IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDING AT MAITAMA-ABUJA
BEFORE HIS LORDSHIP: HON. JUSTICE H. B. YUSUF

SUIT NO: FCT/HC/CV/606/13

BETWEEN:

AMALU & SONS ENTERPRISES LTD……PLAINTIFF

AND

1. THE HON. MINISTER FEDERAL CAPITAL TERRITORY)
2. THE FEDERAL CAPITAL DEVELOPMENT AUTHORITY)
3. THE DEPARTMENT OF DEVELOPMENT CONTROL,)
   ABUJA METROPOLITAN MANAGEMENT COUNCIL)
4. UNIVERSAL RESOURCES & INVESTMENT COMPANY LTD)…..DEFENDANTS

JUDGMENT

This suit was filed on 17th November, 2013 against the Defendants for declaration of title to Plot 45, Katampe Extension, Cadastral Zone (B19) District, Abuja. The case of the Plaintiff Company is that it applied for land allocation sometime in 2003. The application was successful and the disputed land was allocated to the Plaintiff and a Certificate of Occupancy dated 17th October, 2005 was issued to it. The Plaintiff sought and obtained necessary building approval from the 1st to 3rd Defendants and promptly mobilized to site. That while construction was at roofing level the Plaintiff was served with notice

to stop further construction activities on the disputed plot. When the Plaintiff investigated the cause of the notice to stop work it was discovered that the title of the Plaintiff was allegedly revoked by the 1st Defendant and the property reallocated to the 4th Defendant.

The Plaintiff is aggrieved and by paragraph 24 of its Amended Statement of Claim filed on 24th March, 2016 seek the following reliefs against the Defendants jointly and severally:

1. **A declaration that the Plaintiff's right of occupancy over Plot 45 Katampe Extension, Cadastral Zone (B19) District, Abuja is still valid and subsisting.**
2. **A declaration that the purported revocation/voiding by the Defendants of Plaintiff's right of occupancy over Plot 45 Katampe Extension, Cadastral Zone (B19) District, Abuja and reallocation of same to the 4th Defendant or some other persons whosoever is unlawful, irregular, null and void and of no effect whatsoever.**
3. **An Order of perpetual injunction restraining the Defendants, either by themselves or through their servants, agents or privies from interfering with the Plaintiff's right and interest over and possession of Plot 45 Katampe Extension, Cadastral Zone (B19) District, Abuja.**

4. **An Order that the Defendants pay the sum of Two Million Naira to the Plaintiff being the professional fees paid by the Plaintiff to her Lawyers for the prosecution of this case.**

The 1st -3rd Defendants filed a joint Amended Statement of Defence on 4th March, 2016 wherein the claims of the Plaintiff were denied on the ground that the Title Deeds pleaded by the Plaintiff was forged and that same had been voided by the 1st Defendant pursuant to the findings of the ***8th Ministerial Committee on Falsification/Forgery of Land Titles*** constituted sometimes in 2011 by the 1st Defendant.

Similarly the 4th Defendant denied liability vide its Further Amended Statement of Defence filed on 12th April, 2016. It was averred by the 4th Defendant that the disputed plot was lawfully allocated by the 1st Defendant as a replacement for an allocation made to the 4th Defendant which was revoked for overriding public interest. The 4th Defendant therefore submitted a counter claim as set out below:

1. **A declaration that the 4th Defendant is the lawful and legal owner/allottee Plot 45, Katampe Extension, Cadastral Zone (B19) District Abuja, measuring about 3666.92 meter square (the subject matter of this suit).**
2. **A declaration that the 4th Defendant's right, interest, privileges, title and ownership over Plot 45, Katampe**

Extension, Cadastral Zone (B19) District Abuja, measuring about 3665.92 meter square vide a Right of Occupancy dated the 22nd day of May, 2014 and the site plan attached issued by the 1st Defendant is valid and authentic.

At plenary two witnesses testified in support of the case of the Plaintiff as PW1 and PW2 and tendered exhibits A1 to A16. The 1st – 3rd Defendants also called two witnesses who testified as DW1 and DW2 in support of their joint defence and tendered exhibits D1 to D10. Finally the 4th Defendant/Counter Claimant called its Managing Director who testified as DW3 and tendered exhibits D11 to D17. The witnesses were duly cross examined by the opposing counsel.

At the close of trial parties filed and exchange final written addresses which were duly adopted in the open Court.

The learned senior counsel for the 4th Defendant/Counter Claimant, Mr. Mahmud Magaji, SAN identified four issues as arising for the effective determination of this matter. The issues are:

1. Whether the Plaintiff has established that the voiding of his purported Right of Occupancy over Plot 45 Katampe Extension Cadastral Zone (B19) District Abuja is unlawful, irregular, null and void.

