iii)	-	Three (3) Original receipts of payment dated 16/03/11, 22/08/11 and 06/03/12.
(v)	Exhibit PW1E	-	Receipt of Member of Parks & Gardens Owners Association dated 30/11/11.

(vi)	Exhibit PW1F	-	Billing Demand Notice dated 16/12/10 in the name of the Plaintiff.
(vii)	Exhibit PW1G	-	Quit Notice served on Plaintiff dated 06/03/12.
(viii)	Exhibit PW1H	-	Demolition Notice dated 26th April, 2012.
(ix)	Exhibits PW1I(i) – I(iii)	-	Three (3) letters; two dated 30/04/12 and one 30/05/12.
(x)	Exhibit PW1J	-	Acknowledgement copy of petition from Absolute Solicitors dated 03/07/12 addressed to the IG of Police.
(xi)	Exhibit PW1K	-	CTC of the response of the IGP dated 04/07/12.
(xii)	Exhibits PW1L(i) – L(xxii)	-	22 Photographs with their negatives.
(xiii)	Exhibit PW1M(i) – M(xxiii)	-	Photographs of the Park showing the state of the park before and after the demolition.
(xiv)	Exhibit PW1M(i) - M(xxx)	-	30 receipts for purchases and a Police Extract.

PW1 was duly cross-examined and discharged, after which the Plaintiff closed its case.

The 1st and 2nd Defendants also called a sole witness, Musa Ishaku, a Principal Town Planning Officer with the Department of Parks and Recreations who was

in charge of Garki 1 & 2, Gudu and Apo Districts. He testified as DW2 and was duly cross examined by the learned Counsel for the Plaintiff.

On its part, the 3rd Defendant called Mr. Ademola Sunday Adebayo, its Liaison Officer in Abuja, who testified as DW1. He tendered the following documents which were admitted in evidence:

(i)	Exhibit DW1A	-	Original Certificate of Occupancy No. 1806w-107aO-5dc3r-fa46u-20 dated 15th September, 2006.
(ii)	Exhibit DW1B	-	Site Plan in the name of the 3rd Defendant.
(iii)	Exhibit DW1C	-	Letter dated 11/06/12 addressed to Coordinator Abuja Metropolitan Management Council (AMMC).
(iv)	Exhibit DW1D	-	Letter dated 22/06/12 addressed to the Divisional Police Officer, FCT Command.
(v)	Exhibit DW1E	-	Letter dated 04/02/12 addressed to Director, Urban & Regional Planning.
(vi)	Exhibit DW1F	-	Letter dated 30/05/12 addressed to the Director, AMMC.
(vii)	Exhibit DW1G	-	Letter dated 30/01/12 addressed to the Director, AMMC Parks & recreation Dept.

(viii) Exhibit DW1H - Letter dated 30/01/12 addressed to Director, AMMC, Development Control Dept.

(ix) Exhibit DW1I - Letter dated 03/07/12 addressed to the Commissioner of Police, FCT.

Exhibit DW1J, a CTC of ruling of Chief Magistrate Court was also tendered during cross-examination of DW1.

Sequel to the application made by the learned Counsel for the Plaintiff, the Court also made a visit to the locus in quo and in line with the Court's directive for parties to come with their professional experts, Mr. Isaac Oyibo, a Surveyor and Mr. Ogunmakinwa Benson Oladele, a Town Planner invited by the 3rd Defendant attended the locus in quo proceedings and testified in open Court as to what they saw and know as professionals. They were duly cross examined by the Plaintiff/Defendant to the Counterclaim.

The 4th Defendant did not file any Statement of Defence to the Plaintiff's claim.

At close of evidence, parties adopted their respective final written addresses.

In his adopted final address, learned Counsel for the Plaintiff, Anthony Agbonlahor Esq, raised the following two issues for determination:

1. Whether the Plaintiff had proved its case on the preponderance of evidence as to be entitled to the reliefs sought against the Defendants.

2. Whether on the balance of probabilities the 3rd Defendant/Counterclaimant is entitled to the grant of her Counterclaim.

The learned Counsel for the 1st and 2nd Defendants, Cyprian O. Agashieze Esq, on the other hand, formulated the following three issues for determination:

1. Whether there is in existence a Park ebing and known as Park 164B, Cadastral Zone B01, Gudu District at all considering the fact that the Plot being and known as Plot 164, Cadastral Zone B01, Gudu had been allocated to the 3rd Defendant long before the illegal entry into the Plot by the Plaintiff.

2. Whether in the light of the document of title tendered in evidence by the Plaintiff there was any valid allocation or leasing of Park No. 164B measuring an area about 0.6 Hectares ar Garki 1 District to the Plaintiff at all, and if there was, whether the Plaintiff has met the conditions stipulated in the Letter of Allocation to ground her title to the Park as claimed.

3. Whether on the preponderance of legally admissible evidence, the Plaintiff has made out sufficient case to entitle it to all the reliefs or any of the reliefs sought in this suit.

On his part, learned Counsel for the 3rd Defendant, J. O. Bamidele Esq, raised the following two issues for determination:

1. Whether the Plaintiff/Defendant to Counterclaim has made out a case against the 3rd Defendant/Counterclaimant to enable the Honourable Court to grant her the reliefs sought in this case.

2. Whether the 3rd Defendant/Counterclaimant is entitled to tis reliefs against the Plaintiff/Defendant to Counterclaim.

From the above issues respectively raised by the parties and theire submissions thereon, I am of the view that the two issues which fall for determination in this case are:

1. Whether the Plaintiff has made out her case against the Defendants as to be entitled to the declaratory and other reliefs sought in this suit.

2. Whether the 3rd Defendant/Counterclaimant had established her counterclaim against the Plaintiff/Defendant to Counterclaim as to be entitled to the reliefs she seeks against the Plaintiff/Defendant to Counterclaim.

ISSUE ONE: THE PLAINTIFF'S CLAIM:

With regard to the first issue, the learned Counsel for the 1st and 2nd Defendant, Cyprian O. Agashieze Esq, commenced his argument by pointing out that Plaintiff had admitted in paragraph 19 of her Statement of Claim that Plot 164A belongs to the 3rd Defendant while Plot 164B belongs to her, but upon a visit to the locus in quo and upon evidence emanating therefrom, it became clear that there is only one Plot 164 in the area, and there if nothing like Plot 164A and 164B. Counsel argued that it is unimaginable that the Plaintiff would on her own divide the Plot of the 3rd Defendant and give to the 3rd Defendant the one she chooses while retaining the one she likes. He submitted that upon the allocation of Plot 164 to the 3rd Defendant herein, there is no other Plot being and known as Plot 164B to be allocated to the Plaintiff.

Learned Counsel pointed out that in the course of the trial, the 3rd Defendant had tendered in evidence the Statutory Right of Occupancy as well as the Certificate of Occupancy over Plot 164, Cadastral Zone B01, Gudu which was granted to the 3rd Defendant sometime in 1993, long before the Plaintiff embarked on her invasion of same under a non-existent allocation or an allocation to an undesignated plot. He argued that with the creation of a statutory right of occupancy over the said plot, there cannot be any other title to be granted to the Plaintiff in respect of the same Plot.

On whether there is a valid allocation or leasing of Park No. 164B, Cadastral Zone B01, Gudu measuring an area of about 0.6 Hectares to the Plaintiff, learned Counsel submitted that the Plaintiff had not been able to establish that there was any valid allocation to her of the Plot in issue, especially when the 1st and 2nd Defendants have expressly denied the allocation brandished by the Plaintiff dated 6th August, 2007 and issued by the Director, Parks and Recreations Department. He submitted that no reference was made to the Minister of the FCT who has the statutory responsibility to manage and administer all land within the Federal Capital Territory. He pointed out that the Letter of Allocation relied upon by the Plaintiff is in respect of "a recreational centre at Apo" while the Plaintiff is claiming a Park being and known as Plot 164B, Cadastral Zone B01, Gudu. He argued that the allocation of a non-extent, unnamed plot in Apo cannot translate and entitle the Plaintiff to Plot 164B, Gudu District, Abuja.

Learned Counsel contended that under the Constitution of the Federal Republic of Nigeria, 1999 (as amended) the only authority that manages and administers land in the Federal Capital Territory is the Honourable Minister of the FCT. He submitted that the person who sgned the letter of allocation of the

Plaintiff lacks the capacity to pass title. He relied on the case of **MR. LUKA BAKO & ANOR v FEDERAL CAPITAL DEVELOPMENT AUTHORITY & ANOR - SUIT NO. FCT/HC/CV/515/2007, delivered by P. O. Affen, J of the High Court of the Federal Capital Territory, Abuja; and MADU v MADU (2008) 6 NWLR (Pt. 1083) 296.** He argued that the Plaintiff did not get any title to any plot in the FCT as claimed, same having not been made by the Honourable Minister of the Federal Capital Territory or by the appropriate authority on bahelf of the Honourable Minister. He added that in the FCt, the only way of acquiring a valid allocation is from the Honourable Minister of the FCT. He referred the Court to Section 297(2) of the 1999 Constitution (as amended) and Section 18 of the Federal Capital Territory Act.

Without conceding that any title passed to the Plaintiff, learned Counsel for the 1st and 2nd Defendants submitted that the Plaintiff did not meet all the conditions contained in the purported letter of allocation to her. He argued that the Plaintiff had not shown evidence of acceptance of the allocation. He also argued that without an allocation of a specific and designated Park to the Plaintiff any other document that seeks to confer title to land in the FCT by whatever name called or that seeks to regularize or formalize title over a piece or parcel of landis built on nothing and as such cannot stand.

Learned Counsel submitted that in a civil case proof is on the preponderance of evidence and that the Plaintiff has the burden of proving material facts that will make the Court to give judgment in her favour. He cited Sections 131(1) & (2), 132 and 134 of the Evidence Act, 2011. He submitted that given the declaratory nature of the reliefs claimed by the Plaintiff, the Plaintiff can only succeed on the strength of her case and she had failed to discharge the burden placed on her because there is no letter or document allocating Plot 164B,

Cadastral Zone B01, Gudu District to the Plaintiff and the site plan showing Plots 164A and 164B exhibited by the Plaintiff was not signed and not shown to have emanated from any office whatsoever. He added that there is also evidence that the Plot of land known as Plot 164, Cadastral Zone B01, Gudu was duly allocated to the 3rd Defendant and its area covers the place the Plaintiff refers as her Park. Counsel argued that with the allocation of a statutory right of occupancy in favour of the 3rd Defendant as far back as 7th October, 1993 and the issuance of a Certificate of Occupancy to the 3rd Defendant prior to the entry into the Plot by the Plaintiff, there is nothing left to be granted to the Plaintiff. He submitted that there is then nothing left for the Court to declare as belonging to the Plaintiff.

Counsel further submitted that even if it is assumed (though not conceded) that there was anything granted to the Plaintiff, she had not complied with the terms of the said approval as there was no indication that the Plaintiff accepted same and complied with the terms and it was admitted that there was no approval of the structures erected thereon.

