HIGH COURT OF JUSTICE OF THE FEDERAL CAPITAL TERRITORY
HOLDEN AT MAITAMA ABUJA
ON THE 27TH DAY OF FEBRUARY, 2020
BEFORE HIS LORDSHIP; HON JUSTICE MARYANN E ANENIH
(PRESIDING JUDGE)

SUIT NO: FCT/HC/CV/1273/10

BETWEEN:

1. **OBUTEC NIGERIA LIMITED**
2. **NWOGU OBUNEME …….…….…….PLAINTIFFS**

AND

1. **THE HON. MINISTER OF FEDERAL CAPITAL TERRITORY**
2. **THE FEDERAL CAPITAL TERRITORY ADMINISTRATION (FCTA)** } **DEFENDANTS**
3. **DANGEDA GLOBAL INVESTMENT LIMITED**
4. **SONGHAI HEALTH TRUST LIMITED**

JUDGEMENT.

The plaintiff by an amended statement of claim filed on the 6th of December, 2011 claims against the Defendants jointly and severally as follows:

(a). A Declaration that the demolition of the plaintiff's property situate and lying at plot 1003, Utako District Abuja by the Defendant, is without cause, and constitutes as illegal act as trespass to the property to the plaintiffs.

(b). An Order invalidating any purported revocation and/or re-allocation of plot 1003, Utako District, Abuja, to the 3rd to 6th Defendants.

(c). Special damages against the Defendant jointly and severally in the sum of N3 Million for damages to the plaintiff's property viz:

i. Fence - N1,800,000.00

ii. Gate house and appurtenances - ₦1,200,000.00

(d) General damages for illegal trespass and for illegal and forcible eviction of the plaintiff from plot 1003 Utako Abuja in the sum of N10 Million.

(e) Perpetual injunction restraining the Defendants (whether by themselves, agents, servants or representatives in the interest) from any further acts of trespass or damages of the plaintiffs' property situate and lying at plot 1003, Utako District, Abuja.

The 1st and 2nd Defendants filed their statements of defence on 25th of January, 2011.

The 4th Defendant (Songhai Health Trust Ltd) filed her statement of defence on 10th of October, 2012

The 3rd defendant did not file any process nor proffer any defence.

The plaintiffs filed on 10th of April, 2014 a Reply to the 1st, 2nd and 4th Defendants statement of defence.

The full evidence of all the witnesses are captured in the records before the court and would be briefly summarised hereunder for convenience.

The plaintiffs in proof of their case called Nwogu Obuneme as a witness who testified as PW1. He adopted his witness statement on oath filed on 11th of July, 2011 and additional statement on oath filed on 15th of April, 2014. He tendered the following documents as Exhibits:

Exhibit A is the acknowledgement from FCTA dated 1/08/06.

Exhibit B is the photocopy of Grant dated 6/3/07.

Exhibits C1, C2, C3, C4 and C5 are the receipts dated 11/16/2007 No.3018, 9/6/2007 No. 0087, 7/6/07 No. 0930, 1703/06 nO. 0183 and 12/03/06 No. 1464

Under cross examination by 1st and 2nd Defendants, PW1 testified inter alia that:

He stands by the facts in his adopted witness statements on oath. Exhibit B is the allocation by 1st and 2nd defendants to Obutec in respect of the plot. He cannot remember specifically the date the letter of offer was received but it was received in 2007.

With regards to paragraphs 4 and 5 of his witness statement on oath, he started development but not development per se, just fence round the land and gate house, that is what he means by development which was to safe guard the house. He didn't get permit to build the fence and gate house. His building plan approval payment receipts were given to his lawyer. He cannot remember any specific time he was required to carry out development on the land. The demolition took place sometime around December, 2009.

The offer made to 1st plaintiff was to fast track the development of Federal Capital Territory hence its called accelerated Development Project.

The Offer letter, Exhibit B is not a Certificate of Occupancy, but to enable them to participate in the development of Federal Capital Territory.

He does not have anything to show compliance with the said paragraph 2 of Exhibit B that he accepted the offer because as at that time the Agreement was signed and kept in the file.

The date on Exhibit C5,12/3/06, should be a typographical error.

The same thing happened in Exhibit C4, the date is written 17/3/06.

The gate house is a small house where security can stay to guard the house. He is not aware the offer letter Exhibit B was withdrawn hence he contacted his Lawyer.

Under cross examination by 4th Defendant, PW1 further testified inter alia that:

He is the alter ego and executive director of 1st plaintiff and is representing himself.

He does not know the 1st, 2ndand 4thdefendants. The fence and gate house were built initially based on the offer given to them.

He does not think securing of the land needs approval. It is in the main building that they need to get building approval. He doesn't know if he needs approval for erection of fence and gate house to secure the land. If he needed approval and didn't obtain and built then he has done something wrong but this one is just a fence.

Exhibit B, the offer letter is the basis of his entitlement to the land. He wouldn't know if someone had the land before him. All he knows is that they applied for the land and it was given to them.

Since an offer was given and any thing is to be done, then notice ought to have been given for same.

He applied for land and was given, he then sees no reason to write back that he doesn't want to participate in the Accelerated Development Programme. It is correct that his allocation in Exhibit B is for accelerated development programme.

He complied with paragraph 2 of Exhibit B. He remembers that an Agreement was signed although he cannot remember the terms and conditions. He believes that if he contravened the condition then there ought be a letter to him know that he has contravened such condition but there is no such letter.

His name is not on Exhibit D, it is 1st plaintiff he is representing and if a letter is sent to Obutec it's going to be given to him. He is not impersonating Obutec.

He knows No. 65 Shehu Lamido street, Maiduguri. He worked with Obutec at that time of this address.

From Exhibit A, Obutec Nig. Ltd is the applicant. It also shows that Obutec made the payment. He cannot remember if he sent his picture or National ID Card. Obutec has Registration Certification and not birth certification. It also has no international passport. All he knows is that they applied in the name of Obutec and they were given the land.

The 1st and 2nd defendants in defence of the case against them called Tanko A. Madugu. He testified as DW1 and adopted his witness statements on oath filed on 25th of January, 2011 and another filed

6th May, 2015which he also adopted as his evidence. He tendered the following documents as Exhibits:

Exhibit D is the letter of withdrawal of allocation dated 26/05/09 from FCTA.

Exhibit E is the Certified True Copy of DHL express Shipment waybill No.1726071701.

Under cross examination, DW1 testified inter alia that:

> He has been with the 1st and 2nd defendants for 28 years now.
>
> His job schedule is head of Certificate of Occupancy Unit.
>
> The procedure for revocation of C of O is breach of terms of conditions. The parcel of land, subject matter of this action was legally granted to the plaintiff under the accelerated development scheme. The grant was validly done but unfortunately there was no acceptance by the allottee.
>
> The plaintiffs were at a time in possession as the grant was made in good faith , but the plaintiff has never moved to the site. This same parcel of land was re-allocated sometime to Dangede Global Investment Ltd sometime within May, 2009.
>
> It's correct that a grant of accelerated development is not a grant of statutory Right of Occupancy but a prelude to the grant of statutory Right of Occupancy.
>
> The interest of 3rd defendant transferred to the 4th defendant is legal.
>
> Accelerated Development Programme is to assist the FCT to fast track it's development. And such allocation under this scheme is not to be sold.

One of the terms of the Accelerated Development is that it reaches 6th floor before Right of Occupancy can be given.

He cannot tell now whether there's a structure of 6 floors now on the land as the last time he went there was 2016.

The Certificate of Occupancy was granted to the 3rd defendant when the Accelerated development programme was cancelled completely sometime in 2009 but he cannot recall the day/month it was cancelled. The title of the plaintiff was formerly revoked before vesting the 3rd defendant with any interest.

