IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT MAITAMA – ABUJA

BEFORE HIS LORDSHIP: JUSTICE SALISU GARBA
COURT CLERKS: FIDELIS T. AAYONGO & OTHERS
COURT NUMBER: HIGH COURT TWO (2)
CASE NUMBER: FCT/HC/CV/5688/2011
DATE: 18TH APRIL, 2019

BETWEEN:

NEDEC ENGINEERING LIMITED - PLAINTIFF

AND

1. **MINISTER OF THE F.C.T.**
2. **FED. CAP. TERRITORY ADMINISTRATION**
3. **ABUJA METROPOLITAN MGT AGENCY**
4. **DAUDA MAMMAN**
5. **ABDULLAHI ALHAJI BALA**
6. **SALMAN ALHAJI MOHAMMED**
7. **TANKON DOGO**
8. **MOHAMMED P. SANI**
9. **INUWA SANUSI MOHAMMED**
10. **IBRAHIM Y.M. BABA**
11. **MOHAMMED ADAMU**
12. **ABDULLAHI MOHAMMED**
13. **YOHANA KAKA YAMAWO**

- DEFENDANTS

Parties absent.

Ike Nwauzoigwe Ike appearing with Elechukwu C.N.

Okwoor for the Claimant.

Kehinde Oyewole for the 1st – 3rd Defendants.

B.S. Barau for the 4th – 13th Defendants.

Claimant's Counsel – The matter is for judgment and we are ready to hear the judgment.

J U D G M E N T

This case was instituted by a writ of summons and statement of claim dated 17/8/2011, the writ was amended on 23/10/12 and the statement of claim was further amended on 3/3/16.

By the Further amended statement of claim dated 2/3/2016 and filed on 3/3/2016, the Plaintiff claim against the Defendants jointly and severally as follows:

1. A Declaration that it is the Lessee of the parcel of land measuring a total of 3 (three) hectares designated as Plot No. 570 within Cadastral Zone B04, Jabi District, Abuja.
2. A Declaration that the Leesee of the said Plot No. 570 within Cadastral Zone BO4, Jabi District, Abuja granted to the Plaintiff still subsists and valid.
3. A Declaration that any revocation or purported revocation of the Plaintiff's lease in respect of the said Plot 570 within Cadastral Zone B04, Jabi District, Abuja is null, void and of no effect whatsoever.
4. An Order of perpetual injunction restraining the Defendants whether by themselves, their agents, servants or privies from interfering with the Plaintiff's occupation and enjoyment of the said Plot No. 570 within Cadastral Zone B04, Jabi District, Abuja.
5. An Order of this Honourable Court directing the Defendants, their agents, servants and privies to lease forthwith, all acts of trespass on and/or destruction of the structures and works

put in place by the Plaintiff on the said Plot No. 570 within Cadastral Zone BO4, Jabi District, Abuja.

6. And Order of the Honourable Court directing the Defendants to pay to the Plaintiff the sum of N17,362,000.00 (Seventeen Million, Three Hundred and Sixty Two Thousand Naira) only as special damages being the cost of the destroyed structures and works put up by the Plaintiff and being calculated from the sums seen in the pleaded cash invoices in the said Plot No. 570 within Cadastral Zone BO4, Jabi District, Abuja.
7. An Order of the Honourable Court directing the Defendants to pay to the Plaintiff the sum of N20,000,000.00 (Twenty Million Naira) only as general damages.
8. And for such further order or orders as this Honourable Court may deem fit to make in the circumstances and in the overall interest of justice.

In prove of this claim, the Plaintiff filed a 29-paragraph Further Amended Statement of Claim dated 2/3/2016, 19-paragraph Plaintiff's Reply to 1st – 3rd Defendants' Amended Statement of Defence and 14-paragraph Plaintiff's Reply to 4th – 13th Defendants Joint Statement of Defence; the said replies are all dated 12/4/17. The Plaintiff called the following witnesses.

Paul Attah testified as the PW1. In his evidence-in-chief, he adopted a 30-paragraph witness statement on oath dated 3/3/16 as part of his evidence; the said PW1's statement on oath is accordingly adopted as forming part of this judgment.

The gist of the PW1's evidence is that the Plaintiff was granted a lease of a parcel of land measuring 2.245 hectares designated as Plot No. 570 within Cadastral Zone BO4, Jabi District by the 1st to 3rd Defendants vide the letter of 3rd June, 2007 for the purpose of development, management and operation of a designated park and green area; that the Plaintiff in compliance with the terms of grant paid all necessary fees to the 3rd Defendant and was issued with receipts in acknowledgment of the payment made. That the 3rd Defendant has also at intervals served on the Plaintiff demands for Ground Rent in respect of the said Plot 570, Cadastral Zone BO4, Jabi District, Abuja which the Plaintiff complied with by a prompt settlement of same.

The PW1 further stated that based on the approval given, the Plaintiff commenced development on the said park, ;particularly for the perimeter fencing, flower beds and general earth works and has ever since then remained in possession of the said land. That consequent upon the settlement of its bills, the 3rd Defendants committee on revalidation and re-certification of parks in the FCT issued to the Plaintiff a letter declaring its allocation to be authentic. The witness also stated that the Plaintiff expended huge sums of money in excess of N17,362,000.00 only in pursuance of its objective. That it came to the notice of the Plaintiff recently that same persons claiming to be acting on the authorization of the 1st to 3rd Defendants trespassed into the land and commenced demolition of the structures and works put in place by the Plaintiff; that there has not been any communication to the

Plaintiff by any revocation and/or withdrawal of the lease of the said land granted to it.

That the act of intrusion and destruction carried out by the 4th to 13th Defendants has inflicted severe damages on the work and development carried out by the Plaintiff in this land. That the Plaintiff claims as per its further amended statement of claim.