Counsel submitted that the Plaintiff had admitted in paragraph 21 of the Statement of Claim and paragraph 14 of PW1's witness statement on oath that the 1st and 2nd Defendant gave the Plaintiff quit notice before proceeding to demolish the unapproved structures. Counsel argued that the Defendants have duly complied with the provisions of the FCT Act before carrying out the removal of the structures developed without requisite approval. He relied on Section 7(1) & (2) of the FCT Act and submitted that it was when the Plaintiff failed to remove the said unapproved structures that the 1st and 2nd Defendants proceeded to remove same. Learned Counsel referred the Court to the Court of Appeal decision in **ALHAJI YAHAYA YUSUF & ANOR v SAVANNAH**

SCAPE REALTORS LTD – CA/A/719/2013, to the effect that a development carried out without approval within the FCT can be removed withotunthe necessity of a formal demolition notice and the authority can recover the cost of the removal from the developer, since the developer is a law breaker and cannot be shielded from the consequences of breaking the law. Counsel also cited the decision of my learned brother P. O. Affen, J. in **M-SIX II SERVICE LTD. v THE HONOURABLE MINISTER, FCT & 3 ORS – SUIT NO. FCT/HC/CV/2012,** delivered on 23rd December, 2015, where the Court of Appeal decision was relied upon and applied.

Learned Counsel submitted that the Plaintiff had failed to establish his entitlement to the declaratory and consequential reliefs which he seeks in this case. Citing and relying on **DIM v ENEMUO (2009) 10 NWLR (Pt. 1149) 353 at 358 ratio 1; and ONOVO v MBA (2014) 14 NWLR (Pt. 1427) 391 at 395, ratios 1 & 2,** Counsel urged the Court to dismiss the Plaintiff's suit in its entirety with substantial cost.

In his own submissions, learned Counsel for the 3rd Defendant, J. O. Bamidele Esq, pointed out that the Plaintiff's claim is for a declaration that she is the bona fide allotee of recreational Park (Green Area) known as Plot 164B, Cadastral Zone B01, Gudu District, Abuja vide latter titled Temporary Approval to develop a recreational centre dated 6th August, 2007 signed by one TPL Luka Bulus Achi, Director, Department of Parks and Recreation, which is Exhibit PW1B, while the 3rd Defendant had counter-claimed for a declaration that it is the legal and lawful owner of Plot 164 within Gudu District, Cadastral Zone B01, measuring 1.31 hectares as evidenced by C. of O. No. 1806w-107a0-5dc3r-fa46u-20 dated 15th September, 2006 with survey plan attached TDP/Schedule covering the said Plot in question. Learned Counsel contended

that it is settled law that a claim for a declaration is a discretionary remedy that is not granted as a matter of course but upon cogent and credible evidence adduced by the claimant.

Learned Counsel also submitted that the second claim of the Plaintiff is based on trespass. He cited the Supreme Court decision in **OYENEYIN v AKINKUGBE (2010) 4 NWLR (Pt. 1184) 265, paras. A – C,** to the effect that where a claim for treapass is coupled with a claim for injunction, the title of the parties to the land in dispute is automatically put in issue, and where two parties are on land with each claiming possession as in this case, trespass can only be at the suit of that party who can show that title to the land is in him; and when the issue is as to which of the two claimants had a better right to possession or occupation of the land in dispute, the law will ascribe such possession and occupation to the person who proves a better title. He further relied on **ALAO v KURE & ORS (2009) 9 NWLR (Pt. 672) 423 at 434, paras. A – D.**

Learned Counsel also cited the case of **IDUNDUN v OKUMAGBA (1979) 9 – 10 SC 227**, which stipulated five ways of proving title to land. He submitted that the Plaintiff had not been able to establish title to the land in dispute by any of the five ways and methods listed in that case. He stated that the Plaintiff had failed to prove her title over the purported Plot 164B, Cadastral Zone B01, Gudu District, Abuja which is the subject matter of this case. He contended that the Plaintiff must succeed on the strength of her case and not on the weakness of that of the defence. He cited **ODUNZE v NWOSU (2007) 13 NWLR (Pt. 1050) 1 at 52, paras. A – B.**

Learned Counsel submitted that by the averments of the Plaintiff heavy reliance was placed on a letter of temporary approval to develop a recreational

centre dated 6th August, 2007 signed by one TPL Luka Bulus Achi, Director, Department of Parks and recreation of the Abuja Metropolitan Management Agency, but unfortunately for the Plaintiff the purported letter Exhibit PW1B cannot confer title in respect of undeveloped portion of Plot 164 which the Plaintiff single-handedly named as Plot 164B. Counsel reasoned that the said TPL Luka Bulus Achi, Director, Department of Parks and Recreation does not have the authority over Plot 164 and cannot issue Exhibit PW1B the purported letter of approval to the Plaintiff over same, since it is only the 1st Defendant who has the statutory authority to allocate land in the FCT. Counsel referred the Court to Sections 297(2) and 302 of the 1999 Constitution (as amended) and Section 18 of the Federal Capital Territory Act, Cap. 503, LFN, 1990.

Learned Counsel for the 3rd Defendant pointed out that the purported letter of allocation Exhibit PW1B titled Temporary Approval to develop a recreational centre does not have any link with either Plot 164 or Plot 164B as presented by the Plaintiff to the Court, which is within Cadastral Zone B01, Gudu District, Abuja. He added that the opening paragraph of Exhibit PW1B states that "Reference to your request to develop a recreational centre at Apo (0.56 hectares)." Counsel submitted that the whole developed and undeveloped Plot 164 belonging to the 3rd Defendant or as named by the Plaintiff as Plot 164A and Plot 164B is not in Apo but situate in Cadastral Zone B01, Gudu District, Abuja.

Counsel also pointed out that the second paragraph of Exhibit PW1B, the Plaintiff's letter of allocation states that "Note that this is a transit way and the road development can commence at short notice." Counsel submitted that the location of Plot 164 which is in Cadastral Zone B01 Gudu District as stated by the parties in their pleadings is not a transit way as described in Exhibit PW1B

which is in Apo. He added that PW1 had under cross examination confirmed that where she carries on business on Plot 164 is not a transit way allocated to her through Exhibit PW1B. Counsel posited that the Plaintiff had left the transit way allocated to her in Apo and unlawfully broke into Plot 164 Cadastral Zone B01, Gudu District Abuja, occupying the undeveloped portion of it and single-handedly renamed it as Plot 164B.

Learned Counsel for the 3rd Defendant submitted that Exhibit PW1B has failed to meet any of the methods of proving title to land in respect of the undeveloped portion of Plot 164 which is in issue. Counsel submitted that to prove title and ownership of both the developed and undeveloped portions of Plot 164, Cadastral Zone B01, Gudu District, Abuja, measuring 1.31 hectares, the 3rd Defendant had tendered Exhibit DW1A, the Certificate of Occupancy No. 1806w-107a0-5dc3r-fa46u-20 which shows that the land was institutional and not residential and it is a single Plot 164 and not 164A and 164B as presented to the Court by the Plaintiff. Learned Counsel drew the Court's attention to the averment of the 3rd Defendant that due to lack of enough funds it had planned the development of Plot 164 in stages and in support of that assertion it had tendered Exhibit DW1B, the Site Plan made as far back as August 1997. Counsel submitted that it was the portion of Plot 164 which the 3rd Defendant reserved for future use that the Plaintiff broke into and renamed as Plot 164B without any statutory authority. He pointed out that the Plaintiff had admitted that Plot 164 belongs to the 3rd Defendant. He argued that in view of the single Certificate of Occupancy (Exhibit DW1A) that covers the entire Plot 164, the Site Plan (Exhibit DW1B) and the act of ownership of the developed portion, the combined effect points to the fact that the owner of the developed portion is the owner of the undeveloped portion of the subject

matter in dispute. He contended that these facts do prove four of the five ways of establishing title to land and as such the 3rd Defendant/Counterclaimant had successfully proved a better title to the undeveloped portion of Plot 164.

Learned Counsel submitted that the Plaintiff had averred in paragraph 9 of the Statement of Claim and paragraph 4 of PW1's witness statement on oath that the undeveloped portion of Plot 164 was allocated to her in 2007, but she had said in paragraph 11 of the Statement of Claim and paragraph 6 of her witness statement on oath that she paid processing fee for the use of the Plot on 16th March, 2011. Counsel urged the Court to hold this contradiction against the Plaintiff as to the time she entered the Plot in issue. As for the reliance by the Plaintiff on the old fence erected by the 3rd Defendant, Counsel submitted that DW1 had testified that the said fence was erected to prevent flood into the developed portion of Plot 164 and not as a mark of boundary.

Learned Counsel also pointed out that the Professional Town Planner, Mr. Ogunmakinwa Benson Oladele who testified after the visit to locus in quo had stated under cross examination that he could not see the beacons at the undeveloped side of the Plot because the Kerb at the walkway had been reconstructed for easy passage for customers patronising the Garden business. Counsel referred to the Court Order of 12th July, 2012 which was reinforced with the new order of 20th March, 2013 after the Plaintiff had continued reconstruction on the land. He also referred to the pictures submitted by the Plaintiff showing the pulling down of the joint and bars, hut and thatch roof during demolition, as well as the current position of the land which the Court saw during the visit to locus. Counsel argued that the Plaintiff had recklessly flouted the orders of the Court and cemented everywhere and expanded her

business. Counsel urged the Court to draw inference from this that the Plaintiff removed the beacons as shown in Exhibit DW1A.

Learned Counsel for the 3rd Defendant also submitted that the Professional Surveyor Isaac Oyibo had during the visit to locus in quo used his GPS Professional Device and the coordinate data in Exhibit DW1A and was able to locate the starting point of Plot 164 and the end which shares boundary with Plot 163, both adjacent plots already fenced. Under cross examination he had said that the owners of Plots beside Plot 164 had put their fence on the starting point of the first beacon. Counsel urged the Court to draw inference from both Plots on the side of Plot 164 which are standing as single plots with almost the same length and there is no bar or park or recreation activities on those plots, particularly Plot 163 through which the stream and sewage line run, just like the undeveloped portion of Plot 164 that is in dispute.

Learned Counsel submitted that Exhibit DW1A, the Certificate of Occupancy, particularly the TDP Drawing on the reverse page shows Plot 164 as a single Plot and DW1 had under cross examination stated that Plot 164 stretched through the main entrance in the front through the mini road down to the main express road where the undeveloped portion of the Plot is situate, and that Plot 164 is in between the mini road and the Express road and that the authorities did not permit use of gate facing the main express. He added that Exhibit DW1A shows the beacons and both the developed and undeveloped portions as Plot 164 and not Plot 164A as averred by the Plaintiff. He urged the Court to declare Exhibit DW1A valid and based on same and Exhibit DW1B and the testimony of DW1, hold that nothing in Exhibit PW1B the purported letter of allocation and other exhibits put forward by the Plaintiff shows any beacons or any information on Plot 164 or 164A or 164B to draw any inference

in favour of the Plaintiff. He urged the Court to hold that the name Plot 164B given by the Plaintiff to the undeveloped portion that is in dispute is illegal and an attempt to fraudulently take over or subdivide Plot 164 into A and B.

Learned Counsel referred the Court to the case of **OLATUNDE v OBAFEMI AWOLOWO UNIVERSITY (1998) 5 NWLR (Pt. 549) 178,** to the effect that a Certificate of Occupancy properly issued by a competent authority raises a presumption that the holder of the document is the owner in exclusive possession of the land. He further submitted that the 3rd Defendant had established ownership by proof of adjacent land to the land in dispute in such circumstances which render it probable that it is the owner of the land in dispute. Learned Counsel contended that the Plaintiff had failed to prove ownership of the undeveloped portion of Plot 164 and failed to prove possessory right over the said land.