It is not in Exhibit B that the development lease Agreement must be signed in duplicate, but that is the practise policy.

It took almost 2 years to revoke plaintiff's title because the grant was made in good faith thus he was given enough time to complete all the processes and mobilise to site.

Any development or transaction of land automatically opens a channel of communication between the grantor and the grantee.

The grant was subsequently withdrawn when there was no compliance. The revocation was communicated to the plaintiff via DHL through their last known address given as No. 26 Shehu Laminu way Maiduguri. The revocation notice was sent about 3/6/09.

He signed his two witness statements on oath in his office.

DW1 under cross examination by 4th Defendant, further testified inter alia that:

> The revocation letter was addressed to Obutec 1st plaintiff. After the revocation the land became free of encumbrance. And the current bonafide owner of the plot is 4th defendant, Songhai Health Trust Limited.

At the close of evidence, the parties filed, exchanged and adopted their respective final written addresses save for the 3rd defendant who didn't file any address or proffer oral final address.

The 1st and 2nd Defendants in their final written address filed on 23rd of May, 2018 formulated two (2) issues for determination:

1. Whether the 2nd plaintiff is a proper party to this suit.
2. Whether the 1st (and/or 2nd) plaintiff(s) have proved their case entitling them to the reliefs sought in the amended statement of claim.

The full written and oral submissions in respect of the addresses of the 1st and 2nd defendants are before the court and would be properly referred to where found necessary.

In conclusion of their adddress, 1st and 2nd defendants by their counsel urged the Court to dismiss this suit in its entirety for lacking in merit.

The 4th defendant in it's final written address filed on 22nd May, 2018 distilled a lone issue for determination:

> Whether the plaintiffs are entitled to the reliefs sought.

The 4th defendant's counsel made submissions in respect of this singular issue, which is fully captured in the records before the court. Same would be referred to herein whenever the need arises.

In conclusion, 4th Defendant's Counsel submitted that the plaintiffs have failed to prove their case and urged the Court to dismiss the claims of the plaintiffs and order the plaintiffs to pay the 3rd and 4th Defendant their cost of prosecuting this defence.

The plaintiffs in their final written address filed on 26th October, 2018 formulated two issues for determination:

1. Whether the title of the 1st plaintiff was validly revoked by the 1st and Defendants before it was purportedly granted to the 3rd Defendant.
2. Whether the witness statements on oaths of the DW1 are testimonies before the Court capable of being relied upon by the Honourable Court.

The written and oral submissions in respect of these issues are within the court's record and would be highlighted where found necessary.

In conclusion, he urged the court to resolve the two issues in favour of the plaintiffs and grant all the reliefs sought by the plaintiffs.

The 1st and 2nd Defendants also filed a Reply on points of law on 15th March, 2019 which was also adopted before the Court.

On the 4th of December 2019 parties were called upon to further address court on a point of law, pursuant to which they sough for adjournment till 10th January 2020 when they did same and adopted their further written addresses.

Reference would be made to the submissions of counsel via their written or oral submissions where the need arises.

I have considered the claimants case before the court, the defence of the defendants, and the written and oral submissions of counsel on behalf of all the parties. And I am of the view that the main issues arising for determination here are:

1. Whether the 2nd Claimant is a proper party?
2. Whether any valid interest was conferred on the plaintiff viaoffer of grant of Plot 1003 as reflected in Exhibit B.
3. In the circumstance therefore, if 2 above is answered in the affirmative, whether the interest of the plaintiff over the plot of land was properly extinguished.
4. Whether the plaintiffs successfully established acts of trespass against the defendants.
5. Whether the plaintiffs are entitled to the reliefs sought in their amended statement of claim.

The summary or gist of the plaintiffs'case is that they made an application for a statutory right of occupancy pursuant to which they were offered a grant of plot 1003 in Utako District, Abuja in line with the accelerated development programme of the FCT. They accepted the offer by signing and returning the lease agreement to the 1st and 2nd defendants. That they then commenced development by erecting a fence and gate house to secure their property and thereafter proceeded to apply for development approval from 1st and 2nd defendants. That for inexplicable reasons and without warning, after about two years the defendants invaded the said plot and demolished their fence and gatehouse building. That it was only after institution of action against them that they knew about a notice of withdrawal/ cancellation issued and purporting to revoke the grant to them.

The defendants defence in summary is that the plaintiffs did not in all that time accept the offer of grant by signing a Lease Agreement as directed in the offer letter. And that they failed to apply for development approval after about two years. That it was for reason of failure to accept the offer that same was withdrawn. And a priori, that 1st and 2nd defendants have the powers to demolish developments made without requisite approval. The foregoing is a brief summation of events which forms the basis of the institution of this suit.

The first issue is whether the 2nd plaintiff is a proper party in this matter.

The plaintiffs'evidence before the court is that the 1st plaintiff's Chief Executive officer and alter ego is the2nd plaintiff, who submitted application for grant of a statutory right of occupancy to the defendant on behalf of the 1st plaintiff.Incidentally, that's all that was said about the 2nd plaintiff by plaintiff's statement of claim. The subject matter of this suit is Plot 1003, for which offer of grant was made to the 1st plaintiff by the 1st and 2nd defendants via Exhibit B. The plaintiffs claim before the court are in respect of demolition, purported revocation, damages, trespass and perpetual injunction for the said plot 1003. The defendants in their final address submitted that the 2nd plaintiff is not a proper party in this suit. They argue that a company is a juristic person in the eyes of the law that can sue or be sued independent of its directors and staff.

The point for resolution in this issue therefore is the interest of the 2nd plaintiff in this matter.

Does the interest of the plaintiff in this matter qualify him to claim the aforementioned reliefs, being that the transaction that led to the filling of this suit is solely between the 1st plaintiff and the 1st and 2nd defendants.

It is well settled that it is the cause of action as endorsed on the writ of summons that determines the proper parties in a case. See

BAKARE & ORS V. AJOSE-ADEOGUN & ORS (2014) (SC)PG. 47 Para A-B

> *"It is now fairly settled law that it is the cause of action as endorsed on the Writ of Summons that determines the proper parties before theCourt. See;* ***Okoye v. NCFC*** *(1991) 6*

*NWLR (Pt. 199) 501; **Afolayan v. Ogunrinde & Ors** (1990) 1 NWLR (Pt. 27) 359; (1990) 2 SCNJ 62."*

And

CARLEN (NIG) LTD V. UNIJOS & ANOR (1994) (SC) PG. 50 Para D-E

GLOBAL WEST VESSEL SPECIALIST (NIG) LTD V. NIG. NLG LTD & ANOR(2017) (SC) PG. 31-32 Para D-B

The gravamen of the defendants argument appears to also border on the locus standi of the 2nd plaintiff to personally co- institute this action as a plaintiff. Locus standi is the legal capacity of a party to institute an action. Ostensibly, it focuses on the party seeking to get his grievance laid before the court for resolution. See

OJUKWU V OJUKWU & ANOR (2008) LPELR -2401 (SC) PG. 10-11 Para F-A where his lordship Aderemi JSC had this to say

> *What does LOCUS STANDI denote? Going by settled judicial authorities, the term LOCUS STANDI denotes legal capacity to institute proceedings in a Court of law. The fundamental aspect of LOCUS STANDI is that it focuses on the party seeking to get his complaint laid before the Court"*

ADESANYA V. PRESIDENT OF FRN & ANOR (1981) LPELR-147 (SC) PG. 22 PARA D.

ADETONA & ANOR V. ZENITH INTL BANK PLC (2011) LPELR-8237(SC) PG. 40-41 Para E-A.