2. Whether the Plaintiff has established that his purported Right of Occupancy and title over Plot 45 Katampe Extension Cadastral Zone (B19) District Abuja is still valid and subsisting.
3. Whether having regard to all the facts and circumstances of this case, the 4th Defendant/Counter Claimant has established his claim of ownership over Plot 45 Katampe Extension, Cadastral Zone (B19) District Abuja.
4. Whether the Plaintiff is entitled to an order of perpetual injunction against the Defendants.

On their part the 1st – 3rd Defendants in their joint final address filed on 6th April, 2018 put forward two issues as germane to the just determination of this action, to wit:

1. Whether from the totality of the evidence presented by the Plaintiff specifically and in consideration of the 1st – 3rd Defendants' evidence, the Plaintiff is entitled to the reliefs it sought before the Court.
2. Whether the evidence led before the Court especially by the 1st – 3rd Defendants does not tilt to the story of the 4th Defendant to warrant the Court finding in favour of the 4th Defendant.

On his part, the learned counsel to the Plaintiff submitted the following four issues for the resolution of the disputes between parties. The issues are as set down below:

1. Whether the 1st Defendant validly voided the title of the Plaintiff over Plot 45 Katampe Extension Cadastral Zone (B19) District, Abuja on the strength of the 8th Ministerial Committee on Forgery and Falsification of title documents in the FCT which did not give the Plaintiff fair hearing.

2. Whether the Defendants are not stopped from denying the genuineness of the Plaintiff's title document to the property in dispute in view of the evidence before the Court.

3. Whether the Plaintiff has proved her case to be entitled to all the relief she is seeking and whether the Defendants have been able to establish their allegation of forgery and falsification against the Plaintiff to entitle them to offer a valid title over the property in dispute to the 4th Defendant.

4. Whether the 4th defendant has proved her case to be entitled to any of the reliefs she is seeking in her counter claim.

I have carefully considered the issues formulated on both sides and it is my humble view that the issues are not too dissimilar. However for a more practical purpose and straight forwardness I like to

identify and rephrase the issues which are germane to the determination of this case as follows:

(1) Whether having regard to the facts of this case and the evidence led the Plaintiff is entitled to the reliefs sought.

(2) Whether the 4th Defendant/Counter Claimant has led evidence to support its counter claims to entitle it to the reliefs sought.

DETERMINATION OF ISSUES

ISSUE ONE

Whether having regard to the facts of this case and the evidence led the Plaintiff is entitled to the reliefs sought.

Now the law is clear that the plaintiff has the burden to lead credible evidence to determine its entitlement to the reliefs sought in this case especially as the first and second reliefs sought are declaratory in nature.

On this point of law see Section 131-133 of the Evidence Act, 2011 and the following cases:

1. **ELIAS V. DISU (1962) 1 SCNLR 361;**
2. **UNIVERSITY PRESS LTD V. I. K. MARTINS NIG. LTD (2004) 4 NWLR (PT.654) 584; and**

3. **DALHATU V. A-G, KATSINA STATE (2008) ALL FWLR (PT.405) 1651.**

In this case the plaintiff company who has presented two principal declaratory reliefs must either succeed or fail on the strength of its own evidence. The Law is that the weakness of the defence or outright failure to defend would not affect this onerous burden. In essence the Plaintiff must therefore lead credible evidence and satisfy the Court by that evidence of its entitlement to the declaration sought. Thus in **ADDAH VS UBANDAWAKI (2015) 7 NWLR (PT. 1458) 325 AT 344** it was held by the Supreme Court that:

> **"It should be stated clearly that the weakness of the defendant's case does not assist the plaintiff's case. He swims or sinks with his own case. See Animashaun vs Olojo 1991 10 SCNJ 143; Dantata vs Muhammed 2000 7 NWLR (PT. 664) 176; Ekundayo vs Baruwa 1995 2 NLR 211; Nwokidu vs Okanu 2010 3 NWLR (PT. 1181) 362 and Dumez Nig Ltd vs Nwakhoba 2008 18 NWLR (PT. 1119) 361 at 373-374 wherein it was graphically captured that the burden of proof on the plaintiff in establishing declaratory relief to the satisfaction of the Court is quite heavy in the sense that such declaratory**

reliefs are not granted even on the admission by the defendant where the plaintiff fails to establish his entitlement to the declaration by his own evidence."

As it is well known and settled in law from time immemorial, there are five principal ways by which a party may establish ownership or title to landed property. These are:

(1) By evidence of traditional title.

(2) By production of document of title.

(3) By Acts of long possession and enjoyment of land in dispute.