On the Plaintiff's claim for special damages, learned Counsel for the 3rd Defendant contended that the trite law is that same must be specifically pleaded and strictly proved. He argued that the Plaintiff had failed to specifically plead and prove the items claimed to have been damaged in the process of demolishing the hut and thatched huts erected upon the undeveloped portion of Plot 164. He submitted that there was no specific proof of the worth of the items claimed to have been damaged and pointed out that the list of items in the Statement of Claim and the bundles of receipts not bearing the name of the Plaintiff, with some altered and some not having any amount or without date all do not convey any information relating to damaged property, as some are mere quotations given to the Plainitff. Learned Counsel submitted that even if it is assumed that the receipts are genuine, they cannot take the place of strict proof damage to property required by law.

He argued that the claim of damage is at variance with the pictures presented by the Plaintiff showing demolition of hut, plastic chairs and thatched roof carried out by the Department of Development Control after expiration of the notices. Counsel urged the Court to take cognisance of paragraphs 21 and 24 of the Statement of Claim and paragraph 14 of the witness statement on oath of PW1 that quit and demolition notices were served on the Plaintiff before the structures on the Plot were demolished. He argued that the Department of Development Control of Abuja Metropolitan Management Agency is the only authority in charge of issuing quit notice and demolition notice as well as the actual demolition of illegal structures. He submitted that DW1 had testified that the Plaintiff actually packed her properties prior to the day appointed for the demolition.

Learned Counsel urged the Court to hold that having been given notices and time frame and opportunity to remove her things on the Plot which the Plaintiff ignored, running instead to the Department of Parks and Recreations which was not the author of the notices, could not turn around to claim damages. He added that DW1 had during the report of visit to locus in quo said that the Plaintiff had expanded her business even after the demolition.

Learned Counsel submitted that the testimony of the 3rd Defendant was that its statutory duty is training and it does not possess the power to issue quit and demolition notices, and that every effort made by the 3rd Defendant was officially and peacefully handled through appeal to the Plaintiff to quit, after which letters of complaint in Exhibits DW1C, DW1D, DW1E, DW1F, DW1G, DW1H and DW1I were made to the relevant authorities.

Arguing per contra, learned Counsel for the Plaintiff submitted that the Plaintiff had in order to prove her case tendered Exhibit PW1A which was the application form she filled; Exhibit PW1B, the letter of temporary allocation to operate a Park dated 06/08/07 given to her by the Department of Parks and Recreations; as well as Exhibit PW1C, the Site Plan by AGIS given to the Plaintiff during the recertification of Parks in the FCT in 2010. Counsel added that the Plaintiff had also tendered Exhibit PW1F, the demand notice for fees dated 16/12/10 which was served on the Plaintiff, and Exhibits PW1D(i) to PW1D(iii), the Receipts for the processing fee of 16/03/11, recertification fee of 22/08/11 and ground rent of 06/03/12.

Learned Counsel pointed out that Exhibit PW1F dated 16/12/10, the Demand Notice served upon the Plaintiff by the Department of Parks and Recreations showed that the District in which the Park is situate as Gudu and stated the date of allocation as 06/08/07 and that the allocation was temporary. He added that the Plaintiff was taken to the Plot to be used as a Park by the staff of the Parks and Recreations Department and there was a sign erected by the road side indicating that the space was to be used for recreation and the sign had remained there till date.

Learned Counsel argued that since the Plaintiff was let into possession, she had developed the Park and used same for recreational purpose, and since Exhibit PW1B had not given the Park a name, the Plaintiff called her Park Plot 164B because of its proximity to the 3rd Defendant's Plot 164 and for ease of reference. Counsel argued that Plot 164 was not subdivided by the Plaintiff and she does not have the power to subdivide any plot in the FCT and such power vests in the Hon. Minister of the FCT, the 1st Defendant.

Learned Counsel submitted that both the Plaintiff and the 3rd Defendant in this case are relying on the same method of proving title to the land in dispute, which is by production of documents of title. Counsel contended that there are five ways of proving title to land which have been re-stated in **NWAKOBIA v NWOGU (2009) 10 NWLR (Pt. 1150) 553**, where the Supreme Court, relying on **IDUNDUN v OKUMAGBA (1976) 9 – 10 SC 227,** re-stated the five ways as: (i) by traditional history; (ii) by production of documents of title; (iii) by acts of long possession and enjoyment of the land; (iv) by act of a person claiming the land, such as selling, leasing or renting; and (v) by proof of possession of connected or adjacent land.

Further relying on **EDEBIRI v DANIEL (2009) 8 NWLR (Pt. 1142) 15; EZINWA v AGU (2003) 33 WRN 38; AWODI v AJAGBE (2007) 47 WRN 95; and LAWAL v AKANDE (2008) 2 NWLR (Pt. 1126) 425,** learned Counsel submitted that in an action for declaratory title such as this, it is enough if the Plaintiff produces sufficient and satisfactory evidence in support of her claim. He added that the Plaintiff only succeeds on the strength of her case and argued that the Plaintiff has sufficiently produced documents of title to the Park. He relied on **MR. GHASSAN SAIDI v MR. ALAKE OSABORO IBUDE (2011) 20 WRN 127; and ADEYEMO v ADEYEMO (2010) 45 WRN 81 at 109, per Kekere-Ekun, JCA (as he then was) at lines 30 – 40.** Learned Counsel submitted that none of the documents of title to the Park and receipts of payments of fees tendered by the Plaintiff was self-generated. He expressed that the 3rd Defendant on the other hand, had merely laid claim to a prior existing title over Plot 164 and nothing more, but has failed to produce any document of title to make it lay claim to ownership of the Plaintiff's Park, beside the Plaintiff's innocuous act of

stating that her Park is Plot 164B. He argued that calling the Park Plot 164B is not an admission of the title to or ownership of the 3rd Defendant to the Park.

Learned Counsel for the Plaintiff submitted that despite the antics of DW1 in relying on a non-existent title, DW1 had in Exhibit DW1C acknowledged that the Plaintiff had a temporary allocation of the Plot which he calls the property of the 3rd Defendant, and during cross-examination, DW1 had admitted that the Plaintiff was properly let into possession of the Park and therefore withdrew the use of the word 'trespasser'. He added that DW2 had also admitted during cross examination that the power to allocate Parks in the FCT is vested in the Hon. Minister of the FCT but that he had delegated the power to the Director of Parks and Recreation as at 2007 who was TPL Bulus Luka Achi, and who was the person who allocated the Park to the Plaintiff. Counsel argued that based on DW2's admission it was not strange for the Plaintiff's allocation to have been made by the Director of Parks and recreation, TPL Bulus Luka Achi and there has been nothing in evidence to show that the allocation had been revoked or set aside for being irregular or illegal.

Learned Counsel also drew the attention of the Court to the fact that even in the Quit and Demolition Notices (Exhibits PW1G and PW1H) served on the Plaintiff by the Department of Development Control, the Plaintiff's property was knowingly described as " the Park behind Plot 164" and not the Park inside Plot 164 or within Plot 164. He argued that this is an admission by DW1, DW2 and Development Control and this requires no further proof. He relied on Section 123 of the Evidence Act, 2011 and the case of **IBWA v UNAKALAMBA (1998) 9 NWLR (Pt. 565) 245 at 264, para. G.**

It was also the contention of learned Counsel for the Plaintiff that Section 297(2) of the Constitution and Section 1(3) of the Federal Capital Territory Act vest all land in the Federal Capital Territory (FCT) in the Federal Government of Nigeria and Section 18 of the Federal Capital Territory Act vests in the Minister of the FCT the delegated powers of the President to grant ownership of land by way of allocation to any person or group who apply for same after completing the necessary forms. Counsel pointed out that the 3rd Defendant is relying on the existence of Exhibit DW1A, the Certificate of Occupancy dated 15th September, 2006 over Plot 164 as its title over the Plaintiff's Park covered by Exhibit PW1B. Counsel argued that the mere existence of a Certificate of Occupancy does not confer title. He submitted that the 3rd Defendant must prove that from origin, nature and devolution its title, the C of O extend to cover the Plaintiff's Park. He relied on **OGUNLEYE v ONI (1990) 2 NWLR (Pt. 135) 745; ELIAS v OMO-BARE (1982) 5 SC 25 at 57; and MADU v MADU (2008) 6 NWLR (Pt. 1083) 296.**

Counsel submitted that unless the title is admitted by the opposing party or established by evidence, mere display of the C of O does not translate to proof of title. He relied on **KAIGAMA v NNAMNA (1997) 3 NWLR (Pt. 495) 549,** and argued that the title of the 3rd Defendant over the Plaintiff's Park was not admitted by the Plaintiff and the 3rd Defendant has not been able to produce any document showing that its Plot 164 extended over the fence to include the Plaintiff's Park.

Learned Counsel also submitted that the case of the 1st and 2nd Defendant is hinged on the denial of the right of the Plaintiff to the Park. He argued that the 1st and 2nd Defendants have failed to show that the title of the 3rd Defendant extended to cover the Park besides the wrong nomenclature of calling its Park

Plot 164B, and no document was produced by the 1st and 2nd Defendants to prove their assertions. Counsel pointed out that the Plaintiff never claimed to be the owner of Plot 164 covered by Exhibit DW1A, the C of O dated 15/09/06, but only lay claim to the right to operate the recreational Park behind Plot 164 allocated to it on a temporary basis since 2007.

Learned Counsel for the Plaintiff argued that the 1st and 2nd Defendants cannot in one vain state that they did not allocate the Park to the Plaintiff and in another fail to disprove the fact that the Department of Parks and Recreation in Charge of allocation of Recreational Parks allocated the place to the Plaintiff. He added that the 1st and 2nd Defendants have also failed to explain why the Department of Urban and Regional Planning had erected a sign post designating the place for use as Recreation even before the Plaintiff was taken to the space and let into possession. He submitted that the 1st and 2nd Defendants cannot approbate and reprobate at the same time. He cited **SOKOTO STATE GOVERNMENT v KAMDAX NIG. LTD (2004) 9 NWLR (Pt. 878) 346 at 372, paras. C – D; AGIDIGBI v AGIDIGBI (1996) 6 SCNJ 81.**

It was also the submission of the learned Counsel for the Plaintiff that it was the 3rd Defendant who instigated the demolition of the Plaintiff's Park vide Exhibit DW1C, DW1D, DW1E, DW1F, DW1G and DW1H which he sent to the 1st and 2nd Defendants and the latter did not carry out any investigation of the 3rd Defendant's claim beside serving notices as in Exhibits PW1G and PW1H on the Plaintiff before demolishing the Park. Counsel argued that the demolition was not done in accordance with the law, as it was in contravention of Sections 53, 60 and 61 of the Nigerian Urban and Regional Planning Act. Citing the cases of **NWANKWO v YAR' ADUA (2010) 45 WRN 1 at 28; and ONYEMAIZU v OJIAKO (2010) 23 WRN 1 at 6,** Counsel argued that the use of the word "shall" makes

the provisions in those sections mandatory. He contended that where a statute provides for how an act is to be done, no other way is permissible in carrying out that act. He relied **WUDIL JP v ALIYU (2004) 14 WRN 127 At 130; and JOHNSON v MOBIL PRODUCING (NIG) UNLTD (2010) 52 WRN 54 at 64.**

On the claim for damages, learned Counsel submitted that since the demolition was not carried out in accordance with the law, and on the instigation of the 3rd Defendant, the Defendants are liable for the damages caused by their collective actions. He referred to Exhibits PW1L(i) to PW1L(xxiii) and argued that the Plaintiff had specifically proved her claim for special damages from the receipts of the items destroyed by the agents of the 1st and 2nd Defendants. He relied on **NEKA B.B. MANUFACTURING CO. LTD v ACB (2004) 15 WRN 1 at 32 lines 40 – 45.**

Learned Counsel then argued that the entry into the Park by the agents of the 1st and 2nd Defendants on 28/05/12 and that of the 3rd Defendant on 29/05/12 are acts of trespass. He relied on **ANYANWU v UZOWUAKA (2009) 49 WRN 1 at 40, lines 40 – 45,** where trespass was defined , as well as **ASINIOLA v FATODU (2009) 10 WRN 155; OLANIYAN v FATOKI (2003) 13 NWLR (Pt. 837) 273; OYEBAMIJI v FABIYI (2003) 12 NWLR (Pt. 834) 271; and DANTSOHO v MOHAMMED (2003) 30 WRN 61.**

He pointed out that the Plaintiff had shown that she had been in exclusive possession since she was legally led into possession in 2007, and that the demolition was illegal not having been done in accordance with the law and having been deliberately set up by DW1 who forcefully tried to take over the Park by trying to erect a fence over same on 29/05/12 until he was violently resisted by the agents of the Plaintiff. He added that Dw1 had also petitioned

PW1 to the Commissioner of Police, FCT vide Exhibit DW1I which led to the arraignment of PW1 before the Chief Magistrate Court, Karu on the charge of forgery and criminal intimidation., but she was discharged and acquitted vide Exhibit DW1J, the CTC of the Court's Ruling of 06/03/14.