In the cause of PW1's evidence, the following documents were admitted in evidence as exhibits:

1. The letter of intent dated 3/6/07 – Exhibit A.
2. The 3 receipts being payments made by Plaintiff – Exhibit B1, B2 and B3 respectively.
3. The Billing Demand Notice dated 16/12/10 and Official Receipt dated 19/7/11 – Exhibit C^1 and C^2 respectively.
4. Letter titled "Clearance letter" dated 22/8/11 – Exhibit D.
5. Technical Drawings – Exhibit E.
6. Feasibility Study and Design – Exhibit F.
7. Environmental Impact Assessment Report – Exhibit G.
8. Sale Invoice Receipts – Exhibits H^1 to H^9 respectively.
9. Photograph negatives – Exhibit I.
10. 13 copies of pictures – Exhibits J^1 – J^{13} respectively.

Under cross-examination of PW1 by the 1st – 3rd Defendants' counsel, the PW1 stated that there was no approval given to the Plaintiff to carry out the development on the land. The structures in Exhibits J1 – J13 were carried out on the instructions of Department of Parks and Recreations.

The PW1 further stated that the Plaintiff was issued with Clearance notice (Exhibit D) by the 1st – 3rd Defendants.

Under cross-examination of PW1 by the 4th – 13th Defendants' counsel, the PW1 stated that the 4th – 13th Defendants were among the trespassers who trespassed on the Plaintiff's plot.

The witness also stated that Exhibit A is a Letter of Intent giving to the Plaintiff by the 1st – 3rd Defendants and it serves as allocation letter. The letter also has some conditions which the Plaintiff complied with.

The PW1 further stated that the Lease Agreement referred to in paragraph 16 of his statement on oath is not before this court.

Under re-examination, the PW1 stated that the Plaintiff is still in possession of one hectre of the land.

PW1 was discharged.

The PW2 is a subpoenaed witness from the Lands Department. He brought the Satellite Image of 2010 – 2016 of Plot 570 Jabi District, Cadastral Zone BO4; same was admitted in evidence as Exhibit K.

The subpoenaed witness was accordingly discharged.

Okwuchukwu Eze testified as PW3. In his evidence-in-chief, he adopted a 21-paragraph witness statement on oath dated 12/4/2012 as part of his evidence; the said PW3's statement on oath is hereby adopted as part of this judgment.

The gist of the PW3's evidence is that the 1st – 3rd defendants allocated Plot No. 570 within Cadastral Zone BO4 Jabi District Abuja to the Plaintiff; that the letter dated 3/6/2007 was consummated in the light of further steps taken by the Plaintiff and with the consent and approval of the 1st – 3rd Defendants and that the Plaintiff fulfilled the condition precedent stated in the letter of intent and consequent upon payment of re-certification fee, the 3rd Defendant's Committee on Revocation and Re-certification issued the Plaintiff a letter of clearance.

The PW3 further stated that the Plaintiff fulfilled all the required conditions on the intent letter, it was now the responsibility of the 1st – 3rd Defendants to issue the Lease Agreement which they said was being processed.

That the Plaintiff after submitting the requisite documents proceeded to commence development on the said plot in dispute and expended huge sum of money to the tune of N17,363,000.00.

That the Defendants trespassed and destroyed the development on the said plot leaving the Plaintiff with a smaller portion; that the 1st – 3rd Defendants allocated part of the Plaintiff's plot to the 4th – 13th Defendants without any Notice of Revocation served on the Plaintiff.

That the Plaintiff having fulfilled the conditions precedent as stated in the letter of intent, is therefore entitled to possession.

That the Plaintiff is entitled to its claim.

In the cause of PW3's evidence, the CTC of the Certificate of Incorporation of NEDEC Engineering Nigeria Limited was admitted in evidence as Exhibit L.

Under cross-examination of PW3 by the 1st – 3rd Defendant's counsel, the PW3 stated that he did not agree that the Plaintiff made structures on Plot 570 without approval before they move to the site. The PW3 further stated that they have clearance letter and not consent and approval letter and that the Plaintiff complied with conditions in Exhibit A.

Under cross-examination by the 4th – 13th Defendant's counsel, the PW3 stated that he signed his witness statement on oath in court. That the dates in Exhibit A (3/6/07) and (2/5/11) are less than 21 days; that he did not know the 4th – 13th Defendants.

No re-examination, PW3 discharged and that is the case for the Plaintiff.

In defence of this case, the 1st – 3rd Defendants filed 20-paragraph Amended Statement of Defence dated 30/10/2014 while the 4th – 13th Defendants filed 21-paragraph Amended Joint Statement of Defence dated 14/6/2018 and called the following witnesses:

Musa ishaku testified as the DW1. In his evidence-in-chief he adopted a 20-paragraph witness statement on oath dated 29/6/2016 as his evidence; the said DW1's statement on oath is hereby adopted as part of this judgment.

The gist of the DW1's evidence is that the Plaintiff was not granted a lease in respect of Plot No. 570 within Cadastral Zone BO4 Jabi District; that what was granted to the Plaintiff was an approval to lease subject to the fulfilment of the conditions stated in the said letter of intent. That the Plaintiff did not comply with condition (ii) in Exhibit A.

It is also stated by the DW1 that the detailed Technical Design Proposal submitted by the Plaintiff was never approved by the Defendants and no lease agreement was executed by the parties in respect of the said park.

The DW1 further stated that the Plaintiff expressed its interest to develop, manage and operate a designated park and no approval was given to the Plaintiff to carry on development on the site and a visit to the plot shows that weeds and trees have over-grown the whole plot hence the re-designing and allocation to other people as residential areas by the 1st Defendant in 2011. The DW1 urged the court to dismiss the suit.

Under cross-examination of DW1 by the 4th – 13th Defendant's counsel, the DW1 stated that the regulation as regard to Parks and Recreation is vested in the 3rd Defendants. The witness further stated that it is only when the conditions in Exhibit A are fulfilled, that development approval will be conveyed to the beneficiary; thereafter the beneficiary will now apply for Lease Agreement that will last for 30 years.