(4) By positive acts of ownership extending over a sufficient length of time, and,

(5) By proof of possession of connected or adjacent land in circumstances rendering it probable that the owner of such connected or adjacent land would in addition be the owner of the land in dispute.

The law is also that the establishment of one of the five ways is sufficient proof of ownership.

See:

IDUNDUN V. OKUMAGBA (1976) 9 – 10 SC 229.

AYOOLA V. ODOFIN (1984) 11 SC 120.

EWO V. ANI (2004) 17 NSCQR 36.

It would appear to me from the pleadings and evidence led by Plaintiff that it is relying on the second method in proving its title to the property in dispute. That is the production of document of title.

In dealing with issue one the point must be made that one way or the other the Defendants are agreed that the Plaintiff has title documents to the disputed property. What the 1st – 3rd Defendants pleaded and led evidence to support is that the title deed pleaded and tendered by the Plaintiff were forged. That the forged documents was effectively voided by the 8th Ministerial Committee on Forgery and Falsification of title documents in the FCT sometime in 2011. The Plaintiff has denied the allegation of forgery. It has also denied knowledge of the existence and sitting of the said Committee and had insisted that it followed due process before it obtained its allocation to the disputed property.

Learned Counsel to the Plaintiff has also argued that failure to invite the Plaintiff to appear before the Committee amount to breach of fair hearing. The much celebrated case of **GARBA & ORS V. UNIVERSITY OF MAIDUGURI (1986) 1 NWLR (PT.18) 550** was called in aid to support this point. Learned counsel therefore submitted that the report of the Committee which purportedly indicted the Plaintiff for forgery and falsification of title document is null and void and of no legal effect. It further submitted on behalf of

the Plaintiff that the 1st – 3rd Defendants who issued the documents of title put forward by the Plaintiff cannot discredit same as it would amount to approbating and reprobating. Citing the case of **CHUKWUMA V. FELOYE (2008) 12 S.C (PT.II) 291** learned counsel further submitted that the Defendants having held out the Plaintiff as the owner of the disputed land cannot affirm the contrary especially after the Plaintiff has altered its position through visible construction works on the disputed property. The attention of the Court was specifically drawn to exhibit AS6 which is the search report issued by the 1st – 3rd Defendant on 13th July, 2010 which exhibit affirmed the validity of Plaintiff's title.

To facilitate ease of understanding of the Plaintiff's case especially the evidence put forward in support of its title I see the need to highlight the particular of those title documents which formed the bedrock of its claim. They are as set out hereunder:

1. Exhibit AS1 dated 11th April, 2003 is offer of terms of grant/conveyance of approval in respect of the disputed Plot made by the 1st Defendant in favour of the Plaintiff.
2. Exhibit AS3 dated 17th October, 2005 is the certificate of occupancy issued in favour of the Plaintiff sequel to exhibit AS1 over the disputed land.

3. Exhibit AS4 date 29th April, 2008 is demand for 50% of rent and sundry fees in the sum of N7,628,215.62.
4. Exhibit AS4A dated 5th May, 2008 is revenue collector's receipt in the sum of N3,962,295.62 being 50% payment in respect of exhibit AS4.
5. Exhibit AS5 and AS5A are schedule of statutory right of occupancy bills respectively served on the Plaintiff.
6. Exhibit AS6 is search report issued by AGIS and dated 13th July, 2010 affirming the title of the Plaintiff to the disputed plot.
7. Exhibit AS7 dated 2nd November, 2011 is demand for ground rents in the sum of N443,576.32 while exhibits AS7A and AS7B are proof of payment (i.e. bank teller and revenue collector's receipt).
8. Exhibit AS8 dated 14th March, 2011 is settlement of building plan fee in the sum of N758,557.95 and proof of payment of same.
9. Exhibit AS9 issued on 20th April, 2011 is conveyance of building plan approval in favour of the Plaintiff.
10. Exhibit AS10 dated 7th February, 2012 is approval for setting out and commencement of construction.

I have read the response of the 1st -3rd Defendants by way of defence and I must say that I am not in the least impressed with same. Suffice to say that the defence is anchored on the fact that all the title deeds relied upon by the Plaintiff were forged.

This assertion was based on the findings of the Ministerial Committee on Falsification/Forgery of Land titles. However, throughout the deliberation of the so called Ministerial Committee the Plaintiff was never invited and was never heard before exhibit D3 and D4 were produced.

The fundamental concept of fair hearing was never observed and so Section 36(1) of the Constitution of the Federal Republic of Nigeria was breached. The nature of fair hearing has been discussed in a plethora of decisions of the Superior Courts.