It is well settled that if a party doesn't have the locus standi or legal capacity to sue, the court in such a situation would not have been clothed with the requisite competence to determine the action. Where a chairman or director of a company acts for the company, in the eyes of the law, he is an agent of the company and the general principle of

law of principal and agent, that the action be instituted in the name of the principal, would apply. I find support for this position in

SECTION 65 of COMPANIES AND ALLIED MATTERS ACT.

> *"Any act of the members in general meeting, the board of directors, or of a managing director while carrying on in the usual way the business of the company shall be treated as the act of the Company itself and the company shall be criminally and civilly liable therefore to the same extent as if it were a natural person:*
>
> *Provided that-*
>
> *a. the company shall not incur civil liability to any person if that person had actual knowledge at the time of the transaction in question that the general meeting, board of directors, or managing director, as the case may be, had no power to act in the matter or had acted in an irregular manner or if, having regard to his position with or relationship to the company, he ought to have known of the absence of such power or of the irregularity;*
>
> *b. if in fact a business is being carried on by the company, the company shall not escape liability for acts undertaken in connection with that business merely because the business in question was not among the business authorised by the company's memorandum."*

See also;

ALPHONSUS ORIEBOSI V. ANDY SAM INVESTMENT COMPANY LTD (2014) LPELR –23607 (CA) 23-24 Para F-D.

CHIEF F.S. YESUFU & ANOR V. KUPPER INT. N.V. (1996) LPELR-3519(SC) PG. 16-17 Para G-C.

And

TRENCO (NIG)LTD V. AFRICAN REAL ESTATE AND INVESTMENT COMPANY LTD &ANOR(1978) LPELR-3264(SC) PG. 18 Para A-C

"In Foreign case :- FERGUSEN v. WILSON (1866) L.R. 2 CHAPTER 77 Cairns C.I. explained that the general principles of principal and agent regulate in most respects the relationship of the company and its directors. At page 89 he stated: "What is the position of directors of a public company? They are merely agents of a company. The company itself cannot act in its own person, for it has no person; it can only act through directors, and the case is , as regards those directors, merely the ordinary case of principal and agent."

That being the case, it is settled law that in the institution of an action such as this, the proper party to sue is the principal and not the agent. The agent can only reflect his name where applicable as acting for the principal. See:

VULCAN GASES LTD V. GESELLSCHAFT FUR IND. GASVERWERTUNG A.G(2001) LPELR- 3465 (SC) PG. 24 paras A-B.

"The donee of a Power of Attorney or an agent in the presentation of a Court suit or action pursuant to his powers must sue in the name of the donor or his principal and not otherwise. See Timothy Ofodum v. Onyeacho 1966/67 10E.N.L.R. 132; Jones v. Gurney (1913) WN 72; John Agbim v. Mallam Gamba Jemeyita (1972) 2 ECSLR 365."

And

CHAIRMAN & ORS. V. RASHEED (2014) LPELR-23594 Pp. 32-34, Paras. A-C.

The issues before the court in my view can be properly and effectively determined without the inclusion of Mr. Nwogu Obuneme as a party. Assuming though without conceding at this stage that the plaintiffs' action succeeds it would not be proper to make the orders claimed in favour of the 2nd plaintiff when offer of grant of Plot 1003 was never personally made to him. The 2nd plaintiff at best can be

called as a witness, or he can act as agent of the 1st plaintiff. Thus in the absence of any cause of action shown by the 2nd plaintiff in the pleadings, he cannot be a proper plaintiff for the claims made vide the writ of summons and statement of claim. This is more so glaring after a careful scrutiny of the writ of summons and the accompanying statement of claim. Suffice to say that my thinking is in tandem with that of the defendants that the proper party to institute this action is the 1st plaintiff and not 2nd plaintiff.

Issue one is therefore resolved in favour of the defendants.

The second issue is whether any valid interest was conferred on the plaintiff via offer of grant of Plot 1003 as reflected in Exhibit B.

Parties had joined issues in their pleadings on whether the offer of grant in the Accelerated Development replacement letter, being the offer letter and marked herein as Exhibit B, was accepted by the 1st plaintiff. And where issues are joined by parties in pleadings, evidence is required to prove the facts as averred. And it is the person upon whom the evidential burden lies that must adduce satisfactory evidence. See

REPTICO S.A. GENEVA V. AFRIBANK (NIG) PLC (2013) LPELR-20662 (SC) PP.41-42, PARAS. G-C. Per Ariwoola JSC

NWAFOR V. NCS & ORS. (2018) LPELR-45034 (CA) PP.31-32, PARAS. FC.

The 1st and 2nd defendants contend in their defence and argued copiously in their final address that the 1st plaintiff was not able to show by credible evidence before the court that it accepted the offer of grant nor complied with the conditions/requirements in Exhibit B, which is the offer of grant.

In the same vein also the 4th defendant's arguments in their final address is basically hinged on failure of the 1st plaintiff to establish that it accepted the offer as indicated in Exhibit B. Thus the defendants posit that the approval of grant of plot 1003 to 1st plaintiff

for participation in the Accelerated Development Programme (herein after referred to as ADP) by Exhibit B did not crystallize into a valid grant for failure of the defendants to accept and fulfil the conditions of the offer.

The plaintiffs'evidence conversely is to the effect that they complied with the condition for acceptance of the offer of grant by completing the Lease Agreement and returning it to 1st and 2nd defendants as directed in Exhibit B. But that the 1st and 2nd defendants were yet to furnish them with a copy of same. Curiously though, in their final address, the plaintiff shied away from the prospect of responding to the defendants'argument that it did not have a valid grant because it failed to accept and fulfil the terms and conditions of the offer. Apparently, the reason for this silence may not be farfetched.

This issue of acceptance/fulfilment of conditions of offer of grant appears to be one of the twin pillars of the gravamen of the dispute between the parties in this suit. And apropos of this, in my view the evidence before the court ought to be keenly examined and carefully considered to impel a licit resolution of this issue.

The plaintiff's PW1'S evidence is that after the conclusion of processing of the application for grant of statutory right of occupancy, the plaintiffs were issued with an approval for grant of Plot No.1003 in Cadastral Zone B05 of Utako District, measuring approximately 3757.00 sq meters. And that upon receipt of the letter of grant, the plaintiff commenced developments on the parcel of land and thereafter presented application for the requisite permit.

The 1st and 2nd defendants in their evidence by DW1 testified that the plaintiff refused, neglected and/or failed to collect, sign and return the Development Lease Agreement(herein after referred to as DVLA) to evidence the acceptance of the offer. That in the event therefore, the offer of grant to the plaintiff was not accepted as required by the offer letter.

The plaintiff's PW1 however, testified further to the effect that he accepted and signed the lease agreement with the defendants on behalf of the 1st plaintiff before the Accelerated Development Programme Replacement Certificate was handed over to him in the office of the 1st and 2nd defendants.

And it is also the further testimony of the DW1 that there's nothing from the plaintiff to show acceptance of the allocation letter of 6/03/2007. That PW1 did not sign or accept any lease agreement in the office of the 2nd defendant. And that the ADP replacement letter dated 6/03/2007 is first issued to the respective allottees before the acceptance and signing of the lease agreement and not the other way round as stated by the PW1.

Under cross examination, by the 1st and 2nd defendant, the plaintiff's PW1 testified that the development commenced on the land was not development per se but just a fence round the plot and a gate house. That he had payed for, but didn't obtain permit for development. And that he couldn't remember the specific period within which he was required to develop the land. That he accepted the offer and the agreement was signed and kept in the file as that time. He was not aware the letter of offer Exhibit B was withdrawn, hence he contacted his lawyer.