That where there is failure to comply with the conditions in Exhibit A there will be no lease agreement. If there is no lease agreement, the letter of intent will become valueless.

Under cross-examination of DW1 by the Plaintiff's counsel the DW1 stated that there is the need for lease agreement and lease approval to proceed with condition No. 1 in Exhibit A (letter of intent). That the land in issue is highlighted in Exhibit K. The Plot No. 570 in Exhibit K is still in existence.

It is the evidence of DW1 that by Exhibit D as at 2011 the 1st – 3rd Defendants still recognise the Plaintiff as the valid allottee of Plot 570 BO4.

The DW1 further stated that all land in the FCT is vested in the President who in turn delegates his powers to the FCT Minister. The witness also stated that he was not sure whether there is revocation letter served on the Plaintiff.

No re-examination, DW1 was accordingly discharged.

Zuliah Ibrahim testified as the DW2 for the 4th – 13th Defendants. In her evidence-in-chief she adopted a 21-paragraph witness statement on oath dated 21/6/18 as her evidence; the said DW2's statement on oath is hereby adopted as part of this judgment.

The gist of the DW2's evidence is that the plots allocated to the 4th – 13th Defendants is not Plot 570 and or were not carved out of Plot 570 or any purportedly leased to the Plaintiff. That the 4th – 13th Defendants are not trespassers on Plot No. 570 Cadastral

Zone BO4, Jabi District but are legal and lawful owners who were given allocation of plots 1254, 1255, 1256, 1257, 1258, 1259, 1260, 1261, 1262 and 1263 respectively in Cadastral Zone BO4, Jabi District by the appropriate authority.

That at no time did the 4th – 13th Defendants intrude nor destroy anything purportedly belonging to the Plaintiff and that there was no encumbrance(s) on the plots allocated to the 4th – 13th Defendants prior to the time it was allotted and at the time they took possession of their various plots.

The DW2 further stated that the 4th – 13th Defendants cannot be rightfully restrained from possession and or ownership of their plots that were legally allocated to them by the 1st Defendant. That the letter of intent dated 3/6/2007 in respect of Plot 570 which the Plaintiff seeks to rely on have been rescinded as being without Ministerial Approval. DW2 urged the court to dismiss the Plaintiff's suit.

In the cause of DW2's evidence, the following documents were admitted as exhibits:

1. Power of Attorney in respect of Plot 1263 – Exhibit M.
2. Power of Attorney dated 10/9/13 – Exhibit N.
3. Statutory Right of Occupancy in respect of Plots 1256, 1258, 1259, 1260, 1261, 1267 – Exhibits O, P, Q, R, S and T respectively.
4. Statutory Right of Occupancy Bill dated 27/4/11 – Exhibit U.
5. FCTA Revenue Collector's Receipt dated 8/9/2011 – Exhibit V.

6. Conveyance of Building Plan Approval dated 16/2/12 – Exhibit W.
7. This Day Newspaper Publication dated 21/12/2011 – Exhibit X.
8. The Offer of Statutory Right of Occupancy dated 20/12/11 in respect of Plot No. 1262 – Exhibit Y.
9. CTC of Offer of Statutory Right of Occupancy of Plot 1257 dated 27/04/2011 – Exhibit Z^1.

Under cross-examination of DW2 by the Plaintiff's counsel, the DW2 stated that she has a Power of Attorney (Exhibit N) to defend the 4th – 13th Defendants.

The witness informed the court that she did not know who signed Exhibit N because the agent brought the signed document to her; that she bought Plot No. 1263 from the 13th Defendant through the Agent. That the 4th – 13th Defendants did not apply for the allocation of the plots. They bought the plots from the agents. That she visited Plot 570 before she bought same. She do not know the address Nos. 1254, 1255, 1256, 1257, 1259, 1260, 1261, 1262 and 1263 are one and the same Plot 570.

The witness further stated that she did not have any document in court to show that the Plaintiff's title had been revoked.

Under re-examination, DW2 stated that she work with Finance and Administration Department of the FCDA. DW2 was accordingly discharged.

Luka Bulus Achi testified as subpoenaed witness 1 (SW1). In his evidence-in-chief, he stated that he was a professional Town

Planner but a retired civil servant of the FCDA. That the Plaintiff was one of the 1st – 3rd Defendants participants in Park Development Scheme. That the Plaintiff was issued a letter of intent over Plot No. 570 to trigger the 1st stage in the Private/Public Participation Park (PPP) Development in the FCT.

Since then up to the time he left the service of FCDA in 2008, the Plaintiff never fulfilled the requirements of the letter of intent,; that would have enable it be issued with a Lease Agreement.

The witness further stated that the Urban and Regional Planning Department redesigned Plot 570 which was 3 hectares.

Under cross-examination by the 1st – 3rd Defendants counsel, the SW1 stated that the letter of intent cannot be a letter of allocation, reason being that:

1. They sought and obtained approval of the Minister in 2006 for all parks lands in the FCT to be allocated to Abuja Metropolitan Management Council (AMMC).
2. And Certificate of Occupancies were to be giving to AMMC and the Parks and Recreation will sub-let the park to interested parties.
3. The witness further stated that no allocation of certificate of occupancy was made in respect of parks except in the Case 2 exceptions i.e. Wonderland by City Gate and Palm Garden, Maitama. That one of the conditions in the letter of intent is that any violation of any of the conditions mentioned therein will nullify the letter of intent.

The witness also stated that he did not know the purpose of the clearance letter but he assumes it was to authenticate the letter of intent.

Under cross-examination by the Plaintiff's counsel, the SW1 stated that letter of intent is a negotiating paper. By the letter of intent the beneficiary has direct contact with the plot.