In **ZUDEEH Vs. RIVERS STATE CIVIL SERVICE COMMISSION (2007) 1 – 2 SC 1; (2007) 3 NWLR (PT.369) 3045** the Supreme stated thus:

> **"The right of a person to fair hearing is so fundamental to our concept of justice that it can neither be waived nor taken away by a statute whether expressly or by implication. Fair hearing is not only a common Law right but also a Constitutional right. Thus by virtue of Section 33(1) of the 1979**

Constitution and relied upon in the present case in the determination of his civil rights and obligation a person is entitled to a fair hearing within a reasonable time by a Court or other Tribunal established by Law. The requirement of this provision of the Constitution entails the observance of the twin pillars of natural justice namely – audi alterem partem and nemo judex in casua sua."

The provision of Section 33(1) of the 1979 Constitution under which the above case was determined was reenacted in Section 36(1) of the 1999 Constitution (as amended). Therefore the principle in **ZUDEEH Vs. RIVERS STATE CIVIL SERVICE COMMISSION (Supra)** applies to the instant case with equal force. As a matter of fact, I am surprised that the *Ministerial Committee* which invited some property owners and listened to them before taking a decision in exhibits D3 and D4 did not deem it necessary to invite the Plaintiff before taking a vital decision which affects its interest over the disputed property which they knew the Plaintiff has also invested a lot of money.

The Law is clear as decided in **ZUDEEH Vs. RIVERS STATE CIVIL SERVICE COMMISSION (supra)** that where fair hearing is compromised, any decision reached is null and void no matter how

well reasoned. Thus in **MBANEFO V. MOLOKWU & ORS (2014) LPELR-22257 (SC)** His Lordship Peter-Odili, JSC stated as follows:

> **"...a hearing is taken to be fair when all parties to the dispute are given a hearing or an opportunity of a hearing. If one of the parties is refused a hearing or not given an opportunity to be heard, the hearing cannot qualify as fair hearing. Without fair hearing the principles of natural justice are jettisoned and without the principles of natural justice the concept of the Rule of Law cannot be established and grow in the society. See Otapo v. Sunmonu (1987) 5 SC 228 at 259; In Ex-Parte Olakunrin (1985) 1 NMLR 652 at 668."**

See also **GARBA VS. UNIVERSITY OF MAIDUGURI (1986) 1 NWLR (PT.18) 550** ably cited by Counsel to the Plaintiff.

By Section 36(1) of the 1999 Constitution (as amended) a party is entitled to an opportunity to present his case or side of the story. The provision also postulates that the Plaintiff is entitled to know what case is being made against it and be given opportunity to reply thereto before a decision which affects its right is taken.

Perhaps if the Plaintiff was invited and heard it would have impressed the committee to resolve its title on the property in its favour. The failure to observe the above step has robbed on the validity of the Committee reports (exhibit D3 and D4). The entire exercise as regard the findings and conclusions reached and the approval of the minister are null and void.

Furthermore the allegation which the Ministerial Committee investigated is the suspicion that the documents on the disputed Plot was falsified or forged. It is trite law that allegation of forgery is a criminal offence which must be proved beyond reasonable doubt. See Section 135 of the Evidence Act 2011 which provides:

> **"If the commission of a crime by a party to any proceeding is directly in issue in any proceeding civil or criminal, it must be proved beyond reasonable doubt"**

Forgery is criminalized under Section 366 of the Penal Code and Section 465 of the Criminal Code. What led to the voiding of the Plaintiff's title to the disputed land is the allegation that its title documents (exhibit AS1) were forged. That being the case the Law places a burden on the 1st to 3rd Defendants to prove the forgery beyond reasonable doubt. Proof beyond reasonable doubt has been defined variously in many decisions but it simply means that the

prosecution must adduce sufficient, credible and admissible evidence to establish the ingredients of the offence.

See: **EDOKPOLO AND COMPANY LTD VS. OHENHEN AND ANOR (1994) 7 NWLR (PT.358) 511; AND FOLAMI V. COLE (1990) 2 NWLR (PT.133) 445.**

Now the only evidence the 1st to 3rd Defendants have before the Court to support the allegation of forgery of the allocation papers in respect of the disputed land is that the name of the Plaintiff is not part of the names recommended in exhibit D2 for the Ministerial approval. No evidence was led to show that the Hon. Minister who has absolute power to approve application for land form could not have approved the application of the Plaintiff except he got the recommendation of the Director of Land.

Secondly the Director of land was not called in evidence to testify that exhibit D2 was the only recommendation he made to the Hon. Minister at the relevant period for the approval of the Land.

I have observed that the Defendants especially the 1st – 3rd Defendants have not led evidence to demonstrate that the Plaintiff forged the allocation letter (exhibit AS1) and the Certificate of occupancy in respect of the disputed plot and that it knew that the exhibits were forged.