When cross examined by the 4th defendant he testified further that, he doesn't know he needed approval to build fence and gate house for securing the land. That he remembers an agreement was signed in respect of Exhibit B, although he cannot remember everything in the agreement. And that there's no letter from defendants informing him that he contravened the terms and conditions of Exhibit B.

The DW1 in turn under cross examination testified that the grant of the land to the 1st plaintiff was validly done but he never accepted it. And because the grant of the plot was done in good faith, the

plaintiffs were at a time in possession of the land, but never moved to the site. That the grant of accelerated development is not a statutory right of occupancy but a prelude to grant of statutory right of occupancy after the grantee has taken the building up to the 6th floor. That the title of the plaintiff was formerly revoked before vesting the 3rd defendant with any interest. The practice is to sign the development lease agreement in duplicate although it's not so stated in Exhibit B. That it took almost two years to revoke the plaintiff's title because the grant was made in good faith, thus plaintiff was given enough time to complete all processes and mobilize to site. And that any allotment or transaction of land automatically opens a channel of communication between the grantor and grantee.

The evidence of the parties clearly is at variance with one another on this and same would have to be evaluated to identify where the evidence preponderates. See

MUSA V. YAKUBU & ORS. (2015) LPELR- 40337 (CA) PG.29 Paras. C-E.

WAEC V. PROVIDENCE OGECHUKWU MEKWNYE (2016) LPELR-40350 (CA) Pg.22. B-C.

The plaintiff did not tender before this court any DVLA showing compliance with the directive for acceptance in Exhibit B. Tendering of same would have been quite helpful to its case, bearing in mind that the defendants have outrightly denied the existence of any such Agreement. Under the circumstance bare assertion that they accepted the offer would not suffice. Further particulars would naturally be required to discharge the onus of proof which rests on the plaintiff. It is trite law that he who asserts the affirmative has the burden to prove same. See

IMONIKHE V. UNITY BANK PLC (2011) LPELR-1503 (SC) PG. 21, Paras. C-D

ABDULGANIYU ADEKEYE & ANOR. (2012) LPELR-9250 (CA) PG. 34-35, Paras. B-A. Per Abdullahi JCA.

The above position having been stated, nevertheless, there's an aspect of Exhibit B as it relates to the plaintiff's evidence that I believe deserves to be appraised for proper guidance on the issue of compliance with the acceptance of the offer of grant. And the said paragraph of Exhibit B is for better understanding reproduced hereunder:

> *"Please signify your acceptance of this offer in writing within two (2) weeks from the date of this letter by collecting signing and returning a Development Lease Agreement containing the terms and conditions of this offer to this office for perfection."*
>
> (underlining mine for emphasis).

The PW1's evidence is that he was given the lease Agreement which he signed and returned to the defendants in their office before Exhibit B was handed over to him. And that the only copy given to him for signing was kept in the file in defendants office. This appears to tally with the directive in above extract from Exhibit B, but for the evidence of DW1 that the usual practice is to issue allottees the offer letter before signing and returning of DVLA. And that the signing of the DVLA is usually done in duplicate.

In order that it would not appear that the above piece of evidence of the plaintiff or any evidence of either party for that matter, was not given due consideration in the course of this judgement, I have taken the time to steadily examine the entire evidence of both parties before the court. This is the duty of a court in evaluation of evidence especially in a situation such as this, where there's a sharp dichotomy in the evidence of the parties. See

ALHAJI JIMOH ABGAJE V. LAYIWOLA IDOWU(2011) LPELR-279 (SC) PG. 30 para B-E.

> *"A court in evaluating evidence must take into consideration every little aspect of it, and the surrounding factors. It is not for the judge to accept evidence hook, line, and sinker without weighing its preponderance and probability. The law is settled that civil suits are determined on preponderance of evidence and balance of probability. See Shittu v. Fashawe 2005 14 NWLR part 946 page 671, Elias v. Omo-Bare 1982 5 SC. 25, and Odulaja v. Haddad 1973 11 SC.357. "*

See also

MKPINANG & ORS V. NDEM & ORS (2012) LPELR-15536(SC) Pp. 13-14, paras. F-B. Per Fabiyi J.S.C.

NNEJI & ORS V. CHUKWU & ORS (1996) LPELR-2057 (SC)

And it is upon this careful glean of the evidence before the court, that I have made certain observations which will be set out seriatim hereunder:

1. The DW1's evidence is that the usual practice is to issue the accelerated development programme replacement letter(the offer of grant) before the signing and returning of the DVLA, which is usually issued in duplicate. He did not testify that the issuance nor handing over of Exhibit B to the plaintiff was done by him nor in his presence. In other words it was his opinion that this being the usual practise would have been followed in this transaction. However the PW1 testified that he collected the DVLA, signed and returned same to the defendants in their office, after which Exhibit B was given to him.

The defendants did not call any eye witness present at the time, to dispute this evidence of the PW1 that he was given the DVLA whether original or a duplicate copy to sign nor that he was given the DVLA before the hand over of Exhibit B.

What the aforementioned evidence of PW1 depicts is just narration of sequence of events that requires no opinion of an expert. There's nothing about the above evidence of receipt of DVLA or receipt of Exhibit B bordering on forensic, scientific nor technical information requiring clarification from an expert with any special skill for its comprehension. See

KAYDEE VENTURES V. THE HON. MINS FCT & ORS (2010)(CA)

MTN NIG. COMMUNICATIONS LTD V. OLAJIRE A. ESUOLA (2018) LPELR-43952(CA) PG. 16 Para E-F.

And

UWA PRINTERS NIG. LTD V. INVESTMENT TRUST COMPANY LTD (1988) LPELR-3441(SC) PG. 19 Para E-G.

> "*An expert may give his opinion upon facts which are either admitted or proved by himself, or other witness in his hearing, at the trial or are matters ofcommon kno wledge. But where the opinion is basedon report of facts, these facts, unless they arewithin his personal knowledge, must be pr ovedindependently, that is, by calling witnesses who arepersona lly concerned in the transaction- See* ***Ramsdale v. Ramsdale*** *173 LT 393 and* ***R v.Somers*** *(1963) 1 WLR 1306 and paragraph 1279* ***- Phipson on Evidence, 12th Edition*** *."*

Ordinarily common sense would dictate that duplicate copies of documents are executed in transactions such as this for record purpose, however in this instance there's no credible evidence of the existence of duplicate copy of DVLA to the plaintiff by either of the parties.

The plaintiff has said they were given no duplicate copy and the defendants' position is that they gave plaintiff neither original nor duplicate. The plaintiff was emphatic in the course of the evidence of PW1 that he signed and returned a Lease Agreement to the 1st defendants in their office. And Exhibit B attest to this requirement for the plaintiff to signify acceptance by collecting, signing and returning the Lease Agreement to the 1st and 2nd's defendant's office for perfection. Plaintiff hasn't been shown to have deviated from the directive in Exhibit B on how the acceptance was to be signified. There's no mention of a duplicate copy in Exhibit B. The assay of these pieces of evidence should put paid to the fuss on existence or non-existence of duplicate copy. The burden to prove the existence of a duplicate copy in this circumstance doesn't rest on either party as they are both emphatic that there was no duplicate copy given to the plaintiff.

Under the circumstance and in my humble view the absence of a duplicate in evidence cannot translate by any means to prove conclusively that there is or isn't an original copy in existence.

The resolution of this issue cannot be premised on just the absence of duplicate copy of letter of offer. Doing so would be quite speculative and amount to the court basing its decision on conjecture which courts have been admonished to refrain from in several authorities of the apex court. See

RAPHAEL EJEZIE & ORS. v. CHRISTOPHER ANUWU & ORS. (2008) VOL. 6 M.J.S.C. 86 at 120 Para. F.