The witness also stated that Plot 570 was reduced if it is now showing 910 sqm as it was 3 hectres.

That there was a publication cancelling all parks that were not developed.

No re-examination, SW1 was discharged.

Arch. Ali Alhaji Okele testified as SW2. In his evidence-in-chief, he stated that when you need a park you apply for green area or a designated park to develop and manage.

The application will be process and if it meets the requirement, you will be given a Letter of Intent.

In the letter of intent you are giving certain conditions i.e. submitting Technical Drawing for Approval within 21 days.

After approval, you enter into Lease Agreement. The Lease Agreement is really the allocation because alot of conditions are stated therein i.e. the type of leases, period the lease subsist etc.

That it is the FCTA that owns land for parks and recreation.

No cross-examination by the 1st – 3rd Defendant's counsel.

Under cross-examination by the Plaintiff's counsel, the SW2 stated that if you see the word "recreation" it means the allocation is null and void.

The witness further stated that the 1st – 3rd Defendants communicate revocation in writing through the print and electronic means; that he did not know anything about Plot 570 Cadastral Zone BO4, Jabi District, Abuja. That Urban and Regional Planning Department can reduce the size of a plot allocated based on certain reasons.

No re-examination, the SW2 was discharged and that is the case for the 4th – 13th Defendants.

The 1st – 3rd Defendant's counsel filed a 22-page final written address dated 9/11/18 wherein counsel formulated sole issue for determination in this case to wit:

> ***"Considering the totality of the evidence adduced in this case, is the Plaintiff entitled to the reliefs sought"***

On this sole issue, it is the submission that the onus is generally on the Plaintiff to plead other the facts and also lead cogent and credible evidence to prove his case before judgment can be given in his favour. See OLUSANYA v OSINLEYE (2013) 7 NWLR (Pt 1367) 148 at 171.

It is submitted that for the Plaintiff to be entitled to its reliefs as claimed, the onus is on the Plaintiff to establish that there was in existence a lease which said lease was revoked by the 1st – 3rd Defendants. See B. MANFAG (NIG) LTD v M/S O.I LTD (2007) 14 NWLR Pt 1053 Pg 109.

A look at Exhibit A will show that it does not qualify as a Lease Agreement. Court is referred to Clause (iii) of Exhibit A and the case of DALEK (NIG) LTD v O.M.P.A.D.E.C (2009) NWLR (Pt 1033) Pg 402 at 441.

It is submitted that Exhibit A is a letter of intent and is of no moment as it is merely an intention to enter into a Lease Agreement when all the conditions therein as fulfilled by the allottee. See BPS CONSTRUCTION & ENGINEERING CO. LTD v F.C.D.A. (2017) 10 NWLR Pt 1572 Pg 1 at 28 Paras G – H. Court is urged to hold that the Plaintiff has not been able to establish before the court the existence of a lease between it and the 1st – 3rd Defendants.

It is the contention that the Plaintiff has not been able to fulfil the pre-condition stated in Exhibit A that would have lead to the creation of a lease between the parties. Therefore any other act contrary to the said conditions is considered null and void. See ORAKUL RESOURCES LTD v NCC (2007).

It is submitted that the Plaintiff having not complied with the conditions stated in Exhibit A every action or development made on the said plot pursuant to the letter of intent has automatically nullified itself due to the Plaintiff's failure and development without approval of the proper authority. Court is referred to Section 7(1) of the FCT Act.

On the issue of service of Revocation Notice, it is submitted that there is a difference between Allocation of Offer of Statutory Right

of Occupancy issued by the Hon. Minister of FCT and a Letter of Intent issued on condition by a parastatal of the Minister of FCT on Parks and Garden plots to beautify the city.

It is further submitted that while the offer may require notice of revocation in compliance with the provisions of Section 28(4) (6) of the Land Use Act, a letter of intent on the other hand does not. See BPS CONSTRUCTION & ENGINEERING CO. LTD v FCDA (Supra).

It is the submission that the Plaintiff cannot maintain an action for possession and trespass in the same suit. See OLOWOAKE v SALAWU (2000) 11 NWLR Pt 677 Pg 127. Court is urged to hold that the Plaintiff has not established his case with credible evidence to entitle it to a declaratory order from this Honourable Court.

The 4th – 13th Defendant's counsel filed a 19-page final written address dated 13/11/2018 wherein counsel formulated two (2) issues for determination:

1. Whether the Letter of Intent (Exhibit A) is an allocation that can give rise to an enforceable right in the light of the evidence before this court.
2. Whether the Statutory Right of Occupancy granted to the 4th – 13th Defendants are valid and subsisting.

On Issue 1, it is the submission that from the evidence before this court as captioned in Exhibit A and seen in Exhibit E, it can be said that there is no concluded bargain which has settled all essential conditi9ons that are necessary to be settled between the Plaintiffs in this case and the 1st – 3rd Defendants. No contract was in any

way entered between the Plaintiff and the 1st – 3rd Defendants which can be enforced. See ALFOTRIN LTD v F.G. FEDERATION & ORS (1996) 9 NWLR (Pt 475) 634.

It is submitted that the conditions stated in Exhibit A are conditions precedent which only crystallizes upon fulfilment by the Plaintiff within the times specified in the letter to form the basis for a contract. Thus, the entering a Lease Agreement between the Plaintiff and either of the 1st – 3rd Defendants is subject to the occurrence of a future event which Exhibit A (letter of Intent) clearly stated.

It is settled law that where a contract is made subject to the fulfilment of certain specific terms and conditions, the contract is not formed and not binding unless and until those terms and conditions are complied with or fulfilled. See TSOKWA MARKETING CO. LTD v B.O.N. LTD (2002) 11 NWLR (Pt 777) 163.

It is further submitted that from the evidence adduced by the Plaintiff, which evidence mainly hinged on the letter of intent (Exhibit A) and failure of the Plaintiff to tender in evidence any lease agreement in its favour, the Plaintiff's declarative reliefs in prayers 1 – 3 of the Statement of Claim is bound to fail. Court is urged to so hold.