Similarly I have examined the evidence led before me by the Plaintiff that the disputed plot was allocated to it in 2003 vide exhibit AS1. In 2005 the F.C.T. Administration came up with a policy to verify the authenticity of title documents held by Land owners in the F.C.T. The Plaintiff submitted its documents and applied for recertification of the title documents vide exhibit AS2. Evidence was also led before me that on 17/10/2005 the Hon. Minister (1st Defendant) confirmed its title and reissued it with a new certificate of occupancy vide exhibit AS3. It is to me curious that the 1st – 3rd Defendants who examined the Plaintiff's title in 2005 and certified it as genuine would turn around in 2011 about 6 years later to brand the same title as fake.

For me the evidence led by the Plaintiff in this case has revealed that the 1st – 3rd Defendants have taken very critical steps to affirm the title of the Plaintiff that they cannot be heard to disapprove its title. This is what the Law recognizes as estoppel by conduct or equitable estoppel. The implication of this was stated in **NSIRIM VS NSIRIM (2002) 2 S.C (PT.1) 47; (2002) 3 NWLR (PT.755) 693** by the Supreme Court thus:

> **"It need be restated that where one by his words or conduct willfully causes another to believe the existence of certain state of 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. This is how the rule in estoppel by conduct otherwise known as estoppel by matter in pais has been stated. See Joe Iga & ors. Vs Ezekiel Amakiri & ors (1976) 11 SC 1; GREGORY UDE Vs CLEMENT KWARA & ANOR (1993) 2 NWLR (PT. 278) 638 at 662 – 663."

In 2005 the 1st Defendant investigated the Plaintiff's title to the disputed land and certified it as genuine. It issued the Plaintiff a fresh certificate of occupancy in October, 2005. In 2008 the Plaintiff paid right of occupancy rent and fees in the sum of N3,962, 295.62 as demanded by the 2nd Defendant vide exhibit AS4. In 2010 the 2nd Defendant gave right of occupancy bill of N3,665, 920.00 vide its letter dated 13/7/2010 which was admitted as exhibit AS5. In the same 2010 a legal search report still showed that the property belonged to the Plaintiff. Similarly on 2/11/2011 the 2nd Defendant demanded and received from Plaintiff the sum of N443,576.00 on the 14/11/2011 as payment for ground rent.

On the 14/3/2011 the Plaintiff received settlement of building plans from 2nd Defendant and paid the sum of N758,557.95 to the treasury of the 2nd Defendant. In 2012 the Plaintiff got approval for

commencement of construction on the disputed land. This was after the 1st Defendant had purportedly voided its title in 2011. It is my respectful view that it would be inequitable and unconscionable for the 1st to 3rd Defendants who approved all the steps taken by the Plaintiff to erect an approved building on the property to deny it title over the same property.

The point must also be made that as soon as the Plaintiff got wind of the purported nullification of its title in the disputed property it promptly filed this suit on 17th November, 2013. It was during the pendency of this action that the allocation of the 4th Defendant was made. Paragraph 39 of the Amended Statement of Defence jointly filed on behalf of the 1st – 3rd Defendants is very clear on this point. It says:

> **"That sequel to the memos and approvals in 38 above, the 1st and 2nd Defendants allocated the said plot subject of this suit to the 4th Defendant and issued or raised, a ministerial approval sheet for the 4th Defendant dated 22/4/14 which is pleaded herein for reliance during trial"**

In a related development paragraph 12(g) of the 4th Defendant's Amended Statement of Defence is not dissimilar with that of the 1st – 3rd Defendants, to wit:

> **"That sequel to the memos and approvals in paragraph 12(f) above, the 1st & 2nd Defendants allocated the said plot subject of this suit to the 4th Defendant and issued or raised a ministerial approval sheet for the 4th Defendant dated 22/4/14 which is pleaded herein for reliance during trial."**

What has played out here is that all the Defendants are in agreement that the purported allocation of the 4th Defendant was made during the pendency of this action. If that be the case, the Law is settled that such allocation is null and void and of no legal effect. Any action done to spite and undermine the power and integrity of the Court cannot be allowed to stand. That is what the principle of lis pendes is about.

Thus in **AJUWON V. AKANNI (1993) 12 SCNJ 32** the Supreme Court (per Igu, JSC) has this to say on this point of Law:

> **"It is indisputable that the doctrine of lis pendens affects a purchaser who buys property, the subject matter of litigation, during the pendency of such litigation, not because the purported purchaser is caught by the equitable doctrine of notice, but because the law does not allow to parties to a suit, and give to them,**

pending the litigation, rights in the property in dispute, so as to prejudice the opposite party. But the doctrine of lis pendens only applies to a suit in which the object is to recover or assert title to a specific property which, however, must be real property as the doctrine has no application to personal property. Accordingly, where there is a sale of, or, conveyance in respect of a land in dispute by either side to a litigation, even though the alienation be for ever so good a consideration, yet if it was made pendente lite, the purported purchase would be ineffective and must be set aside as void. See also:*Barclays Bank of Nigeria Ltd. v. Alhaji Adam Ashiru and others (1978) 6 and 7 S.C.99 at 123 - 125 and 128 - 129* per Idigbe, J.S.C".