PDP & ANOR. V. INEC (2012) LPELR-9225 (CA) P.19, Paras. C-D.

Other surrounding facts, evidence and circumstance must be taken into due consideration.

2. The defendants argued that the plaintiff failed to develop the plot within two years hence the grant was withdrawn/cancelled. For an offer of grant that was meant to be accepted within two weeks one wonders why it took the defendants two years to finally wake up to the fact that the plaintiff did not accept the offer of grant and proceed to cancel same and demolish its structures on the land. This is even more curious when the defendant's DW1 under cross examination testified that the plaintiff was in all of the relevant period in possession of the plot of land and that they had open communication with allottees. Apparently, this channel was never used to act on plaintiff's purported failure to accept in two weeks, but was only utilised about 2years later to communicate withdrawal of the plot.

He also stated that plaintiffs never obtained building approval nor moved to site, albeit he admitted they erected a fence and gate house which was later demolished by the defendants. The defendant's DW1 agreed under cross examination that before the withdrawal the plaintiff had been in possession of the land because the grant was made in good faith. What the defendants want this court to believe by this admission is that, notwithstanding that the plaintiff did not accept the offer of grant, 1st and 2nd defendants put him in possession of the plot anyway and allowed him to enjoy exclusive possession for the next two years. This is to say the least, quite ludicrous, considering the offer was meant to have been accepted within two weeks of the grant.

3. Also of note is the fact that, Exhibit D purports to withdraw/cancel the grant of the allocation and not an outright withdrawal of an offer. Could this have been an anomaly arising from mere semantics? I think not because the same Exhibit Dgoes further to state that:

"…, the Minister has approved the cancellation of accelerated development programme and withdrawal of the allocation in view of your failure to develop plot<u>within the terms and conditions of the lease Agreement</u>, please."

(underlining mine for emphasis)

The withdrawal/cancellation notice apparently refers to failure to develop the plot within the terms and conditions of the Lease Agreement. Taking into account that one of the twin pillars of the defence of the 1st and 2nd defendant in this case is that the plaintiff did not sign a development lease agreement, this withdrawal notice poses a paradox in the case of the defendants. This is because defendants issued and tendered Exhibit D in evidence, however they have singled out failure to comply with the lease Agreement (whose existence they have denied) as the sole reason for the withdrawal/cancellation of the allocation of the plot. There was no particulars given in defendants' testimony to clarify this discrepancy. And in this particular instance I do not believe any interpretation other than that reflected on the said document could be admissible to wish away the gravity of its content on the defence of the defendant. I find support for this reasoning in SECTION 129(2) & (6) of the EVIDENCE ACT.

And

<u>ATIBA IYALAMU SAVINGS & LOANS LIMITED v. MR. SIDIKU AJALA SUBERU & ANOR (2018) LPELR-44069(SC) PG. 49 - 50 Paras. A-E</u> Per Eko JSC.

"I agree with Appellants submission, on the authority of Olatunde O.A.U. & Anor. (1998) 4 S.C.N.J. 59 at 74-75 and Layade Panalpina World Transport (Nig) Ltd (1996) 7 S.C.N.J. 11; That it is no duty of the court to make contracts for the parties, and that as a rule parties make their own contracts and intend thereby to be governed by the contract. The parties herein, in their freedom of contract, made Exhibits D1 and D2. Exhibit D2, made subsequent to Exhibit D1, was

intended by the parties to supercede and override their previous contract in Exhibit D1, and it is binding on them. The parties herein having thus made their contract in Exhibit D2 and in writing, the is settled that they, the parties, particularly the Appellant herein, are not permitted to adduce oral evidence to establish terms extrinsic to, and to vary, the terms agreed upon and settled in Exhibit D2; Union Bank of Nigeria Plc v. Ozigi (1994) 2 N.W.L.R. (Pt. 333) 385 at 400; Olatoye v. Balogun (1990) 5 N.W.L.R. (pt.148) 24."

See also

BOARD OF MANAGEMENT, FEDERAL MEDICAL CENTRE & ANOR. V. ABAKUMA (2015) LPELR-24786 (CA) Pg. 33 Paras. C-E.

UNILIFE DEVELOPMENT COMPANY LTD V. ADESHIGBIN & (2001) LPELR- 3382 (SC) PG.23-25, Paras. G-D.

The evidence of defendants hinged on Exhibit D appears even more contradictory when the same defendants have hitherto led evidence to the effect that the reason for withdrawal of the grant is failure to accept the offer of grant. This court would have to accept and act on Exhibit D as presented without any other interpretation of the purport of any of its contents. Exhibit D appears to support plaintiff's evidence that he signed and returned the Lease Agreement. And I find support for reliance on this Exhibit D tendered by defendant, as supporting the plaintiff's case in the time honoured principle of law, that where the evidence of the adversary favours or supports that of his opponent, any such admission against interest only strengthens the opponent's position. See

EDOKPOLOR & COMPANY LTD V. BENDEL INSURANCE CO. LTD (1997) LPELR-1018 (SC) PG. 11 para C-E per KUTIGI JSC where the the supreme court re echoed this position of the law and held that:

"It is quite lawful and permissible for a plaintiff or a defendant as the case may be in a case to make use of evidence from the other side that is useful to it. See (Woluchem & Ors. v. Gudi & Ors. (1981)5 SC. 219, Akinola v. Oluwo (1962) 1 ALL NLR 224; (1962) 1 SCNLR 352)."

See also the case of

AKANDE V. ADISA & ANOR. (2012) LPELR-7807 (SC) P.28, Paras. A-B.

In a situation where the evidence of the adversary favours or supports that of his opponent, any such admission against interest only strengthens the latter's position. See Adeyeye v. Ajiboye (1987) 7 SCNJ 1; Ekretsu v. Oyobebere (1992) 9 NWLR (Pt.266) 438 at 462- 463 and Kimdey & Ors. v. Governor of Gongola State (1988) 5 SCNJ 28 holding 4."

Additionally, is the fact that this court has had the opportunity to see, hear and observe the demeanour of witnesses that testified before the court and I have found more reason to believe the PW1 on this issue and to accept his evidence and apropos of same issue disbelieve and reject the evidence of DW1.

The 1st and 2nd defendants in their final addressed proffered that there were contradictions in the evidence of the plaintiff. I have considered this submission and gone through the said evidence of the plaintiff. I do not find in it, material contradiction, if at all there's any. At best they are what could be referred to as mere discrepancy in evidence that would not in any material affect the substance of the case. For this reasoning I refer to:

ADMU V. ALELE (2018) LPELR- 45374 (CA) PP.15-16, PARAS.F-C Per Onyemenam JCA held:

"…The law is trite that where two or more pieces of evidence seem to vary, and the discrepancy is minor, the difference cannot destroy the credibility of the witness. Abokukuyanro v. State (2016) LPELR-40107 (SC); Ayo Gabriel v. The State (1987) 5 NWLR 457."

The questions begging for answers from defendants herein therefore are:

a. If there was no acceptance why did the defendants expect the plaintiff to move to site or obtain building plan approval for construction of fence and gate house or main structure?

b. Why is it that, the plaintiff who did not accept an offer, enjoyed undisturbed exclusive possession for about two years, more so when the DW1 testified that once the offer is made, a channel of communication is usually opened between defendants and allottees.

c. Why defendants withdrew/cancelled the grant/allocation of plot 1003 to plaintiff when there was no acceptance of the offer of same in the first place. More so when what was withdrawn wasn't the 'offer of grant' but referred to in defendant's Exhibit D as the 'grant' of plot 1003 and withdrawal of the allocation.

d. Considering that the defendants posit that the plaintiff didn't sign any lease agreement, which Lease Agreement did the defendants refer to in their Exhibit D, that the plaintiff failed to comply with?

e. What was the reason for withdrawal/cancellation of the grant in the first place, is it for failure to develop within the terms of the Lease Agreement as shown in defendants' Exhibit D, or for non acceptance of offer of grant as averred in defendants' pleadings and evidence before the court?