On Issue 2, it is the submission that the Statutory Right of Occupancy granted to the 4th – 13th Defendants in respect of Plots 1254, 1255, 1256, 1257, 1258, 1259, 1260, 1261, 1262 and 1263 respectively is valid and subsists in the light of the fact that there is no adverse or

conflicting claim whatsoever or revocation and or compulsory acquisition by the government for public use/purpose. Court is referred to Exhibit W.

It is submitted that assuming but not conceding that the Statutory Right of Occupancy allocated to the 4th – 13th Defendants were as claimed by the Plaintiff, part of Plot No. 570 Cadastral Zone BO4, the uncontroverted evidence of SW1 and SW2 that the 1st – 3rd Defendant through "Urban and Regional Planning Department has the duty to re-size plots", avails the 4th – 13th Defendants. Furthermore, the Plaintiff's failure to meet with conditions precedents as listed in Exhibit A and the failure to produce a Lease Agreement extinguishes whatever ray of hope the Plaintiff may have had.

It is submitted that the Statutory Right of Occupancy are relevant and were admitted in Evidence without objection and contest from the Plaintiff. There is also no adverse claim made by another party laying claim to the plot; more so, the Plaintiff failed to prove that they are even entitled to Plot 570 as the case may be. Court is urged to dismiss the Plaintiffs suit for failing to establish title over Plot 570 Cadastral Zone BO4, Jabi District, Abuja.

The Plaintiff's counsel filed a 40page final written address dated 8/1/19 wherein counsel formulated a lone issue for determination, thus:

"Whether the Plaintiff has established its case by cogent, credible and compelling evidence thus entitling it to a grant of the reliefs claimed"

On this singular issue, it is the submission that it is a fact before this court that the Plaintiff is still in exclusive possession of Plot 570, Cadastral Zone BO4, Jabi District, Abuja. Court is referred to Exhibit K. This fact of exclusive possession has not been challenged and controverted in any way. The court is therefore bound to accept the fact. See HEIN NEBELUNG ISENSEE K.G. v UBA PLC (2012) 16 NWLR (Pt 1326) 349.

It is the contention of counsel to the Plaintiff that the 1st Defendant cannot redesign or exercise plots from the allocation of the Plaintiff without first of all revoking the allocation of the Plaintiff according to the provision of the Land Use Act. There is no evidence before this court that the 1st Defendant authorized the redesign of Plot 570 which evidence would have been notified to the Plaintiff vide the Notice of Revocation duly served on the Plaintiff.

It is submitted that there is nothing to show that the title of the Plaintiff was revoked. Therefore the Plaintiff's title is still valid and subsisting. See OGUNLEYE v ONI (1990) 2 NWLR (Pt 135) 745 at 784.

It is th3e submission that the Plaintiff placed its case for proving title to Plot 570, Cadastral Zone BO4 Jabi District by :

(i) Production of documents of title, which are duly authenticated.

(ii) By acts of leasing.

(iii) By proof of possession of connected or adjacent land.

See IDUNDUN v OKUMAGBA (1976) NWLR 200.

In the instant case there is evidence of documents of title in Exhibit A as revalidated and authenticated in Exhibit D. Exhibits C1 and C2 and the subsequent resubmission of Exhibit s E, F and G led to the authentication of Exhibit A in Exhibit D. There is also evidence of acts of leasing and therefore a lease interest created in Exhibit A. The Plaintiff has also shown that it has been in continuous exclusive possession of the plot in dispute from June 2007 till date. See ASHIRU v OLUKOYA (2006) 11 NWLR (Pt 990) 1 at 38 Paras D – E.

It is submitted that the 1st – 3rd Defendants carving out of the plots and their purported re-allocation to 4th – 13th Defendants is illegal, null and void and thus makes the 4th to 13th Defendants' claim to parts of Plot 570 unlawful.

It is the contention that by the contents in Exhibit A, it shows that the said Exhibit A conveyed a Lease title or that it was an allocation of title. Court is urged to take a careful look at Exhibit A and the case of NDIC v OKEM LTD (2004) 18 NSCQR 42 at 104.

It is further contended that the content of a valid Lease Agreement are all contained in Exhibit A. There is a property determined as Plot 570 BO4, Jabi and there is also the commencement date which is the 3/6/2007 and also the parties

are stated therein and it in writing. See BOSAH v OJI (2002) 6 NWLR (Pt 762) 137.

It is submitted that from Exhibits O, P, Q, R, S, T, Y and Z, the length of term of leases for grants of title to land in the FCT Abuja, by the 1st to 3rd Defendants is a maximum lease term of 99 years. See KACHALA v BANKI (2006) 8 NWLR (Pt 982) 364 at 383.

It is the submission that the conduct of the 1st to 3rd Defendants in serving bills to the Plaintiff is a clear admission that the Plaintiff has title and in exclusive possession of Plot 570. It is therefore submitted that there is presumption of regularity. See Section 168(1) & (2) Evidence Act and the case of WIKE v PETERSIDE (No. 2) & 3 ORS (2016) 1 – 2 SC (Pt 1).

It is submitted that the 1st – 3rd Defendants are estopped from denying the effect of Exhibits A, B3, C1, C2 and D on the further strength of it, the Plaintiff incurred the expenses seen in Exhibits H1 to H9 which the 1st – 3rd Defendants demolished as seen in Exhibits J1 – J13.

The law is settled that where one by his words or conduct wilfully causes another to believe the existence of certain things and induces him to act on that belief so as to alter his own previous position, the former is precluded from averring against the latter a different state of things as existing at the same time. See UDE v CLEMENT NWARA & ANOR (1993) 2 newly (Pt 278) 638.