On the 1st and 2nd Defendant's assertion that the Plaintiff did not accept the offer made to her in 2007, learned Counsel submitted that PW1 had stated that she accepted the offer by writing to the Department of Parks and Recreation. Counsel argued that the Department had recognized the existence of a contractual obligation when it issued Exhibits PW1D(i) to PW1D(iii), PW1E and PW1F to the Plaintiff. He submitted that the 1st and 2nd Defendants cannot at this stage be questioning the validity of the contract which has been consummated by performance. He cited **ORIENT BANK (NIG) PLC v BILANTE INT'L LTD. (1997) 8 NWLR (Pt. 515) 37; SPARKLING BREWERIES LTD v UNION BANK OF NIG. LTD (2001) 7 SCNJ 321; DALEK NIG LTD v OMPADEC (2007) 24 WRN 1; and FGN v ZEBRA ENERGY LTD (2003) 3 WRN 1.**

Learned Counsel also submitted that the objection being raised by the 3rd Defendant as to the Plaintiff's claim for special damages was too late, as they ought to have raised the objection at the point when the receipt were being tendered.

On the argument of the 3rd Defendant that the letter of offer of the Plaintiff Exhibit PW1B states that the Park allocated to the Plaintiff is in Apo and not Gudu where the Plaintiff is operating, learned Counsel submitted that the 3rd Defendant is not a party to the contract between the Plaintiff and the Department of Parks and Recreation, and as such cannot question the validity of the terms or operations of the contract, since there is no privity of contract

between them. He relied on **TEXACO NIGERIA PLC v ALFRED KEHINDE (2001) 6 NWLR (Pt. 708) 224; CAP PLC v VITAL INVESTMENT LTD (2006) 46 WRN 74 at 134,** and argued that the 3rd Defendant failed to ask DW2 why the Plaintiff was led to the Park by the agents of the 1st and 2nd Defendants. He submitted that the Plaintiff cannot answer why she was shown the place to operate and why Exhibit PW1F was issued to her demanding for rent and stating in it that the Park is in Gudu. He added that the Plaintiff did not make those exhibits.

It was the submission of the learned Counsel for the Plaintiff that the 3rd Defendant had failed to show anything to substantiate his allegation that its Plot extended to the Park and did not terminate with the fence it erected over 25 years ago. He pointed out that if the 3rd Defendant's witnesses have AGIS Map that shows the extent of the 3rd Defendant's Plot, the 3rd Defendant had not subpoenaed AGIS to testify on its behalf and tender the Map. He added that even the Cadastral Map copiously mentioned by DW2 and DW3 after the visit to the locus in quo was not tendered by the 3rd Defendant. Counsel urged the Court to invoke the presumption of withholding evidence in Section 167(d) of the Evidence Act and hold that the maps, approval to re-establish beacons and building plan which were available from the testimonies of DW1, DW2 and DW3 but were not produced, would if produced be unfavourable to the 3rd Defendant. He relied on **IGBEKE v EMORDI (2010) 27 WRN 76.**

Counsel also pointed out that the 4th Defendant, though a nominal party, neither filed any defence to the Plaintiff's suit nor cross examined any of the witnesses called by the parties, and as such he is legally deemed to have admitted the case of the Plaintiff. He relied on the case of **ABIOLA v ALAWOYE (2007) 39 WRN 177 at 197- 198, lines 45 -10.** He added that none of the Defendants have faulted the documents of title allocating the Park to the

Plaintiff by the Department of Parks and Recreation, as well as the documents evidencing payment of fees by the Plaintiff.

Counsel submitted that although the Counsel for the Defendants did a good job in their respective addresses, the trite position of the law is that those addresses cannot be substitutes for evidence which they failed to lead. Relying on **NEKA B.B.B. MANUFACTURING CO. LTD v ACB LTD (2004) 15 WRN 1 at 19, lines 25 – 29,** he urged the Court to hold that the Plaintiff had by preponderance of evidence established her claims and grant the reliefs sought.

In his Reply on Points of law, learned Counsel for the 3rd Defendant submitted that the entire arguments of the learned Counsel for the Plaintiff was a frantic effort to confuse the Court instead of providing cogent and credible evidence in support of the Plaintiff's case. Counsel contended that address of Counsel no matter how well-crafted cannot make up for lack of evidence. He cited **IGWE v AICE (1994) 8 NWLR (Pt. 363) 459 at 481, para. B; N.A.B. LTD v FELLY KEME (NIG) LTD (1995) 4 NWLR (PT. 387) 100 at 106, para. H.**

Learned Counsel also pointed out that the Plaintiff's Counsel had in his final argument stated that the Plaintiff was taken to the Plot to be used as a Park by the staff of Parks and Recreation Department and that since the Plaintiff was let into possession, she developed the Park and used same for recreation purpose in accordance with land use. He submitted that those factual assertions of Counsel were neither pleaded not given as evidence by the Plaintiff (PW1) and as such it is inadmissible and goes to no issue. He cited **AKINOLA v V.C. UNILORIN (2004) 11 NWLR (Pt. 885) 616 at 649, para. H.** He further submitted that since the Plaintiff failed to name and/or call the staff of Parks and Recreations Department that led her into the Plot, despite the

directive of the Court for parties to invite professionals for the visit to the locus in quo, the Court should invoke the presumption relating to withholding evidence in Section 167(d) of the Evidence Act, 2011, to the effect that the said staff would if called give evidence against the Plaintiff.

Learned Counsel for the Plaintiff also urged the Court to take a look at the Amended Statement of Claim and the attached Plan titled: **"SITE PLAN SHEWING SUBDIVISION OF PLOT 164 AT CADASTRAL ZONE B01, GUDU DISTRICT FCT ABUJA,** which if forming part of or attached with Letter dated 6th August, 2007 titled: **"TEMPORARY APPROVAL TO DEVELOP A RECREATIONAL CENTRE.** Counsel pointed out that the said site plan attempting to subdivide Plot 164 was craftily removed from Exhibit PW1B at the point of tendering the Letter marked as Exhibit PW1B. Counsel submitted that although the Plan attached to the Exhibit PW1B, frontloaded along with the Statement of Claim was not tendered along with Exhibit PW1B, the Court is entitled to suo motu make reference to it in the case file. He cited and relied on **AKINOLA v V.C. UNILORIN (supra) at 650, paras. B – C; AGBAISI v EBIKOREFE (1997) 4 NWLR (Pt. 502) 630; and AGBAHOMOVO v EDUYEGBE (1999) 3 NWLR (Pt. 594) 170 at 182, para. E.**

On the Plaintiffs argument that the 3rd Defendant had nothing to show that its Plot 164 extends to the Park and did not terminate with the fence it erected over 25 years ago, learned Counsel submitted that the professionals that attended the proceedings during the visit to locus in quo consistently stated that there is no recognised Park on Plot 164, and it was the evidence of DW1 that the fence was erected to prevent flood from coming into the developed portion of Plot 164. Counsel added that the TDP Drawing in Exhibit DW1A shows the beginning of Plot 164 and the end and DW1 had stated that the said

Plot is in between the access road in front and the major road at the back. He argued that there is nothing on Exhibit PW1B relating to the undeveloped portion of Plot 164 where the Plaintiff operates garden and as such Exhibit PW1B cannot confer title of undeveloped portion of Plot 164 on the Plaintiff and same cannot be a licence for her to operate a garden therein.

On the Plaintiff's submission that the Site Plan Exhibit DW1B was not filed before the 1st and 2nd Defendant and was not approved and registered by them, learned Counsel for the 3rd Defendant submitted that Exhibit DW1B was filed before 1st and 2nd Defendants and was registered and approved by them on 11th August, 1997. He argued that the Site Plan, Exhibit DW1B is relevant to the fact pleaded and the evidence of the 3rd Defendant to the effect that the development of Plot 164 was designed to be in two stages, the developed portion and the undeveloped portions of Plot 164 reserved for future use. Learned Counsel urged the Court to dismiss the Plaintiff's case in its entirety.

I have considered the arguments advanced by the parties. In this action the Plaintiff seeks for two declaratory reliefs and five other consequential reliefs. It is settled law that a party seeking declaratory relief must establish his entitlement to such a relief with cogent and credible evidence. He must satisfy the Court of his entitlement to the exercise of the Court's discretion in his favour. In so doing, he succeeds only on the strength of his own case and not on the weakness of that of the defence. Indeed, unless established by the claimant, a declaratory relief is therefore, not granted even on admission of the Defendant. See: **ADDAH & ORS v UBANDAWAKI (2015) LPELR-24266(SC), per Fabiyi, JSC at pages 19 – 20, paras. E – F; MATANMI & ORS v DADA & ANOR (2013) LPELR-19929(SC), per Fabiyi, JSC; DUMEZ NIGERIA LIMITED v NWAKHOBA (2008) LPELR-965(SC), per Mohammed, JSC at pages 13 – 14,**

paras. F – F; and ORGAN & ORS v NIGERIA LIQUEFIED NATURAL GAS LTD & ANOR (2013) LPELR-20942(SC), per Muhammad, JSC at page 35, paras. C – E.

In the first declaratory relief claimed by the Plaintiff, she is praying the Court to declare that she "is the allottee of the Recreational Park (Green Area) also known as Plot 164B, Cadastral Zone B01, Gudu District, Abuja via a Letter of Temporary Approval to develop a Recreational Centre dated 6th August, 2007 signed by one TPL Luka Bulus Achi, Director, Department of Parks and Recreation of the Abuja Metropolitan Management Agency allocating the Park to the Plaintiff. In essence, the Plaintiff seeks in the main, a declaration to the ownership of the land in dispute, the subject matter of this action, by virtue of document of title, the Letter of Temporary Approval to develop a Recreational Centre dated 6th August, 2007, which she tendered as Exhibit PW1B.

It is settled law that there are five ways of establishing title to land. These are: (1) By traditional evidence; (2) By production of documents of title; (3) By various acts of ownership and possession numerous and positive to warrant an inference of ownership; (4) By acts of long possession and enjoyment of the land; and (5) By proof of possession of adjacent land to the land in dispute in such circumstances which render it probable that the owner of the adjacent land is the owner of the land in dispute. The credible proof of any one or more of these methods could establish title to land. See: **IDUNDUN & OR 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; DAKOLO & ORS. v REWANE-DAKOLO & ORS. (2011) LPELR-915(SC), per Rhodes Vivour, JSC at pages 23 – 24, paras. F – D; and FALEYE & ORS v DADA**

& ORS (2016) LPELR-40297(SC), per Peter-Odili, JSC at pages 21 – 22, paras. F – D;

In proof of her claim to this declaratory relief, the Plaintiff relied on the oral evidence of its sole witness PW1 and the several documentary exhibits listed in the earlier part of this judgment, especially the said Exhibit PW1B, the Letter of Temporary Approval to Develop a Recreational Centre dated 6th August, 2007.