All these posers, albeit unanswered questions point to one fact and inexorable logical conclusion, which is that the 1st plaintiff accepted the offer in Exhibit B, signed a Lease Agreement and obtained a valid grant of plot 1003 thereof. From a summation of the facts and entire

circumstance, the weight of evidence of the plaintiff that he accepted the offer preponderates over and above that of the defendant in the contrary. And clearly the balance of probability is in favour of the plaintiff's case. I am further fortified in this finding particularly by, SECTION 121 (a) of the EVIDENCE ACT which provides that:

> *"121. A fact is said to be-*
>
> *(a) "Proved" when, after considering the matters before it, the court either believes it to exist or considers its existence so probable that a prudent man ought, in the circumstances of the particular case, to act upon the supposition that it does exist;*

See also the holding of the court of Appeal in:

OROK & ORS v. IKPEME &ORS(2017) LPELR-43493(CA) pg. 12-13 para E-B

And

AIICO INSURANCE PLC V. ADDAX PETROLEUM DEVELOPMENT COMPANY LTD (2014) LPELR-23743 PG. 15 Para C-F.

In my humble view the 1st and 2nd defendants in the light of foregoing granted to the plaintiff a valid allocation of plot 1003, cadastral zone BO5 of UTAKO measuring approximately 3757.00sq.m. as reflected in Exhibit B.

Suffice to say therefore that issue two is hereby resolved in favour of the plaintiff.

Issue three is, in the circumstance therefore, if issue 2 above is answered in the affirmative, whether the interest of the plaintiff over the plot of land was properly extinguished.

Having answered issue 2 in the affirmative, the next issue would be the proper manner to withdraw/cancel or extinguish the existing interest or title of the plaintiff in the circumstance.

Upon invitation by the court for further address, parties canvassed extensive arguments on whether the grant of plot 1003 as contemplated by Exhibit B is a Lease guided by the Land Use Act (hereinafter referred to as LUA). For the purpose of the address by counsel by court's invitation, the agitating point on this issue is particularly the manner of withdrawal, cancellation or revocation of the right so conferred via Exhibit B.

The plaintiff has led evidence to show that they issued Exhibit D which is a withdrawal/cancellation notice and have served same on the plaintiff.

The plaintiff has denied the receipt of any notice of revocation or withdrawal. Both parties are ad idem on the fact that the grant of the plot indicated in Exhibit B is not the usual grant of right of occupancy as envisaged in the Land Use Act. But that it is a grant in respect of the accelerated development programme of the Federal Capital Territory.

And the 1st and 2nd defendants'counsel opined that since the Development Lease in the Accelerated Development Programme (ADP) is not recognized nor provided for in the LUA, the LUA cannot guide or regulate same. And that the cancellation, withdrawal or supposed revocation of the ADP Lease cannot be done under the LUA.

It has been established by credible evidence that there is a Lease Agreement between the parties in respect of the grant of Exhibit B for which the 1st and 2nd defendants issued cancellation/withdrawal notice by Exhibit D. This is a pointer to the fact that the interest granted to the plaintiff in respect of the plot is in fact in the manner of a Lease, which usually provides terms and conditions of the grant.

In one breadth plaintiff's counsel submitted that the lease agreement must be strictly adhered to. And in another breadth in the very next linehe argued that the ADP within the FCT did not contemplate either

withdrawal or cancellation as a means of termination of interest but revocation notice in line with the SC. 28 of LUA. With due respect to the plaintiff's counsel I cannot agree with him that the grant of plot 1003 to plaintiff by 1st and 2nd defendants is akin to a right of occupancy that ought to be revoked in accordance with SC. 28 of the LUA.

Firstly, no evidence was led by either party in respect of the manner of withdrawal or cancellation contemplated in the Lease Agreement referred to in Exhibit D. And secondly, the Lease Agreement is not before the court for verification of this fact. Thirdly the caption used for the grant and the manner of acceptance of offer by 'execution of a lease Agreement' is reminiscent of a Lease which is defined in BLACK'S LAW DICTIONARY as:

> *"1.A contract by which a rightful possessor of real property conveys the right to use and occupy the property in exchange for consideration, usually rent. The lease term can be for life, for a fixed period, or for a period terminable at will.*
>
> *2. Such a conveyance plus all covenants attached to it.*
>
> *3. The written instrument memorializing such a conveyance and its covenants—Also termed (redundantly) lease agreement; lease contract;…"*

The same term has also found judicial interpretation in a plethora of decided cases. See

REGISTERED TRUSTEES OF MASTER'S VESSEL MINISTRIES (NIG) INCORPORATED V. EMENIKE & ORS. (2017) LPELR-42836 (CA) PG. 50-51, PARAS. E-B. Per Tur JCA.

And

STAR FINANCE 7 PROPERTY LTD & ANOR V. NDIC (2012) LPELR-8394 (CA) P.20, Paras. B-D.

My thinking is in tandem with that of the 1st and 2nd defendants'counsel in his final address that the execution of a development lease agreement is not equal to a grant of right of occupancy contemplated under the LUA. And that the manner of termination of the said lease ought to be in line with the Lease Agreement of parties. See

BOSAH & ORS v. OJI(2002) LPELR-794(SC) pg 9

And

NLEWEMADIN V. KALU UDUMA (1995) LPELR-2053 (SC) PG. 29 Para B-D.

In as much as the lessor may reserve the right to terminate the relationship for breach of covenants, it must be shown that same was done in accordance with the agreement of parties in the Lease Agreement. The hitch here is as earlier observed that the said Lease Agreement was never tendered before this court for possible inspection. The plaintiff in their pleadings put the 1st and 2nd defendants on notice to produce same. Defendants however failed to produce same, albeit, that is what they relied on for the withdrawal and cancellation of the grant of the plot to plaintiff. The defendants did not lead any credible evidence to explain why they acknowledged existence of same but failed to produce it. The presumption of the law in this regard is well settled that if the said Lease Agreement is produced it would be unfavourable to the defendant's case. I find support for this legal presumption in SECTION 167(D) of the EVIDENCE ACT.

> ***167.*** *The court may presume the existence of any fact which it deems likely to have happened, regard shall be had to the common course of natural events, human conduct and public*

and private business, in their relationship to the facts of the particular case, and in particular the court may presume that-

(d) evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it; and

See also

FALKE V. BILLIRI LOCAL GOVT. COUNCIL & ORS (2016) LPELR -40772 PG. 35-36 Para E-C.

UNILORIN & ORS v. OBAYAN (2018) LPELR-43910(SC) PG. 13 Para B-C.

The fact that the Lease Agreement is not before the court means that the exact manner of termination or tenure of the lease cannot be deciphered by this court. This court cannot therefore determine one way or the other whether the issuance and purported service of the withdrawal notice is in accord with the terms of the Lease Agreement. This court would not be presumptuous nor speculate on the Terms of the Lease Agreement. The commencement, Tenure and termination are covenants that are ordinarily meant to be spelt out in a lease Agreement for land. On covenants in lease agreement for land, See:

BROSSETTE MANUFACTURING (NIG) LTD V. M/S OLA ILEMOBOLA LTD & ORS. (2007) LPELR-809 (SC) PG. 34-35, Paras. F-E.