It is submitted that the 1st – 3rd Defendants did not comply with Sections 47, 48, 49 and 50 of the Nigerian Urban and Regional

Planning Act. That there was no demolition notice issued and served on the Plaintiff and none was tendered in court before the 1st – 3rd Defendant embarked on the demolition exercise. The Defendant being in breach of the Statute and the Specific proof of the special damages seen in Exhibits H1 to H9, the Plaintiff is entitled to the special damages claimed against the Defendants.

On the issue of general damages, it is the submission that the Plaintiff has established that they have exclusive possessory rights to Plot 570. Damages for trespass is grantable without proof of the injury. Trespass is actionable per se. Court is urged to grant the sum claimed for damages and enter judgment for the Plaintiff.

The 1st – 3rd Defendant's counsel filed 15-page reply on points of law dated 25/2/2019 wherein counsel in reply to Plaintiff's exclusive possession submitted that Exhibit K the Satellite Image Drawing does not in any way demonstrate act of possession as claimed by the Plaintiff in paragraphs 3.6 – 3.12 of its address. It is further submitted that Exhibit K only shows the image drawing of Plot 570 as well as the surrounding plots within the Cadastral Zone BO4, Jabi District, Abuja as seen from space. That Exhibit B1, B2, C1 and C2 are also not legal documents to prove the Plaintiff's title to land. See OKHUAROBO v AIGBE (2002) 9 NWLR Pt 771 Pg 29 at 61 Paras F – H.

It is submitted that the comparison of the letter of intent issued by the 1st – 3rd Defendants to the Plaintiff with Statutory Right of Occupancy is most misconceived and a misconception of law by the Plaintiff. From evidence adduced, the Plaintiff has not placed

any legal evidence (Lease Agreement) to prove its title and so the Plaintiff is nothing but a trespasser on the said plot.

It is further submitted that assuming without conceding that the Plaintiff has possession as it claims, the law is well settled that possession no matter for how long, cannot in itself ripen into title as to defeat the title of the real owner. See MAGAJI & ORS v CADBURY (NIG) LTD (1965) 9 SC 59 at 159.

On the letter of intent (Exhibit A), it is submitted that it is not the Plaintiff's duty to read meaning or interpret the content of Exhibit A.

The wordings of Exhibit A is not rightly clear. It is trite that the issue of the interpretation of a document is a matter of law. The law is that no words must be added, subtracted or ignored when giving meaning to the document.

It is also a rule of construction of a document that speculation is improper in construing a document. See INCAR NIG PLC v BOLEX ENTERPRISES NIG. LTD (2001) 12 NWLR Pt 728 P. 646.

On damages, it is submitted that contrary to the Plaintiff's assertion that is brought building materials (Exhibit H1 – H9), it is the position of the 1st – 3rd Defendants that Exhibits H1 – H9 which the Plaintiff seeks to rely upon was done in anticipation of this suit, as the dates on the invoices indicate. Court is referred to the evidence of DW3 of lack of activity on the plot during the period of the alleged purchase. Also Exhibits R1, B2, C1 and C2 suffers same fate as Exhibits H1 – H9 as they were made between December

2010 and February, 2011 in anticipation of this suit. The law is that any document made in anticipation of a suit is inadmissible. See ARARUME v INEC (2007) 9 NWLR Pt 1038 Pg 127; GWAR v ADOLE (2003) 3 NWLR (Pt 808)). 516 at 543 Paras B – H.

It is submitted that the Plaintiff's argument on special and general damages is unfounded and baseless; same having not been proved that is, is a valid contract between the parties.

It is the contention of learned counsel to the 1st – 3rd Defendants that Exhibits B1, B2 and B3 are for intent and purposes a non refundable payment to 1st – 3rd Defendants as part of the pre-conditions to the signing of a lease on the issue of the clearance letter (Exhibit D).

It is submitted that the argument by the Plaintiff's counsel that the said exhibit confirmed the Plaintiff as the valid allottee of Plot 570 is misconceived. DW1, DW3 and DW 4 gave credible evidence that the purpose of Exhibit D was to confirm that the Letter of Intent given to participants are genuine because many fake letters of intent were in circulation then and so does not serve as a lease or allocation.

On the issue of revocation, it is submitted that the Plaintiff's argument/submission on revocation is misconceived that no Statutory Right of Occupancy was issued to the Plaintiff but a Letter of Intent issued subject to fulfilment of conditions therein. See case of BPS CONSTRUCTION & ENGINERRING CO. LTD v FCDA (2017) 10 NWLR (Pt 1572) Pg 1. Court is urged to hold that the

Plaintiff not having presented to this Honourable Court a valid Lease Agreement, they are not entitled to a revocation notice. Court is urged to dismiss the Plaintiff's suit.

The 4th to 13th Defendants filed 15-page written reply on points of law dated 21/2/2019 wherein counsel invite this court to discountenance the submission of the Plaintiff as contained on pages 9 to 35 of its final written address as the argument thereof remains grossly unmeritorious and devoid of substance relating to issues canvassed with audible evidence before this Honourable Court.

On the issue of Letter of Intent, it is submitted that Exhibit A tendered in evidence is a Letter of Intent and not an Allocation or Right of Occupancy.

Under the Land Use Act, it is only a Right of Occupancy that can be revoked in accordance with Section 28 of the Land Use Act.

It is submitted that Exhibit A specified conditions precedent and amongst others, that there will be a formal lease agreement entered. The conditions were not met, and there was no lease. No Lease Agreement is before this court as evidence. Thus, nothing can be inferred by reference to what does not exist before the court as evidence. See STAR FINANCE & PROPERTY LTD & ANOR v NIG. DEPOSIT INSURANCE CORPORATION (Supra).

The Plaintiff misconceived the position in WALSH v LONGSDALE in essence that an agreement for lease is as good as a lease. This presupposes an equitable lease. But in this case, there was no

agreement for a lease to start with. The letter of intent, just like a memorandum of understanding is preliminary not binding and cannot be a lease. See BPS CONST. & ENGINEERING CO LTD v FCDA (Supra).