It is settled law that where reliance is placed on both oral and documentary evidence, as in this case, 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; UKEJE & ANOR v UKEJE (2014) LPELR-22724(SC), per Rhodes Vivour, JSC at pages 25 – 26, paras. F – A); and CAMEROON AIRLINES v OTUTUIZU (2011) LPELR-827(SC), per Rhodes Vivour, JSC at page 23, paras. A – D.**

In paragraphs 3 – 18 of her adopted witness statement on oath, PW1, Ngozi Anene, who is the Managing Director of the Plaintiff and the Plaintiff's sole witness, deposed as follows:

> 3. That I applied to Abuja Metropolitan Management Agency of the Federal Capital Development Authority being the legal custodian to use and develop Plot 164B (hereinafter to as 'the plot') as recreation centre vide an application form given to me by the 2nd Defendant dated 23rd October, 2006. The photocopy of the said form is hereby pleaded and reliance shall be placed on same at

the trial. Notice is hereby given to the 2nd Defendant to produce the original at the hearing of this matter.

4. That the plot was thereupon the application form mentioned above allocated to the Plaintiff vide a letter dated 6th August, 2007. A copy of the Plaintiff's allocation letter and sketch attached to the letter dated 6th August, 2007 are hereby pleaded and reliance will be placed on same at the trial.

5. That the Plaintiff's application preceding paragraph was approved by the Abuja Metropolitan Management Agency, subject to an annual payment to the 2nd Defendant.

6. That consequent upon the approval, I paid for the use of the Plot on behalf of the Plaintiff. The receipts issued to the Plaintiff by the Defendant dated 16th March, 2011, N25,000 for park processing fee, 22nd August, 2011, N50,000.00 for ratification of park, 6th of March, 2012, N242,000.00 for ground rent and 30th November, 2011, N50,000.00 for member of Parks and Gardens Owners Association are hereby pleaded and reliance will be placed on them at the trial.

7. That I have been operating the plot since the allocation as a recreation centre as required and stated in the letter of approval from the Abuja Metropolitan Management Agency, a department of the 2nd Defendant.

8. That there is another plot known as plot 164A very close to the Plot 164B allocated to me.

9. That the said Plot 164A is occupy by the 3rd Defendant. (sic)

10. That the Plot 164A is purely residential while Plot 164B is Green Area.

11. That there is an old fence and large sewage line that demarcate Plot 164B. The photographs of the fence and sewage line are hereby pleaded and reliance will be on same at the trial.

12. That in January, 2012 some persons claiming to be agents of the 2nd and 3rd Defendants the occupant of Plot 164A came to inspect the plot and installed a beacon on the plot without my permission.

13. That when I noticed this I contacted the 2nd Defendant through the Parks and Recreation Department and I was told that the purported staffs are not from the 2nd Defendant.

14. That the purported staff of the 2nd and 3rd Defendants caused a quit notice to be pasted on the premises of the plot on the 6th of March, 2012 and later caused a demolition notice dated 26th April, 2012. Both two notices are pleaded and reliance will be on them at the trial.

15. That in reacting to the fact stated in the above paragraph immediately contacted my Solicitor OSHIE U. TOM & CO to write to the 1st Defendant which was copied to the 2nd Defendant and demand a visitation to the locus with a bid to resolving the matter peacefully. A copy of the Plaintiff Solicitor's letter dated April 30, 2012 to the 1st Defendant is hereby pleaded and reliance will be on same at the trial.

16. That consequent upon the letter of the Plaintiff's Solicitor, officials of the 2nd Defendant came to visit the plot on 2nd week of May, 2012 and parties were advised to wait for the report of the visitation.

17. That the 3rd Defendant defying the advice of the officials of the 2nd Defendant on the 29th day of May, 2012 made good their threat by bringing trucks and bulldozer to demolish the structures on the plot. Copies of the pictures snapped after the demolition are hereby pleaded and reliance will be on them at the trial.

18. That the Plaintiff has lost greatly from the acts of trespass by the Defendants.

Whilst in her above oral evidence-in-chief, PW1, the Managing Director of the Plaintiff, had asserted that she had applied to use and develop Plot 164B, Cadastral Zone B01, Gudu as Recreation Centre and was allocated the said Plot vide Exhibit PW1B (the letter of temporary approval dated 6th August, 2007), and stated that the said Plot 164B allocated to the Plaintiff is adjacent to Plot 164A occupied by the 3rd Defendant, a careful examination of Exhibit PW1B relied upon by the Plaintiff, shows that Exhibit PW1B does not support PW1's oral assertion. For ease of reference and clarity, it is pertinent to reproduce the contents of Exhibit PW1B, the said letter of allocation tendered and relied upon by the Plaintiff as establishing her claim to Plot 164B, Cadastral Zone B01, Gudu District, Abuja.

Managing Director,
Stoppy Limited,
Abuja

Dear Sir,

TEMPORARY APPROVAL TO DEVELOP A RECREATIONAL CENTRE

Reference to your request to develop a recreational centre at Apo (0.56 hectares), am pleased to convey the department's approval to be used under the flowing conditions:-

Note that this is a transit way and the road development can commence at short notice.

1. That this site is given out purely on a temporary basis.
2. You will not alter use from purely recreational activities.
3. Provide to this office details of all activities, necessary drawings of the site.
4. Necessary fees to be paid will be conveyed to you after we receive your letter of acceptance please.
5. You are expected to fill an application form with a bank draft of N25,000 (non refundable). You are to convey your acceptance to these conditions in writing within the next two weeks please.

Accept our highest regards.

TPL. Luka Bulus Achi
Director, Parks and Recreation, AMMA.

From the above reproduced contents of Exhibit PW1B, it is clear that contrary to the assertion of PW1, the approval was for the Plaintiff to develop a recreational centre at Apo and not Gudu District as claimed by PW1. In addition, apart from clearly stating that the approval is a temporary one, Exhibit PW1B, did not state that the approval is in respect of Plot 164B at Gudu District as asserted by PW1. Therefore, Exhibit PW1B tendered by the Plaintiff does not support paragraph 8 and 9 of the Plaintiff's Statement of Claim and the oral testimony of PW1, that the Plaintiff was allocated Plot 164B Cadastral Zone B01, Gudu District, Abuja. Rather, Exhibit PW1B shows that a temporary approval was given to the Plaintiff to develop a Recreational Centre at Apo.

Indeed, the said letter did not specify any plot number or location at Apo, but only gave a measurement of 0.56 hectares.

In **F. A. T. B. LTD v PARTNERSHIP INV. CO. LTD (2003) 18 NWLR (PT. 851) 35 at page 74,** the Supreme Court, per Iguh, JSC, emphasized the importance and superiority of documentary evidence over oral averment when the Apex Court held that:

> Documentary evidence, where it is relevant, ought to be produced and tendered as they speak for themselves as against the ipse dixit of a witness which may not be readily accepted by the court See: BON LTD v SALEH (1999) 9 NWLR (PT. 618) 331. See also: Section 132 (1) of he Evidence Act Cap. 112 Laws of the Federation.

See also: **OGUNDIPE v THE MINISTER OF FCT & ORS (2014) LPELR-22771(CA), per Adumein, JCA at pages 34 – 35, paras. E – A; KWARA POLY & ORS. v OYEBANJI (2007) LPELR-11829(CA), per Agube, JCA at pages 77 – 78, paras. E – A; ELIAS v FRN & ANOR (2016) LPELR-40797(CA), per Sankey, JCA at page 118, paras. D – E; and NGUROJE & ANOR v EL-SUDI & ORS(2012) LPELR-20865(CA), per Agube, JCA at pages 99-100, paras. D-D.**

Exhibit PW1B therefore runs contrary to PW1's oral evidence that the Plaintiff was vide the said Exhibit PW1B allocated Plot 164B Cadastral Zone B01, Gudu District, Abuja. The other documents relied upon by the Plaintiff apart from Exhibits PW1B, Exhibits PW1A is the application form filled by the Plaintiff which showed that the Plaintiff actually applied on 23rd October, 2006 to the Department of Parks and Recreation of Abuja Metropolitan Management Agency (AMMA) for a place in Apo/Gudu to develop a Recreational Centre; Exhibit PW1C, the Site Plan which the Plaintiff claimed was given to her by

AGIS during recertification; and Exhibits PW1D(i) – PW1D(iii) which are receipts for payments of various fees made by the Plaintiff to the Department of Parks and Recreations of AMMA. It is important to state that all these other documents relied upon as supporting the Plaintiff's claim to ownership of Plot 164B, Cadastral Zone B01, Gudu District, Abuja could only derive their strength from Exhibit PW1B, the letter of temporary approval granted to the Plaintiff which showed that it was for Apo and not Gudu.

Indeed, under cross examination by the learned Counsel for the 1st and 2nd Defendants, PW1 had admitted that the Sattelite Image , Exhibit PW1C which the Plaintiff relied upon to argue that Plot 164B which she claims is a green area, was not made personal to the Plaintiff and the Plaintiff's name was not on it. PW1 had also admitted that Plot 164B was not mentioned in the Billing Demand Notice which she tendered as Exhibit PW1F. Under cross examination by the learned Counsel for the 3rd Defendant, PW1 similarly admitted that the place where she is claiming is not a transit road as specifically stated in Exhibit PW1B.

Learned Counsel for the Plaintiff had argued in his final address that the 3rd Defendant who had counterclaimed for a declaration that the land in dispute forms part of its Plot 164 Cadastral Zone B01, Gudu District, Abuja and who had tendered Exhibit DW1A, a Statutory Certificate of Occupancy over the said Plot 164, had not produced any document to show that its Plot extends to the Plaintiff's park. But a careful look at the Plaintiff's case as made up of her Amended Statement of Claim and the evidence in PW1's witness statement on oath clearly shows that the claim of the Plaintiff was that she was allocated Plot 164B as her Park, while the 3rd Defendant's Plot is 164A adjacent to her own Park and the two plots are demarcated by an old fence. (See paragraphs

6, 7, 8, 9and 19 of the Plaintiff's Amended Statement of Claim dated 21st November, 2013, as well as paragraphs 1, 6, 7, 8, 9, 10 and 11 of PW1's adopted witness statement on oath dated 21st November, 2013.

In addition, as rightly observed by the learned Counsel for the 3rd Defendant, the Plaintiff had in paragraph 9 of her Amended Statement of Claim, averred that "the Plaintiff's letter of allocation and the sketch attached to the letter dated 6th August, 2007 is hereby pleaded and reliance would be placed on same at the trial of this suit." In the documents frontloaded by the Plaintiff along with both the initial and the said Amended Statement of Claim, the Plaintiff had attached as part of the said letter of allocation of 6th August, 2007 (Exhibit PW1B), a Site Plan titled: **SITE PLAN SHEWING SUB-DIVISION OF PLOT 164 AT CADASTRAL ZONE B01, GUDU DISTRICT FCT, ABUJA.** That site plan which shows that Plot 164 has a total area of 1.306 Hectares showed that the Plot 164 was subdivided into Plot 164A consisting of 7456.508sqm and Plot 164B consisting of 5600.381sqm. Interestingly, the Plaintiff who claimed and relied on the attached site plan as part of her allocation letter, tendered only the letter of allocation dated 6th August, 2007 as Exhibit PW1B and did not tender the Site Plan attached to it which showed the subdivision of Plot 164 into 164A and 164B as she stated in paragraph 9 of the Amended Statement of Claim.