UBA LTD V. TEJIMOLA & SONS LTD (1988) LPELR-3402 Pg.54-55, Paras. D-A.

And

REGISTERED TRUSTEES OF MASTER'S VESSEL MINISTRIES (NIG) INCORPORATED V. EMENIKE & ORS. (2017) LPELR-42836 (CA) PG. 9-10, PARAS. D-A.

The plaintiff denies receipt of any revocation or withdrawal notice and has testified that they only became aware of the purported

withdrawal notice from defendants after institution of this matter. The defendants refute this assertion and have tendered Exhibit D to support their evidence that the withdrawal notice was issued and Exhibit E to show that same was mailed to the plaintiff. In as much as the propriety of Exhibit D cannot be determined by a glean of the lease agreement, then one wonders how Exhibit E, the DHL waybill on its own can be held to be conclusive evidence of having validly extinguished the allocation of the plaintiff. This is even moreso when the DHL shipment air waybill by which the cancellation/withdrawal notice was said to be mailed is addressed to Obutec Nig. Ltd as against to the secretary or clerk of the company as provided for in SC. 44(d) of the LUA that is assuming without conceding that the LUA is applicable. This is not to say that I am unmindful of the position of the law that a letter that was properly addressed and posted is prima facie evidence that it was delivered. See

UNILORIN & ORS v. OBAYAN (2018) LPELR-43910 (SC) PP.11-13, PARAS. F-C.

NLEWEDIM V. UDUMA (1995) 6 NWLR (PT.402) 383 PG. 394 Para A-C

And

NATIONAL EMPLOYERS MUTUAL GENERAL INSURANCE ASSOCIATION LTD v. MARTINS (1969) LPELR-25570(SC) Pg. 7-8 Para F-B.

FBN PLC V. S. M. P. AKIRI (2013) LPELR-21966 (CA) PG. 23-24 Paras F-B.

It is also observed that the Exhibit E is not accompanied with a delivery note. I am mindful that having not had the benefit of perusing the Lease Agreement referred to in Exhibit D any further deliberation on this issue would only amount to an academic exercise which courts have been enjoined to refrain from in the course of adjudication/judgement. See

AUDU V. AG FEDERATION & ANOR (2012) LPELR- 15527 (SC) Pg. 20-21, Paras. E-A. Per Rhodes - Vivour JSC.

> *"In a long line of cases it has been said over and over again that Courts are constituted to determine live issues and not to engage in academic exercise. See Bhojwani v. Bhojwani (1996) 6 NWLR Pt. 451 P.663. Oyeneye v. Odugbesan 1972 4 SC P.244 Obi -Odu v. Duke (No.2) 2005 10 NWLR Pt.932 P.1220 Bamgboye v. Unilorin 1999 10 NWLR Pt. 622 P.290".*

See also

OKEREKE V. UMAHI & ORS (2015) LPELR-40687 (CA) P.20, Para. A. Per Oyewole JCA.

One thing is certain however, and that is that the presumption in Sc. 167 (d) of the EVIDENCE ACT would have to be invoked against the 1st and 2nd defendants who failed to produce the lease Agreement, that the withdrawal was not done in accordance with the dictate of lease Agreement between the parties. See authorities already cited in this regard Supra.

In the same vein also the 1st and 2nd defendants cannot be allowed to benefit from their own wrong of not producing the Lease Agreement. This is a principle of law that has received the nod of approval in several decisions of the supreme court. See

PEOPLE'S DEMOCRATIC PARTY & ORS V. BARR. SOPULUCHUKWU E. EZEONWUKA & ANOR (2017) LPELR-42563 (SC) PG. 105 Para B-C per EKO JSC

> "*Equity, acting in personam, would not allow a party to benefit from his own iniquity. It insists that whoever comes to it or justice must do justice, and must not come to the temple of justice with dirty hands"*

And

MEKAOWULU V. UKWA WEST LOCAL GOVT COUNCIL (2018) LPELR-32807 (CA) Pg.14-15 Paras. E-D. Per Mbaba JCA

See also

THE ADMIN & EXE. OF THE ESTATE OF ABACHA V. EKE-SPIFF & ORS. (2009) LPELR-3152 (SC) Pg.44 Paras.B-D Per Aderemi JSC. Where his lordship held that:-

> *"…Any wrongful act tending to the damage of another must not receive support in the seat of justice. And no one shall be allowed to benefit from his own wrong doing; the maxim is "EX TURPI CAUSA NON ORITUR ACTIO" See Onyiuke v. Okeke (1976) 1 NMLR 285."*

This Court would therefore have to find against the 1st and 2nd defendants that the manner of withdrawal/cancellation of the grant of plot 1003 from the plaintiff does not accord with Agreement of parties and therefore falls short of the requirement of the law and is invalid.

Suffice to say that this issue is also hereby resolved in favour of the plaintiff.

Issue four is whether the plaintiff successfully established acts of trespass against the defendants.

The plaintiff's evidence is that for inexplicable reasons the defendants without prior notice or warning invaded his plot 1003 with a bulldozer and destroyed the structure on the land.

The 1st and 2nddefendants in turn led evidence to the effect that no valuable property of the plaintiff was destroyed. That having failed to accept the offer of grant, the plaintiffs were trespassers on the land and that any alleged development was illegal which the development control department is empowered by law to remove/demolish and surcharge the developer.

The word trespass in legal parlance has been simply defined as an unlawful act committed against the person or property of another. And trespass to land specifically is said to be a person's unlawful entry on another's land that is visibly enclosed either by visible or material fence or an ideal invisible fence in the contemplation of the law. This tort consist of doing any of the following without lawful justification: 1. Entering on to land in the possession of another 2. Remaining on the land, or 3. Placing or projecting any object on it.

See BLACK'S LAW DICTIONARY 10TH EDITION.

See also a plethora of decided cases of superior courts where the act of trespass has received judicial interpretation. And to mention but a few I refer to:

ADETONO & ANOR. V. ZENITH INTERNATIONAL BANK PLC (2011) LPELR-8237 (SC) Pg. 41, Paras. A-B Per Ngwuta JSC.

COMPAGNIE GENRRALEDE GEOPHYSIQUE (NIGERIA) LTD V. ASAAGBARA & ANOR. (2001) 1 NWLR (PT.693) 155 or (2000) LPELR-5517 (CA) Pg. 42, Para. F.

The 1st and 2nd defendants contend that they are empowered by law to remove/demolish and surcharge the developer for illegal development. And they have relied on SECTION 7 OF FEDERAL CAPITAL TERRITORY ACT as backing for this contention.

The onus of prove is on the plaintiff who is alleging trespass and being a declaratory relief same ought to be proved on the merit and to the hilt to sustain the claim. See

ARCHIBONG V. UTIN (2012) LPELR-7907(CA)Pg. 12 -13, Paras. B-D.

UMESIE & ORS. ONUAGULUCHI (1995) LPELR-3368 (SC) PG. 31-32, PARAS. E-A. Per Adio JSCwhere it was postulated that:

"Trespass is an unjustifiable interference upon a parcel of land in possession of another. See: Ogunbiyi v. Adewunmi (1988) 5 NWLR (Pt.93) 215 at P.221. It is, therefore, the duty of a plaintiff suing for damages fro trespass to prove that he was in exclusive possession of the land in dispute at the time of the alleged trespass. See: Adelaja v. Fanoiki (1990) 2 NWLR (Pt. 131) 137.

This court has hitherto found the grant of the plot to the plaintiff to be still subsisting as the defendants could not prove a valid withdrawal/cancellation as alleged. In the event therefore any unlawful invasion or demolition on the property should ordinarily amount to trespass, however in this instance, evidence before the court is that the plaintiff did not obtain the requisite approval before building the fence and gate house.