Arising from this principle, it is very clear that the purported conveyance of title in the disputed property by the 1st Defendant to the 4th Defendant/Counter Claimant during the pendency of this suit is a mark of disrespect for the Court. Such unwholesome conduct undeniably undermines the sanctity and integrity of the Court and must be deprecated in the strongest terms.

In a related development I have seen exhibit D15 (certificate of occupancy issued to the 4th defendant by the 1st defendant) and I must say that it is not an admissible document as the exhibit is excluded under Section 83(3) of the Evidence Act, 2011. This is so because the contest in this matter is strictly between the Plaintiff and the 1st to 3rd Defendants. The 4th Defendant in my view is an innocent and accidental party. So if the 1st Defendant issued a new Certificate of Occupancy as demonstrated by exhibit D15 in favour of the 4th Defendant during the pendency of this matter it does mean that the 1st to 3rd Defendants as an interested party has flouted Section 83(3) of the Evidence Act.

For the avoidance of doubt Section 83(3) of the Evidence Act, 2011provides as follows:

> **"Nothing in this section shall render admissible as evidence any statement made by a person interested at a time when proceedings were pending or anticipated involving a dispute as to any fact which the statement might tend to establish."**

In this case the 1st to 3rd Defendants who authored exhibit D15 took the actions that led to this dispute. Therefore, it cannot be denied that they have something to gain from the issuance of exhibit D15 which was issued during the pendency of this case. On that score it

follows as day follows the night that exhibit D15 is not legally admissible as it is clearly excluded under Section 83(3) of the Evidence Act.

The Law is clear that if through inadvertence a document which ought to be excluded in evidence in admitted it can be expunged at judgment stage. The position of law where inadmissible document is wrongly admitted through inadvertence or otherwise is very trite.

In **KUBOR AND ANOR VS DICKSON & ORS (2013) 4 NWLR (PT. 1345) 534** ONNOGHEN JSC stated thus:

> **"On the sub issue as to whether the Court has the power to expunge from its record evidence or documents earlier admitted without objection by counsel, it is settled law that the Courts can do that and has been doing that over the years."**

See **NIPC LTD VS THOMSON ORGANISATION LTD (1966) I NMLR 99 at 104** where Lewis JSC stated the law as follows:

> **"It is of course the duty of counsel to object to inadmissible evidence and the duty of the Court anyway to refuse to admit inadmissible but if not withstanding this evidence is still through oversight or otherwise admitted then it is the duty of the Court**

to when it comes to give Judgment treat the inadmissible evidence as if it had never been admitted."

Exhibit D15 is therefore expunged from the record as it is clearly an inadmissible document.

As it is now there is nothing before the Court to challenge the title of the Plaintiff to the disputed property having been lawfully and validly granted by the 1st Defendant. At the end of the day I hold as I should that from whichever angle the Plaintiff's claim is viewed the Court has a duty to affirm its title and I so hold.

In essence the Plaintiff is entitled to the declaratory and injunctive reliefs sought. Reliefs a, b and c are accordingly granted as prayed.

I have also considered the pleadings and evidence led in support of the claim for Solicitors fees in the sum of N2,000,000.00 (Two Million Naira) Only and I form the view that the claim is not well founded. In reaching this conclusion I lean on the case of **PRINCE UGO MICHAEL V. ACCESS BANK OF NIGERIA PLC (2017) LPELR-41981 (CA)** where it was held inter alia as follows:

"In GUINNESS NIGERIA PLC vs. NWOKE (2000) 15 NWLR (pt 689) 135 at 159 this Court held that a claim for Solicitors fees is outlandish and should not

be allowed as it did not arise as a result of damage suffered in the course of any transaction between the parties. Similarly, in NWANJI vs. COASTAL SERVICES LTD (2004) 36 WRN 1 at 14-15, it was held that it was improper, unethical and an affront to public policy, to have a litigant pass the burden of costs of an action including his Solicitors fees to his opponent in the suit. Therefore, I think that on the current state of the law, a claim for Solicitors fees, which does not form part of the Claimant's cause of action, is not one that can be granted."

Arising from the above stated position of the Law the claim for Solicitor's fees is hereby refused and dismissed for want of merit.