In order to reach a just decision, a Court of Law is empowered to examine and look into all processes and documents filed by the parties which are contained in the Court's file. In **UGOCHUKWU v NWOKE & ANOR (2010) LPELR-11616(CA),** the Court of Appeal, per Sanusi, JCA (as he then was) captured this legal position more clearly when he held at page 18, paras. C – D, that:

> It is trite law that in order to do justice, court is entitled to look at a document in its file while writing judgment or ruling even if such document was not tendered and admitted as an exhibit at the trial.

See also on this: **ANPP & ANOR v ARGUNGU & ORS (2009) 17 NWLR (Pt 1171) 445 at 458 paragraph E – F; AGBAREH & ANOR v MIMRA & 2 ORS (2008) 1 SC (Pt. 111) 88 at 111-112; AGBAHOMORO v EDIEYEGBE (1999) 3 NWLR (Pt. 594) 170 at 182, para. E; AGBISI v EBIKOREFE (1997) 4 NWLR (Pt. 502) 630; OGBUANYINYA v OBI OKUDIA (1979) 3 LRN 318; and AKINOLA v V.C. UNILORIN (2004) 11 NWLR (Pt. 885) 610 at 650, paras. B – C.**

In attempting to obscure the claim of the Plaintiff to a subdivision of Plot 164, Cadastral Zone B01, Gudu District into Plot 164A and 164B, learned Counsel for the Plaintiff had argued that the fact that the Plaintiff had referred or called the Park as Plot 164B does not amount to an admission by the Plaintiff of the 3rd Defendant's title over the Park. With due respect to the learned Counsel, this argument is misconceived because the Plaintiff's very case as revealed in her pleadings and in PW1's adopted witness statement on oath, is that Plot 164 was sub-divided into Plot 164A and 164B, and that she was allocated Plot 164B for her to develop as a Park by the Department of Parks and Recreations of the 1st and 2nd Defendants. However, as clearly shown above, the Plaintiff appears to have later tried to obscure that claim to subdivision of Plot 164 into 164A and 164B by detaching the Sketch Plan from Exhibit PW1B, the letter of allocation the Plaintiff had tendered, even though she had not only relied on same in her pleadings but also frontloaded same as an attachment to the said Exhibit PW1B.

It is elementary however, that parties are bound by their pleadings and no party can make out a case which is different from the one made in his pleadings. In **DR. A.A. NWAFOR ORIZU v. FRANCIS E.A. ANYAEGBUNAM (1978) LPELR-2765(SC),** the Supreme Court, per Idigbe, JSC stated this trite legal position as follows:

> It is settled law that a plaintiff must be held to the case put forward in his pleadings. In African Continental Bank v. Attorney-General of Northern Nigeria, (1967) NMLR 231, at page 233, Brett, JSC., delivering the judgment of this court regarded it as established rule that a plaintiff must be held to the case put forward in his writ of summons and pleadings, for, as it has also been established by this court, one of the objects of pleadings is to settle the issues to be tried. (P. 15, paras. B-E)

See also: **ALAHASSAN & ANOR v ISHAKU & ORS (2016) LPELR-40083(SC), per Okoro, JSC at page 72, para. E; per Ogunbiyi, JSC at page 68, para. B; PDP v INEC & ORS (2014) LPELR-23808(SC), per Okoro, JSC at page 53, paras. C – E; ATANDA v ILIASU (2012) LPELR-19662(SC), per Rhodes Vivour, JSC; and OKULEYE v ADESANYA & ANOR (2014) LPELR-23021(SC), per Rhodes Vivour, JSC at page 15, paras. B – C.**

In this case, not only has the Plaintiff claimed in her pleadings a subdivision of Plot 164 into Plots 164A and 164B and frontloaded a Sketch Plan of the Plots 164A and 164B attached to Exhibit PW1B, the Plaintiff's sole witness (PW1) had also testified to the same effect. Hence, the argument of learned Counsel which seems to go contrary to the pleadings and evidence led by the Plaintiff is clearly of no moment. In any event, a Counsel's submission no matter how erudite cannot substitute the place of evidence. See: **OYEKAN & ORS. v**

AKINRINWA & ORS. (1996) LPELR-2871(SC), per Onu, JSC at page 36, paras. F – G; and ODUWOLE & ORS. v WEST (2010) LPELR-2263(SC), per Ogbuagu, JSC at page 26, paras. E – F.

In addition, this Court also undertook a visit to locus in quo on Wednesday, the 11th of October, 2017. During the visit, the Plaintiff was represented by its Managing Director, Ngozi Anene, who is PW1, as well as the Plaintiff's Counsel A. O Agbonlahor Esq. The 1st and 2nd Defendants were represented by their Counsel C. O. Agashieze Esq, while the 3rd Defendant was represented by Mr. Sunday Adebola as well as the learned Counsel for the 3rd Defendant, J. O. Bamidele Esq. The 4th Defendant was also represented by his Counsel, Ikechukwu Odo Esq. Before the visit, the Court directed that parties should come along with their technical experts is they so wish. While the Plaintiff did not bring any such expert, the 3rd Defendant invited two technical experts. The first was Isaac Oyibo, a Surveyor who is a staff of the Land Department of the Federal Capital Development Authority (FCDA). The second was Ogunmakinwa Benson Oladele, an Assistant Chief Town Planning Officer with the Urban and Regional Planning Department of FCDA.

In her evidence on the visit to locus in quo, Ngozi Anene, the Managing Director of the Plaintiff and PW1 stated that the Court had seen the demarcation of the stream and sewage as well as the sign post erected by FCDA to show that the place was meant for recreation. She stated that there was not beacon located by the Surveyors produced by the 3rd Defendant. She stated that the sewer line she showed the Court started from Apo and came from Gudu Park and crossed the road to Stoppy Nig Limited.

On his part, Sunday Adebola, the representative of the 3rd Defendant and DW1, stated that he had tendered Exhibit DW1A, the 3rd Defendant's certificate of occupancy over Plot 164. He stated that Exhibit DW1A was referred to at the locus. He stated that based on Exhibit DW1A the beacons were established on Plot 164 long before the visit to locus in quo, but the beacons could not been seen because the whole place had been floored by the Plaintiff. But he stated that Exhibit DW1A clearly showed where the beacons were supposed to be.

Under cross examination he stated that the fence behind was put there by the 3rd Defendant. He stated that the 3rd Defendant had a gate, but FCDA, the town planners pointed out that there should be no entrance on the highway. He stated that the Plot 164 is between the highway and the mini express and no one is allowed to put a gate on the highway.

In his evidence Mr. Isaac Oyibo had stated that he could not show the beacons of Plot 164 to the Court at the locus in quo because the beacons must have been removed. He stated that they usually determine the size of the plot from the specified coordinates. He stated that on the visit to the locus he came with a device which shows the coordinates at any point and the coordinates of the Plot 164 were shown. He added that apart from the device, he had also brought the Layout from the Land Department where the allocation was made, showing the series of Plots in the area, including Plot 164. He stated that from the layout he had told the Court that the Stream or Sewage entered Plot 164 and stated that a stream is not a mark to show the beginning and end of a Plot.

Under cross examination, Mr. Oyibo had stated that the device he brought was meant to show the exact place where a beacon is located and that he showed

some of these to the Court. He stated that the device can show where a beacon is supposed to be even if it was not there before.

Mr. Ogunmakinwa Benson Oladele, the Assistant Chief Town Planning Officer from the Urban and Regional Planning Department also testified that he had told the Court going by the land use plan, there was no Park in the area being claimed by the Plaintiff and that to the Urban and Regional Planning Department, Plot 164 in Gudu District is a public institution and that where Plot 164 and other adjoining plots are located, there is no Park recognised in the area.

Under cross examination, Mr. Oladele had stated that Parks and Recreation Department has the responsibility of designating parks but that their decision is not final even as they sometimes designate such parks without the knowledge of the Urban and Regional Planning Department.

It is significant for me to state that a party who relies upon document of title as proof of ownership of land has a duty to establish that the said document of title squarely matches the land being claimed otherwise the Court cannot rely on such a document to declare the claimant as the owner of the land being claimed. In the instant case, it is glaringly shown from the oral and documentary evidence led by the plaintiff above and from the evidence elicited after the visit to the locus in quo, that Exhibit PW1B relied upon by the Plaintiff to seek a declaration that she is the owner of Plot 164B, Cadastral Zone B01, Gudu District, Abuja does not match the land being claimed by the Plaintiff. Indeed, the evidence clearly showed that there is no such plot known as Plot 164B, Cadastral Zone B01, Gudu District, Abuja in respect of which the Plaintiff seeks a declaration from the Court. Also the evidence shows that the

place which the Plaintiff claims as Plot 164B is actually part of Plot 164 and there is no provision for a Recreational Park in that place.

It is also important to point out that even if it is assumed that Exhibit PW1B is a letter of allocation to the Plaintiff of the land in dispute, Exhibit DW1A and the evidence led by DW1 as well as that of DW2 and DW3, the experts who testified after the visit to the locus in quo all show that at the time Exhibit PW1B was purportedly issued to the Plaintiff on 6th August, 2007 by the Department of Parks and Recreations of the 1st and 2nd Defendants, the land in question is already part and parcel of Plot 164 granted by the 1st Defendant to the 3rd Defendant since 7th October, 1993, pursuant to which the 1st Defendand issued Exhibit DW1A, the Certificate of Occupancy tendered as DW1A. In other words, at the time the temporary approval in Exhibit PW1B was granted to the Plaintiff by the Department of Parks and Recreations to develop a Park, the Department of Parks and Recreations, and indeed the 1st and 2nd Defendants have no such land to give to the Plaintiff having given same out as part of Plot 164 granted to the 3rd Defendant since 1993. Applying the latin maxim *nemo dat quod non habet,* the Department of Parks and Recreations cannot give to the Plaintiff what it did not have. See: **BAMGBOSE v OSHOKO & ANOR (1988) LPELR-734(SC), per Belgore, JSC (as he then was) at page 23, paras. B – E.**

As stated earlier, a claimant who seeks a declaration of title to land must prove his entitlement to such a relief with credible evidence on the strength of his case and not on the weakness of that of the defence. See: **ADDAH & ORS v UBANDAWAKI (supra); MATANMI & ORS v DADA & ANOR (supra); DUMEZ NIGERIA LIMITED v NWAKHOBA (supra); ORGAN & ORS v NIGERIA LIQUEFIED NATURAL GAS LTD & ANOR (supra).**

In this instance, I find that even on the case put forward by the Plaintiff, the Plaintiff has failed to establish her claim for a declaration that she is the bona fide allotee of Recreational Park (Green Area) also known as Plot 164B, Cadastral Zone B01, Gudu District, Abuja. I so find and hold.

With regard to the second claim of the Plaintiff, which is for a declaration that the action of the 1st and 2nd Defendants in entering the Plaintiff's Garden and demolishing the Plaintiff's properties, goods and food stuffs on 28th May, 2012 while acting on the promptings of the 3rd Defendant is an act of trespass, it is pertinent to observe that just as the Plaintiff has claimed for declaration of title to Plot 164B, Cadastral Zone B01, Gudu District, Abuja, as well as damages for trespass and injunction against the Defendants, the 3rd Defendant herein has counterclaimed against the Plaintiff for declaration of title to the land in dispute and for damages for illegal trespass, injunction, etc.