On the issue of possession, it is submitted that the Plaintiff do not have better title than the 4th to 13th Defendants; while the 4th to 13th Defendants have Right of Occupancy and against Letter of Intent issued by a Department of the 3rd Defendant. See FOLORUNSHO OLUSANYA v ADEBANJO OSINLEYE (2013) LPELR – 20641 (SC).

It is the submission that the Nigerian Urban and Regional Planning Act and the FCT Act relied by the Plaintiff are inapplicable to this matter because, there was no Right of Occupancy. Court is urged to hold that Exhibit A is only a letter which merely sets down in writing what the parties intend will eventually form the basis of a formal contract between them and non-conforming with the terms/conditions of it renders incompetent, worthless and void every subsequent step taking without compliance to the intendments of the later.

I have carefully considered the processes filed, evidence of witnesses and submission of learned counsel on both sides and come to a firm view that this case poses no complexity and that the sole issue that call for determination is:

"Whether the Plaintiff has established its case by cogent, credible and compelling evidence thus entitling it to a grant of the reliefs claimed"

It is not in contention that the Plaintiff prays this court to grant it a declaration that it is the Lessee of Plot 570, Cadastral Zone BO4, Jabi District, Abuja. The law is that the Plaintiff must prove by positive evidence before this court for it to be entitled to a declaration of title to land and must succeed on the strength of its own case and not on the weakness of the defence. See RIVERS STATE v A.G. AKWA IBOM STATE & ANOR (2011) 3 SC 1; OLUBODUN v LAWAL (2008) 17 NWLR (Pt 1115) 1 at 37.

By Relief 1 (one) of the Plaintiff's claim, the Plaintiff is urging the court to declare it as the lessee of the parcel of land measuring a total of three hectares while Relief 2 (two) is seeking the declaration of the subsistence of the lease and the 3rd (third) relief is praying this court to declare null and void any purported revocation of the alleged lease.

Now for the Plaintiff to be entitled to these reliefs, the onus is on the Plaintiff to establish that there was in existence a lease between it and the 1st – 3rd Defendants.

The Supreme Court in the case of B. MANFAG (NIG) LTD v M/S.O.O LTD (Supra) the court held as follows:

"It is settled beyond question that in order for there to be a valid agreement for a lease, the essentials are that there shall be determine not only the parties, the property, the

length of the term and the rent, but also the date of its commencement"

In paragraphs 3.38 of the Plaintiff's final written address, it contended that the title and possessory rights in Plot 570 and specifically, lease title or interest in land was granted in Exhibit A.

Now for want of doubt the said Exhibit A Letter of Intent is hereby reproduced as follows:

ABUJA METROPOLITAN MANAGEMENT AGENCY
Department of Parks and Recreation

Your Ref:

Our Ref: AMMA/P&R/S.500 **Date: 3rd June 2007**

Managing Director,
Nedec Engineering Limited,
Abuja

Dear Sir,

LETTER OF INTENT TO DEVELOP, MANAGE AND OPERATE DESIGNATED PARK SITE IN THE FCT.

Following your Expression of Interest to Develop, Manage and Operate a designated Park and Green Area in the FCT; and your subsequent qualification to do so, I wish to convey the approval of the FCT Administration for the leasing of:

- **Park No:** **570, Bo4**
- **Park Name:** **District Park**
- **Location:** **Jabi District**
- **Plot size:** **3.0 hectares**
- **Recommended use:** **Outdoor Events, Recreation, Barbecue and Snack Spot.**

On the following conditions:-

(i) That this Letter of Intent is to enable you commence negotiation with your financiers and immediate site preparation.

(ii) That you submit a detailed technical design proposal for approval within twenty one (21) days from this date;

(iii) That the Lease Agreement shall be given to you upon approval of your detailed technical design proposal and payment of all necessary fees:

(iv) That the Park be developed and completed according to the approved technical proposal within one (1) year from the date of approval.

(v) On completion of development of the Park or Green Area, the general public should have unhindered access to its usage.

(vi) Any contravention of the above stated conditions can result in the revocation of the allocation.

Thank you for your interest in the development of the Federal Capital Territory.

(Sgd)
TPL. Luka Bulus Achi FNTEP, RTP

Director Parks and Recreation, AMMA

The question that readily comes to mind is whether Exhibit A qualifies as a Lease Agreement? In the case of NLEWEDIM v

UDUMA (1995) 6 NWLR Pt 402 Pg 383 at 396 the Supreme Court held thus:

> ***"A lease must be clear as to its intent and purpose and it must at least contain (i) the term of year (ii) the rent payable and (iii) the commencement date of the lease"***

A clear look at Exhibit A it is without doubt that none of the above essential feature is in Exhibit A.

It must not be forgotten that Exhibit A is captioned "LETTER OF INTENT..." It is trite that the principle governing the interpretation of documents is a matter of law and one of the canons of interpretation is that no words must be added or subtracted or ignored when giving meaning to the document. It is also a rule of construction of document that speculation is improper in construing or interpreting a document. See INCAR NIG PLC v BOLEX ENTERPRISE NIG. LTD (2001) 12 NWLR (Pt 728).

The Black Law Dictionary, 7th Edition defines a letter of intent as:

> ***"A written statement detailing the preliminary understanding of parties who plan to enter into a contract or some other agreement; a non committal writing preliminary to a contract"***

The Supreme Court in BPS CONSTRUCTION & ENGINEERING CO. LTD v FCDA (Supra) defines Letter of Intent:

"Letter of Intent; a written statement detailing the preliminary understanding of parties who plan to enter into a contract or some other agreement"

The Apex court went on to hold that:

"A letter of Intent is not meant to be binding and does not hinder the parties from bargaining with a third party. Business people typically means not to be bound by a Letter of Intent and court ordinarily do not enforce one but court occasionally find that a commitment has been made"

From the above definition, it is clear that a memorandum of understanding or letter of intent, merely sets down in writing what parties intend will eventually form the basis of a formal contract between them. It speaks to the future happening of a more formal relationship between parties and the steps each party need to take to bring that intention to reality. From the definition above, notwithstanding the signing of a memorandum of understanding the parties thereto are not precluded from entering into negotiations with a third party on the same subject matter.