ISSUE 2

Whether the 4th Defendant/Counter Claimant has led evidence to support its counter claims to entitle it to the reliefs sought.

COUNTER CLAIM

The gist of the 4th Defendant's Counter Claim is as reproduced below:

1. **A declaration that the 4th Defendant is the lawful and legal owner/allottee of Plot 45, Katampe Extension, Cadastral Zone (B19) District Abuja, measuring about 3666.92 meter square (the subject matter of this suit).**
2. **A declaration that the 4th Defendant's right, interest, privileges, title and ownership over Plot 45, Katampe Extension, Cadastral Zone (B19) District Abuja, measuring about 3665.92 meter square vide a Right of Occupany dated the 22nd day of May, 20014 and the site plan attached issued by the 1st Defendant is valid and authentic.**

Parties both in their pleadings and evidence led in support have joined issues on the above claims. The counter claimant being the plaintiff in respect of the counter claim must lead credible evidence to support its claim.

In **JERIC (NIG) LTD V. UBN PLC (2000) 15 NWLR (PT.691) 447**, Kalgo, JSC stated the law thus:

> **"It is trite law, that for all intents and purposes, a counter-claim is a separate, independent and distinct action and the counter-claimant, like all other plaintiffs in an action, must prove his claim against the person**

counter-claimed against before obtaining judgment on the counter-claim."

See also:

1. **OGBONNA V. A.-G., IMO STATE (1992) 1 NWLR (PT.220) 647; AND**
2. **DABUP V. KOLA (1993) 9 NWLR (PT.317) 254.**

For the record I have observed that the counter claim of the 4th Defendant is simply declaratory as it was not accompanied with any injunctive relief or damages of whatever nature. In other words, all that the 4th Defendant/Counter Claimant is seeking is a declaration of the position of the law with respect to the dispute before the Court. Put in another way the counter claimant is seeking declaratory judgment and nothing more.

On this point of Law I refer to the case of **DR. TAIWO OLORUNTOBA-OJU & ORS V. PROF. P.A. DOPAMU & ORS (2008) 34 NSCQR (PT.I) 278** where Aderemi, JSC has this to say:

> **"When a litigant claims declaratory relief, he does no more than to invite the court to declare what the law is on the issue. See *PETER OBI V. INEC & 7 ORS*. (2007) 11 NWLR (pt.1046) 560. Whatever a court of law may say in acceding to that invitation is not executory. Indeed, the grant of such a relief is discretionary.**

Therefore, a plaintiff who intends to have an enforceable legal right from a declaratory judgment or order in his favour must, in addition, seek injunctive order or damages."

The Counter Claimant whose main relief is in the realm of declaratory relief has a duty to prove its case with cogent and credible evidence in order to succeed. See the case of **ADDAH VS UBANDAWAKI (supra)** on this point of Law.

I have carefully considered the facts in support of the Counter Claim and it is clear to me that the first time the 4th Defendant/Counter Claimant appeared on the scene of this dispute was sometimes in 2014 when exhibit D15 (i.e. offer of statutory right of occupancy) was issued to it. As at that time the title of the Plaintiff to the disputed land was subsisting and had not been wrestled from the said Plaintiff. As a matter of fact the Plaintiff had already taken the 1st to 3rd Defendants to Court over the property and decision on the dispute had not been rendered.

Now the crux of the Plaintiff's claim in the action is for a declaration that it is the owner of the property. If that be the case, I do not see how the 1st to 3rd Defendants in good conscience could have allocated the property which is in dispute to the 4th Defendant/Counter Claimant.

Furthermore, in the instant case, the time the 1st Defendant purported to grant the land in dispute to the 4th Defendant by exhibit D15 in 2014 he had nothing to grant, the maxim being nemo dat quod non habet. Although the 1st Defendant could in proper case revoke the Plaintiff's right of occupancy under Section 28 of the Land Use Act, he did not validly do so before purporting to grant to the 4th Defendant a right of occupancy (exhibit D14) over the same land over which the Plaintiff had a right of occupancy. In my opinion such a grant of a right of occupancy by the Minister (1st Defendant) to a party when another person's right of occupancy has not been revoked is invalid.

See: **OGUNLEYE V. ONI (1990) 2 NWLR (PT.135) 745.**

In **OTUKPO VS. JOHN (2012) 7 NWLR (PT. 1299) 357** the Supreme Court (per Adekeye, JSC) has this to say:

> **"It is imperative at this stage to highlight the effect of a Certificate of Occupancy in respect of claim of title to land. A Certificate of Occupancy is only prima facie evidence of title to land or exclusive possession of land. Consequently, if it is successfully challenged, it can be nullified. Where there is evidence to show that the**

certificate was wrongfully obtained the court is entitled to nullify it."