The law is settled that where, as in this case, a claim is for both trespass and an injunction, the title of the parties to the land in dispute is automatically put in issue. See: **ANEKWE & ANOR v NWEKE (2014) LPELR-22697(SC), per Ogunbiyi, JSC at pages 27 – 28, paras. F – B; OMOTAYO v CO-OPERATIVE SUPPLY ASSOCIATION (2010) LPELR-2662(SC), per ADEKEYE, JSC at pages 26 – 27, paras. G – B; AJIBULU v AJAYI (2013) LPELR-21860(SC), per Ogunbiyi, JSC at page 16, paras. C - F; and OYENEYIN v AKINKUGBE (2010) 4 NWLR (Pt. 1184) 265 at 283, paras. A – C.**

In the instant case, as shown in the beginning of this judgment, the Plaintiff and the 3rd Defendant are all claiming for title, trespass and injunction against each other with each claiming possession of the land in question. In this situation where two parties are on land with each claiming possession,

trespass is only at the suit of that party who can show a better title to the land in question. See: **OYENEYIN v AKINKUGBE (supra) at page 283, paras. F – G; OLONADE & ANOR v SOWEMIMO (2014) LPELR-22914(SC), per Peter-Odili, JSC at page 45, paras. A – B; and EZEKWESILI & ORS. v AGBAPUONWU & ORS. (2003) LPELR-1204(SC), per Musdapher, JSC (as he then was) at page 37, paras. A – B.**

The Plaintiff herein, has claimed for declaration that she is the bona fide allotee of the Recreational Centre (Green Area) known as Plot 164B, Cadastral Zone B01, Gudu District, Abuja as well as declaration that the Defendants actions in demolishing the Plaintiff's properties amounts to trespass and also sought for injunction against the Defendants. The 3rd Defendant, on the other hand, had counterclaimed for declaration that it is the legal and lawful owner of Plot 164, Cadastral Zone, B01, Gudu District, Abuja which includes the part being claimed by the Plaintiff as a Recreational Centre. I have already found above that the Plaintiff has not been unable to establish her claim for declaration of title to the land in dispute.

The 3rd Defendant on the other hand had in its defence and in support of its counterclaim, tendered and relied on Exhibit DW1A, which is an original Certificate of Occupancy No. 1806w-107a0-5dc3r-fa46u-20 dated 15th September, 2006 with a survey plan attached covering Plot 164 Cadastral Zone B01, Gudu District, Abuja. It was the evidence of Adebola Sunday Adebayo, DW1, the 3rd Defendant's witness that the Ministry of the Federal Capital Territory granted the 3rd Defendant a Plot of land described as MF1 measuring 13,485sm^2 within Gudu District through a Letter titled: **CONVEYANCE OF APPROVALOF GRANT OF LAND IN THE FCT** dated 7th October, 1993 with Reference No. MFCT/LA/93/FG-2067, and that sequel to that allocation, the

Honourable Minister of the Federal Capital Territory, the 1st Defendant herein, granted the said Certificate of Occupancy No. 1806w-107a0-5dc3r-fa46u-20 dated 15th September, 2006 over Plot 164, Cadastral Zone B01, Gudu District, Abuja. Dw1 also stated that the purpose of the allocation of the said plot is institutional land use. The original Certificate of Occupancy was tendered as Exhibit DW1A. He stated that upon the grant of the said Plot 164, the 3rd Defendant submitted building plan and site plan for its Abuja Regional Training Centre and Liaison Office to the Federal Capital Development Authority, the 2nd Defendant which was approved. DW1 further stated that considering the resources available, the 3rd Defendant was only able to build a Training Hall and Guest Accomodation for the participants on a part of the said Plot 164 while reserving the remaining part for future development. DW1 said that a fence was erected around the developed portion of the Plot so as the prevent flood coming to the developed part from the stream that passes through the land and for security purposes. The Site Plan showing the developed and undeveloped portions of the Plot was tendered as Exhibit DW1B.

DW1 also stated that the 3rd Defendant became aware of the Plaintiff's trespass on the land as a result of regular occurrence of unknown persons entering into the developed part of Plot 164. After peaceful appeals to the Plaintiff to stop the illegal activities of Bar and Joint being operated by the Plaintiff on the undeveloped part of Plot 164, the 3rd Defendant wrote letters to the Development Control Department, the Federal Capital Development Authority, the Urban and regional Planning Department and the Minister of the Federal Capital Territory, as a result of which the Development Control Department issued and served Quit and Demolition Notices on the Plaintiff, and upon the expiration of the said notices, the 1st and 2nd Defendants

proceeded to demolish the illegal structures erected by the Plaintiff. The letters which the 3rd Defendant wrote to the 1st and 2nd Defendants were tendered and marked as Exhibits DW1C, DW1D, DW1E, DW1F, DW1G and DW1H, while the Quit and Demolition Notices were already tendered by the Plaintiff as Exhibits PW1G and PW1H.

In her evidence under cross examination by the learned Counsel for the 1st and 2nd Defendants, PW1, the Plaintiff's Managing Director and its sole witness stated as follows:

> It is true I was served with a Quit Notice to leave the Site. After the Quit Notice, I complained to the Department of Parks and Recreations but they told me to relax that the place was not given out. Then another notice came in and I went back to Parks and Recreations to ask for the status of the Green Area I was given by their Office. I went in company of my Company Secretary Tom Oshie. We were advised to write to the Minister and copy the other bodies. We copied the 2nd Defendant, the Development Control Department which served the Quit and Demolition Notices, the Urban and regional Planning Department and AMMA and the Parks and Recreations Department. One week after the letter there was a visitation of the locus. The visitation was done by the Urban and regional Planning who were sent by the 1st Defendant to ascertain the status of the place. Pictures were taken and we were asked to wait for the result of the Urban and regional Planning Tribunal. We were told orally. Two days after, the garden was demolished at about 5.30 pm.

Also on cross examination by the learned Counsel for the 3rd Defendant, PW1 stated thus:

> Since I have been in Abuja, it is Development Control that is in charge of demolitions. But before they demolish parks they must seek information from the Parks and Recreation Department to determine their status before demolition. I did not heed the Notice because it came from Development Control and they were not the ones who gave me the Park. It was the Parks and Recreation Department. That was why I ignored it. I did write to Development Control and the letter has been tendered in Court.

The 1st and 2nd Defendants, especially the 1st Defendant who, by virtue of Section 297(2) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) and Section 18 of the Federal Capital Territory Act, is the authority that administers land in the FCT and determines the status of any plot in the FCT, has in the submission of the 1st and 2nd Defendants denied of any subdivision of Plot 164 into Plot 164A and 164B. Specifically, in paragraph 11 of their Statement of Defence dated 23rd May, 2016, the 1st and 2nd Defendants have averred that "at no time was a Park being and known as Plot 164B, Gudu District allocated to the Plaintiff as claimed or alleged. The 1st and 2nd Defendants further aver that parks are not in any way referred to as plots in the classification of parks within Federal Capital Territory."

In the evidence of DW2, Musa Ishiaku, who is a staff of Department of Parks and Recreations of the FCDA had stated in his adopted witness statement on oath that the claim of the Plaintiff that she was allocated Plot 164B Gudu District is not true as parks are not in any way referred to as Plots in the classification of Parks within the Federal Capital territory but called appropriately as Parks. He also stated that it is the 1st and 2nd Defendants that have the responsibility of allocating any park in the FCT or giving approval to

any development to be carried out in the FCT. He expressed that even if the Plaintiff had been allocated a Park by the 1st and 2nd Defendants, the Plaintiff had not accepted the allocation and complied with the conditions of the allocation.

DW2 also stated that the 1st and 2nd Defendants have the statutory duty to remove any structure erected without approval and that it was when the 1st and 2nd Defendants confirmed that the Plaintiff was occupying the land in question "illegally and had developed structures without approval that we promptly asked the Plaintiff to quit the site to enable us remove the structures illegally erected on the Plot.

As rightly argued by the learned Counsel for the 1st and 2nd Defendants on page 10 of his final address, the Federal Capital Territory Act stipulates in Section 7(1) that approval of the Federal Capital Development Authority (the 2nd Defendant) must be obtained before any structure can be erected, while subsection (2) of that Section empowers the Federal Capital Development Authority to require any person who makes such development without approval to remove same and if he fails, the Authority shall proceed to remove same and recover the cost from the developer.

In **YEKINI ADEDOKUN OYADARE v CHIEF OLAJIRE KEJI & ANOR. (2005) LPELR-2861(SC),** the Supreme Court, per Kutigi, JSC (as he then was) held that:

> It is settled by a chain of authorities that where the pleaded title to land has not been proved as in this case, it will be unnecessary to consider acts of ownership and possession which acts are no longer acts of possession but acts of trespass. (Pages 11 – 12, paras. F – A).

In this case therefore, where the Plaintiff has clearly failed to establish title to the land in dispute and the 3rd Defendant who is equally in possession of the said land had shown a better title, the Plaintiffs claim for a declaration that the actions of the agents of the 1st and 2nd Defendants in entering into the Plaintiff's garden and demolishing the Plaintiff's properties, goods and food stuffs on 28th May, 2012 while acting on the prompting of the 3rd Defendant is an act of trespass, had evidently failed. As has been clearly shown it is the Plaintiff's presence on the land that constitutes trespass, especially in view of the evidence that the title to the said land occupied by the Plaintiff is actually in the 3rd Defendant. See: **OYENEYIN v AKINKUGBE (supra) at page 283, paras. F – G; OLONADE & ANOR v SOWEMIMO (supra); and EZEKWESILI & ORS. v AGBAPUONWU & ORS. (supra).**

I therefore find and hold that the Plaintiff has failed to establish her entitlement to the second declaratory relief of trespass against the Defendants.

As for reliefs (c), (d), (e), (f) and (g) which are for injunction, special and general damages for trespass and cost of action, all these are reliefs which are dependent upon successful proof of the declaratory reliefs claimed by the Plaintiff. Having found and held that the Plaintiff is not entitled to the two declaratory reliefs he seeks, the Plaintiff is also not entitled to these consequential reliefs. I so hold.

From all the foregoing, I hereby resolve the first issue against the Plaintiff and hold that the Plaintiff had not established her claims against the Defendants and is not entitled to the reliefs she sought. Accordingly, the Plaintiffs claim against the Defendants is hereby dismissed.

Having dismissed the Plaintiff's claim, I now turn to the second issue for determination which is whether the 3rd Defendant has established its counterclaim against the Plaintiff and is entitled to the reliefs it sought.

ISSUE TWO: THE 3RD DEFENDANT'S COUNTERCLAIM:

In the 3rd Defendant's Counterclaim which I have stated at the beginning of this judgment, the 3rd Defendant/Counterclaimant essentially sought for a declaration that she "is the legal and lawful owner of Plot 164 within Gudu District, Cadastral Zone B01, measuring 1.31 hectares as evidenced by Certificate of Occupancy No. 1806w-107a0-5dc3r-fa46u-20 dated 15th September, 2006 with the attached schedule covering the said Plot 164; an order declaring the attempt made by the Plaintiff/Defendant to Counterclaim or its Agents to sub-divide Plot 164 belonging to the Counterclaimant as illegal, null and void; an order declaring the activities of the Plaintiff/Defendant to Counterclaim as illegal trespass on the undeveloped portion of Plot 164 belonging to the Counterclaimant; a perpetual injunction against the Plaintiff, general damages and cost of action.