In the light of the above, it is the obvious from the wording of Exhibit A – the letter of intent relied upon by the Plaintiff is merely a preliminary understanding of both parties to enter into a binding contract agreement by the parties. The Defendants witnesses who are directors under the 3rd Defendant in their testimonies before the court stated that a letter of intent is merely a letter of

invite and negotiation paper. That the lease agreement is what can be termed an allocation paper not a letter of intent

It is also pertinent to state that there are conditions listed in Exhibit A upon fulfilment of which will finally lead to the creation of a lease between the Plaintiff and the 1st – 3rd Defendants. These conditions are pre-conditions to the formation of a lease.

In ORAKUL RESOURCES LTD v NCC (2009) 16 NWLR (Pt 1060) Pg 270 at 302 Paras B – D, the court held inter alia that:

> ***"…..where the law prescribed the doing of a thing as a condition for the performance of another, the non-doing of such thing renders the subsequent act void"***

The question to ask is whether the Plaintiff fulfilled the conditions as stated in Exhibit A as to entitle the Plaintiff to the relief sought.

Condition (ii) states that the Plaintiff is to submit a detailed technical design proposal for approval within twenty one (21) days from the 3/6/2007. It is clear from the evidence before this court the Plaintiff never submitted detailed technical design proposal for approval within the 21 days as stipulated in Exhibit A; instead the Drawing before this court Exhibit Q is dated 2/5/11 over 4 years of the making of Exhibit A.

Condition No. 6 of Exhibit A states clearly that any contravention of the conditions can result in the revocation of the allocation. The Plaintiff has not proved that it submitted the technical drawing

within the 21 days stipulated neither has it prove that a lease agreement was executed in its favour.

The law is trite that where a contract is made subject to the fulfilment of certain terms and conditions, the contract is inchoate and not binding unless and until those terms and conditions are complied with or fulfilled. See BEST (NIG) LTD v B.H. NIG. LTD (2011) 5 NWLR (Pt 1239) 95 at 126.

It is also the contention of the Plaintiff that it had developments on the disputed plot that was demolished by the Defendants. The PW1 admitted under cross-examination by the 1st – 3rd Defendant's counsel that Exhibit A is not the lease he referred to in paragraph 16 of his statement on oath. And that there was no approval giving the Plaintiff to carry out the development on the land. Also under cross-examination by the 4th to 13th Defendants, the PW1 stated as follows:

> ***"The Lease Agreement referred to in paragraph 16 of my statement on oath is not before this court"***

In the light of the above, it is not difficult for this court to hold that the Plaintiff has not been able to prove with cogent and credible evidence that there exist a Lease Agreement between the Plaintiff and the 1st – 3rd Defendants, I so hold.

By the provision of Section 7(1) of the FCT Act no development is allowed without the approval of the 2nd Defendant being first sought and obtained.

As stated earlier, the Plaintiff did in fact admitted that there was no approval given to it before the development was carried out on the said plot.

Accordingly, I hold the strong view that the development carried out on the said plot without the approval of the relevant authority, were done illegally as the existence of a lease is what would have entitle the Plaintiff to go into the land and the approval of the 2nd Defendant is what would have given the Plaintiff the right to carry on any development.

The Plaintiff also contended that Notice of Revocation was not served on them. I must state here that there is a wall of difference between Allocation of Offer of Statutory Right of Occupancy issued by the Hon. Minister of FCT and a Letter of Intent issued on condition by a parastatal of the Minister of FCT on Parks and Garden Plots. By the provision of Section 28(4) & (8) of the Land Use Act an offer requires notice of revocation; a Letter of Intent on the other hand does not.

A Letter of Intent needs no revocation as parties are still at liberty to negotiate with others. And in this case by the evidence adduced, the Plaintiff failed to comply with the conditions stipulated in the Letter of Intent.

It is also without doubt that from the evidence adduced, the Plaintiff have failed to prove that there exist a Lease Agreement with the parties.

It is clear that Reliefs 1, 2 and 3 on the statement of claim are the principal reliefs were the Plaintiff is claiming a declaration that it is a lessee, that the lease to the Plaintiff subsists and that the purported revocation is null and void.

The law is trite that where the principal reliefs fails other ancillary reliefs must also fail like a pack of cards.

As stated earlier the Plaintiff have not be able to prove before this court that there exist a Lease Agreement between the parties, particularly the Plaintiff and the 1st – 3rd Defendants. The Lease Agreement is the foundation upon which the case of the Plaintiff stands. And since the Plaintiff was unable to establish that there exist a Lease Agreement, is therefore fatal to the case of the Plaintiff.

Accordingly, the Plaintiff's reliefs 1, 2 and 3 therefore fails and it consequently follows that reliefs 4, 5, 6 and 7 will also fail being consequential to the principal reliefs.

In conclusion, I am of the considered view that the Plaintiff have failed to prove by positive, cogent and credible evidence its case to warrant the judgment of this court in its favour. Accordingly this case is hereby dismissed.

(Sgd)
JUSTICE SALISU GARBA
(PRESIDING JUDGE)
18/O4/2019

Claimant's Counsel – We commend the court for the industry.

1st – 3rd Defendant's Counsel – We are grateful for the judgment.

4th – 13th Defendants – We commend the court for the industry put in this case.

(**Sgd)**
JUSTICE SALISU GARBA
(PRESIDING JUDGE)
18/O4/2019