See also:

1. **OKPALUGO VS. ADESOYE (1996) 10 NWLR (PT. 476) 77;**
2. **AUTA VS. IBE (2003) 13 NWLR (PT.837) 247; AND**
3. **DAKAT VS. DASHE (1977) 12 NWLR (PT. 531) 46**

Still on this point of Law Edozie, JSC succinctly re-echoed this principle of Law in **ILONA V. IDAKWO (2003) 11 NWLR (PT.830) 53** thus:

> **"A document of title such as a certificate of occupancy is prima facie evidence of title but it will give way to a better title."**

So clearly apart from the fact that exhibit D15 (i.e. offer of statutory right of occupancy) is an inadmissible document the 1st Defendant did not have what it purportedly granted to the 4th Defendant/Counter Claimant.

Taking the argument further the mere possession of letters of allocation does not automatically show ownership of such land. For the Court to admit a document as sufficient evidence of ownership of such land to which the allocation letter relates, it must be established and the Court must satisfy itself that:

(a) The document is genuine and valid;

(b) That it has been duly executed.

(c) The grantor has the authority and capacity to make the grant/allocation.

(d) That the grantor has in fact what he proposed to grant.

(e) That the grant has the effect claimed by the holder of the instrument.

See **AYORINDE VS KUFORIJI (2007) 4 NWLR (PT. 1024) 341 and DOSUMU VS DADA (2002) 13 NWLR (PT. 783) 1.**

In this case I must say that exhibit D15 has not met the requirements of the Law as set out above. For example, the exhibit was not validly issued by the 1st Defendant as the title in the property vested in the Plaintiff at the material time the exhibit was purportedly issued. Similarly the 1st Defendant as grantor has no authority and capacity to make the grant/allocation as it has already parted with title in the property when the said 1st Defendant made the Plaintiff's allocation. In essence exhibit D15 has no effect claimed by the holder (i.e. the 4th Defendant) of the instrument.

Based on all the points highlighted above I must hold as I should that the 4th Defendant/Counter Claimant has not established its Counter Claim to warrant the grant of same. The declaration sought

on the face of the Counter Claim is therefore refused and dismissed for want of merit.

In ending this judgment, I must express my disappointment with the conduct of the staffer of the 1st to 3rd Defendants who in creating problem for the Plaintiff and inviting the 4th Defendant/Counter Claimant into a litigation that it does not bargain for leaves much to be desired. The 4th Defendant/Counter Claimant had a property in Mabushi within the FCT which was revoked for overriding public interest. In that case the 1st Defendant is under an obligation to give the 4th Defendant an unencumbered land as a compensation. However, what it got is a land on which there is full development and a pending litigation.

I must say that I sympathize with the situation that has been foisted on the 4th Defendant/Counter Claimant by the 1st to 3rd Defendants. But as it is I cannot offer any help. Nevertheless I advice the 1st Defendant to look for an unencumbered land with similar advantage to allocate to the 4th Defendant.

In all, the case of the Plaintiff succeed and I grant the reliefs sought therein except the claim for professional fee while the counter claim of the 4th Defendant/Counter Claimant is refused and dismissed for want of merit.

For the avoidance of doubt I make the following orders:

1. **I make a declaration to the effect that the Plaintiff's right of occupancy over Plot 45 Katampe Extension, Cadastral Zone (B19) District, Abuja is valid and subsisting.**

2. I declare that the purported recommendation of the 8th Ministerial Committee on Falsification/Forgery of Land Titles constituted sometimes in 2011 by the 1st Defendant leading to the purported nullification of the Plaintiff's title is null and void and of no effect.

3. An Order of perpetual injunction is hereby made restraining the Defendants, either by themselves or through their servants, agents or privies from interfering with the Plaintiff's right and interest over of Plot 45 Katampe Extension, Cadastral Zone (B19) District, Abuja.

4. The claim for professional fee of N2,000,000.00 (Two Million Naira) is refused and dismissed for want of merit.

5. The Counter Claim of the 4th Defendant is refused and dismissed in its entirety for want of merit.

SIGNED
HON.JUSTICE H.B. YUSUF
(PRESIDING JUDGE)
11/12/2019

Appearances:

H.A. Eze esq – For the Plaintiff

S.N. Mbaezue esq – For the 1st – 3rd Defendants
(with Ibegbulan Vanessa esq)

Danjuma Ayeye esq – For the 4th Defendant
(with Hafiz Mantomi esq, Waduda Abdullateef esq
And Hauwa S. Aliyu esq)

SIGNED
HON.JUSTICE H.B. YUSUF
(PRESIDING JUDGE)
11/12/2019