From the counterclaim and the evidence of DW1, it was 3rd Defendant/Counterclaimant's case that it was allocated Plot 164 Cadastral Zone B01 within Gudu District, Abuja by the 1st Defendant for institutional use vide Letter titled Conveyance of Approval of Grant of Land in the FCT dated 7th October, 1993 with reference no. MFCT/LA/93/FG-2067. That the 1st and 2nd Defendants, being the only authority statutory empowered to administer and allocate land in the FCT, processed and granted the 3rd Defendant a Certificate of Occupancy No. 1806w-107a0-5dc3r-fa46u-20 dated 15th September, 2006 which DW1 tendered in evidence as Exhibit DW1A.

It was the testimony of DW1 that considering the resources available to the 3rd Defendant at the time, it developed a portion of the said Plot 164 and erected a fence between the developed portion and the undeveloped portion of the Plot in order to prevent flood from the stream that passed through the undeveloped portion from flowing into the developed portion of the Plot. The 3rd Defendant tendered as Exhibit DW1B, the approved Site Plan showing the developed portion of the Plot and the undeveloped portion which it reserved for future development.

DW1 stated that as a result of regular incursion into the developed portion of its Plot 164 by unknown person, the 3rd Defendant became aware of the Plaintiff's trespass upon the undeveloped portion of the Plot which the Plaintiff was using for Bar and Joint activities where men and women of different characters converge. He stated that after the Plaintiff refused all appeals to stop her illegal activities on Plot 164, the 3rd Defendant wrote letters of complaint to the Development Control Department, the Federal Capital Development Authority, the Urban and Regional Planning Department and the Minister of the Federal Capital Territory. The letters were tendered by DW1 and were admitted as Exhibits DW1C, DW1D, DW1E, DW1F, DW1G and DW1H.

It was also the testimony of DW1 that the 1st and 2nd Defendants served quit and demolition notices on the Plaintiff and when the Plaintiff refused to stop her Bar and Joint activities on Plot 164, the 1st and 2nd Defendants carried out their statutory responsibility of demolishing and removing the illegal structures erected by the Plaintiff on the undeveloped portion of the said Plot 164.

In defence to the 3rd Defendant's counterclaim, the Plaintiff posited that all the documents which the 3rd Defendant claimed to have emanated from the 2nd

Defendant were fabricated and do not correspond with the initial Conveyance of Approval of Grant of Land in the FCT dated 7th October, 1993, and that the purported Site Plan (Exhibit DW1B) approved by the 2nd Defendant shows in the diagram that the Plaintiff's Plot was left plain in the Site Plan and there was a very large sewage channel demarcating the 3rd Defendant's plot and that of the Plaintiff, and that if the said Plaintiff's plot were to be part of the 3rd Defendant's land, the 2nd Defendant would have merged the Site Plan and specified the purpose of the Plot. That it was not the practice of the 2nd Defendant to leave part of land undrawn in the site plan and merely tag if "Future Development", as all land in the FCT had been drawn and purposes specified in the Abuja Master Plan from the inception of the FCT.

The Plaintiff also countered that she was allocated the Plot of Land vide letter of Temporary Approval to develop a recreational centre dated 6th August, 2007 and the Plaintiff had been on the land since 2007 and had had uninterrupted possession until 2012 when the 3rd Defendant tried to merge the said plot with that of the 3rd Defendant. That quit and demolition notices were served on the Plaintiff by staff of the 2nd Defendant based on the instruction of the 3rd Defendant after which the staff of the 2nd Defendant came with the 3rd Defendant on 28th May, 2012 and demolished the Plaintiff's structures on the said Plot.

I have already reviewed the evidence led by the parties while considering the Plaintiff's claim. As I had stated whilst considering the Plaintiff's claim, the trite position of law is that documentary evidence should be used to test the veracity of oral evidence. See **EGHAREVBA v OSAGIE (supra); KIMDEY & ORS. v MILITARY GOV. OF GONGOLA STATE & ORS. (supra); UKEJE & ANOR v UKEJE (aupra); and CAMEROON AIRLINES v OTUTUIZU (supra).**

Suffice it for me to state that in dismissing the Plaintiff's claim I had clearly shown that the Plaintiff's claim to Plot 164B and the oral evidence it led in support thereof were not supported by the document of title (Exhibit PW1B) which it tendered and relied upon, and the evidence led had also shown that there is no Plot 164B Cadastral Zone B01, in Gudu District, over which the Plaintiff could seek a declaration of title.

As for the 3rd Defendant's counter claim for declaration of title to Plot 164, Cadastral Zone B01, Gudu District, Abuja, the oral evidence of DW1 as contained in his adopted witness statement on oath is clearly verified by Exhibits DW1A and DW1B, which are the Certificate of Occupancy No. 1806w-107a0-5dc3r-fa46u-20 dated 15th September, 2006 and the Site Plan, respectively.

It is trite law that although not conclusive proof of title, the production of Certificate of Occupancy, as was done by the 3rd Defendant herein, is prima facie evidence of title unless the adverse party can show a better title. See: **OTUKPO v JOHN & ANOR (2012) LPELR-20619(SC), per Onnoghen, JSC at page 18, paras. F – G; SULEIMAN v ADAMU (2016) LPELR-40316(CA), per Sankey, JCA at pages 54 – 55, paras. F – C; and USMAN v BABA (2013) LPELR-22136(CA), per West, JCA at pages 23 – 24, paras. D – B.**

In his submission, learned Counsel for the Plaintiff had argued that the 3rd Defendant had not established that its Plot 164 Cadastral Zone B01, Gudu District, Abuja extended to the Plaintiff's Park. But as I had shown while considering the Plaintiff's claim, the evidence of DW1 (Sunday Adebola), the representative of the 3rd Defendant; Mr Isaac Oyibo, a staff of the Land Department of the 2nd Defendant; Mr. Ogunmakinwa Benson Oladele, an

Assistant Chief Town Planning Officer from the Urban and Regional Planning Department of the 2nd Defendant have all confirmed after the visit to the locus in quo, the fact that there is no Plot 164B and no recognized Park on Plot 164, Cadastral Zone B01, Gudu District, Abuja as claimed by the Plaintiff; and that Plot 164 extends to the portion of land being claimed by the Plaintiff and on which the Plaintiff was operating a Park until same was demolished by the 1st and 2nd Defendants after requisite quit and demolition notices were given to the Plaintiff.

It is therefore clear from the oral and documentary evidence led in this case that the Plaintiff has not proved title to the land in dispute, while by Exhibit DW1A, the 3rd Defendant/Counterclaimant has proved title and possession over Plot 164, of which portion includes the land in dispute and is therefore entitled to the declaration of title over the said land.

As stated earlier, the settled law is that where a claim for trespass and injunction is sought, the title of the parties to the land in dispute is automatically put in issue, and where each is claiming possession as in this case, trespass will be at the suit of that party who can show a better title. See: **ANEKWE & ANOR v NWEKE (supra); OMOTAYO v COOPERATIVE SUPPLY ASSOCIATION (supra); AJIBULU v AJAYI (supra); OYENEYIN v AKINKUGBE (supra); OLONADE & ANOR v SOWEMIMO (supra); and EZEKWESILI & ORS v AGBAPUONWU & ORS (supra).**

It is not in dispute that the Plaintiff had been operating a Park on the portion of Plot 164 over which it had unsuccessfully claimed title and possession. Indeed, PW1, the Plaintiff's Managing Director and its sole witness had admitted that she was served with Quit and Demolition Notices by the 1st and

2nd Defendants, but she did not heed to the notices because it came from Development Control Department and they were not the ones that gave her the Park, but the Parks and Recreation Department. But I have shown while considering the Plaintiff's claim that the evidence led shows that Plot 164B, Cadastral Zone B01, Gudu District, Abuja over which she laid claim did not exist and worse still, the document of title (Exhibit PW1B) on which she relied did not match her claim to Plot 164B, Cadastral Zone B01, Gudu District, Abuja.

It is in the light of the above that I find that the Plaintiff's act in operating a Park on the 3rd Defendant's Plot 164, Cadastral Zone B01, Gudu District, Abuja constitutes a trespass to the 3rd Defendant's land for which the 3rd Defendant is also entitled to the 2nd, 3rd and 4th reliefs sought in its Counterclaim. I so find and hold.

As regards the 3rd Defendant's counterclaim for general damages the Court of Appeal had held in **ENORIODE & ORS v. ENUDE (2013) LPELR-21842(CA)** as follows:

> In assessing damages for trespass a court is entitled to take into account the motive and conduct of the defendant where they aggravate the claimant's injury - United Bank of Africa Plc Vs Samba Petroleum Ltd supra. Thus, in Okefi Vs Ogu (1996) 2 NWLR (Pt.432) 603, where the defendant committed persistent and several acts of trespass in open violation of a subsisting consent judgment to which he submitted and he entered the land in contempt of a court order, the court was of the view that substantial amount ought to be awarded as damages for trespass. (Page 32, paras. B – E).

In assessing the damages being claimed by the 3rd Defendant against the Plaintiff for trespass, I have taken cognisance of the evidence led by the parties in this case, and the fact that the portion trespassed by the Plaintiff was an undeveloped portion which the 3rd Defendant had reserved for future development. Taking all these into consideration, I hereby award the sum of N1,000,000 (One Million Naira Only) as general damages in favour of the 3rd Defendant/Counterclaimant against the Plaintiff/Defendant to the Counterclaim.

From the foregoing, I hereby resole the second issue for determination in favour of the 3rd Defendant and hold that the 3rd Defendant/Counterclaimant had established her counterclaim against the Plaintiff/Defendant to Counterclaim and is entitled to the reliefs she seeks against the Plaintiff/Defendant to Counterclaim.

Accordingly, judgment is hereby entered in favour of the 3rd Defendant/Counterclaimant against the Plaintiff/Defendant to the Counterclaim as follows:

(i) It is hereby declared that the Counterclaimant is the legal and lawful owner of Plot 164 within Gudu District, Cadastral Zone B01, measuring 1.31 hectares as evidenced by Certificate of Occupancy No. 1806w-107aO-5dc3r-fa46u-20 dated 15th September, 2006 with attached schedule covering the said Plot 164.

(ii) It is hereby declared that the attempt made by the Plaintiff/Defendant to Counterclaim or its agent to subdivide Plot 164 belonging to the Counterclaimant is illegal, null and void.

(iii) It is hereby declared that the activities of the Plaintiff/Defendant to the Counterclaim on the undeveloped portion of Plot 164 belonging to the Counterclaimant amounts to trespass.

(iv) An order of perpetual injunction is hereby granted restraining the Plaintiff/Defendant to the Counterclaim, their agents, servants and representatives from disturbing the Counterclaimant's peaceful possession and enjoyment of Plot 164 and or from carrying on illegal bar and joint upon the Counterclaimant's Plot 164 within Gudu District, Cadastral Zone B01, Abuja.

(v) The Plaintiff/Defendant to the Counterclaim is hereby ordered to pay to the 3rd Defendant/Counterclaimant the sum of N1,000,000.00 (One Million Naira Only), as general damages.

(vi) The Plaintiff/Defendant to the Counterclaim shall pay to the 3rd Defendant the sum of N100,000.00 (One Hundred Thousand Naira Only) as cost of action.

HON. JUSTICE A. B. MOHAMMED
JUDGE
22ND MARCH, 2019

Appearances:

Anthony Agbonlahor Esq, for the Plaintiff.

Cyprian O. Agashieze Esq, for the 1st and 2nd Defendants/Applicants.

J. O. Bamidele Esq, for the 3rd Defendant.

Ikechukwu Odoh Esq, for the 4th Defendant.