Before I proceed, it is pertinent to reproduce Section 7 of the Federal Capital Territory Act for better understanding herein:

Sc. 7(1) of the FEDERAL CAPITAL TERRITORY ACT provides that:

"(1) As from the commencement of this Act, no person or body shall within the Federal Capital Territory carry out any development within the meaning of this Act unless the written approval of the Authority has been obtained by such person or body: Provided that the Authority may make a general order with respect to the interim development of the land within the Federal Capital Territory and may make special orders with respect to the interim development of any portion of land within any particular area.

(2) The Authority shall have power to require every person who, otherwise than in pursuance of an approval granted or order made under subsection (1) of this section, proceeds with or does any work within the Federal Capital Territory to remove any work perforrned and reinstate the land or, where applicable, the

building, in the condition in which it was before the commencement of such work, and in the event of any failure on the part of any such person to comply with any such requirement, the Authority shall cause the necessary work to be carried out, and may recover the expenses thereof from such person as a debt.

(3) In this section- "development" means the carrying out of any building, engineering, mining or other operations in, on, over or under land or water, or the making of any material change in the use of any land or buildings thereon or of any stretch of water whatsoever; "interim development" means such temporary development as may be authorised by the Authority of any land comprised in the Federal Capital Territory between the date of commencement of this Act and the coming into operation of any of the Authority's schemes of development for the particular portion of land."

(underlining of proviso highlighted for emphasis)

The above provision of the FEDERAL CAPITAL TERRITORY ACT, apparently prohibits development without the requisite written authority. The plaintiff's evidence did not deny the assertion by the defendants that it failed to obtain approval before it erected the structure on the land. And I haven't been referred to any extant legislation distinguishing or excluding a gate house and fence from the meaning of the operative word 'development'used within the meaning of the Act.

And the defendants have also proffered that subsection 2 of the same Act empowers them to remove the structure illegally built by the plaintiff.

There's no shying away from the fact that by not getting the requisite development approval or interim permit before construction, the plaintiff failed to comply with the Sc. 7(1) of the FCT Act.

This having been said, I wish to refer to the evidence of the plaintiff that without prior notice or warning the defendants on the 16th of December, 2009 invaded the plaintiff's property on the site with a bulldozer and demolished their gate house, fence building on the plot of land. The defendants did not outrightly in their evidence deny demolishing the property of the plaintiff as alleged, but only said that any alleged development on the land can only be illegal, which they are by reason of the illegality, entitled to remove/demolish and that they did not destroy any valuableproperty of the defendants. The fact of demolition is therefore deemed admitted. It is well settled that facts not denied are deemed admitted. And facts admitted need no further proof. See

GENEVA V. AFRIBANK NIGERIA PLC (2013) LPELR-20662 (SC) Pg. 42, Paras. C-D Per Ariwoola, JSC.

GOGWIN V. ABDULMALIK & ORS. (2008) LPELR-4210 (CA) Pp.19-20, Paras. D-B.

The 1st and 2nd defendants therefore did not discharge the burden of proof which shifted on them by the evidence of the plaintiff to rebut, counteract or controvert the evidence of the plaintiff that they demolished their gate house and fence by any discrediting nor reciprocal credible evidence as required by law. I place reliance for this finding on:

OHOCHUKWU V. AG RIVERS STATE & ORS. (2012) (SC) LPELR-7849 Pg.337 Para. E.

BULET INT'L (NIG) LTD & ANOR. V. OLANIYI & ANOR. (2017) LPELR-42475 Pg.28-29, Paras. F-D.

The issue of value of what was demolished remains for the Court to decide. A scrutiny of SC. 7 OF THE FCT ACT relied upon by the defendants reveals that it empowers the defendants to require any person who failed to get necessary approval for development to remove any work, reinstate the land, … etc. There's no evidence

before the court that the plaintiff was required by the 1st and 2nd defendants to do any of the aforementioned before the demolition. I do not believe that defendants are at liberty to pick and choose what part of the provision to abide by or enforce. Probity demands that a public body vested with statutory power, does not abuse it but act within the limits of such powers. See

PSYCHIATRIC HOSPITAL MANAGEMENT BOARD V. EJITAGHA (2000) 11 NWLR (PT. 677) PG 154 OR (2000) LPELR-2930 (SC) PP.14-15 Paras. D-B Per Uwaifo JSC.

AMASIKE V. THE REGISTRAR GENERAL, CORPORATE AFFAIRS COMMISSION (2010) 13 NWLR (PT. 1211) PG. 337 Pp. 399 Paras. B-D.

The 1st and 2nd defendants have fallen short of the requirement of the law for demolition of a property in circumstances such as this and abused their statutory powers by not issuing the requisite notices.

For good measure and further emphasis on the position of the law in this regard, I refer also to the NIGERIA URBAN AND REGIONAL PLANNING ACT 1992 CAP. N138 LFN 2004 which sets out the procedural benchmark for powers of development control department and steps for enforcement of such powers, most of which were disregarded by the 1st and 2nd defendants in the demolition of plaintiff's development.

For clarity the relevant provisions are set out hereunder:

> *SC. 28 (1) Approval of the relevant Development Control Development shall be required for any land development.*
>
> *(2) A developer shall submit a development plan for the approval of the development Department.*
>
> *SC. 53 (a) an authorised development is being carried out; or*
>
> *(b) where a development does not comply with a development permit issued by the control Department, the control Department shall issue a stop - work order pending service*

of an enforcement notice on the owner, occupier or holder as specified in section 50 of this Act.

Provided that where the development or use is a minor development or use, the Control Department shall have the power to order the developer to alter, remove or discontinue the development or use without reference of the matter to a court of law.

SC. 56 The Control Department shall give a reasonable time not exceeding 21 days within which the developer shall be required to comply with the provisions of section 53 of this Act.

SC. 61 (1) The Control Department shall have the power to serve on a developer a demolition notice if a structure erected by the developer is found to be defective as to pose danger or constitute a nuisance to the occupier and the public.

(2) Notice served pursuant to subsection (1) of this section shall contain a date not later than 21 days on which the Control Department shall take steps to commence demolition action on the defective structure.

SC. 62 After the expiration of the time specified in the notice served under subsection (1) of section 61 of this Act, the Control Department shall take such necessary action to effect the demolition of the defective structure."

There are plethora of authorities of superior courts of law which also expressed this reasoning that I have herein embraced. Some of them are

PSYCHIATRIC HOSPITAL (Supra) AND AMASIKE (Supra)

See also

BORNO STATE URBAN PLANNING AND DEVELOPMENT BOARD, MINISTRY OF LAND AND SURVEY BORNO STATE

& ANOR V. BAMS INVETSMENT NIGERIA LTD (2017) LPELR -43290 (CA) PG. 45-46 Para F-E and PG.38-39-Para A-A.

Pursuant to the foregoing I am of the firm view, that having acted beyond the scope of their duties of development control by demolishing the plaintiff's property without any prior warning or notice, the 1st and 2nd defendants have abused their statutorily conferred powers and are liable for trespass against the plaintiff's property. And I therefore so hold.

Suffice to say that issue four is also hereby resolved in favour of plaintiff.

Issue five is whether the plaintiff is entitled to the reliefs sought in their amended statement of claim.

The reliefs as set out would be taken seriatim in the resolution of this issue.

The first relief is for a declaration of illegal acts of trespass. Issue four has taken care of this relief. And the 3rd and 4th defendants on their part did not adduce any evidence in rebuttal of the plaintiff's evidence, they are therefore deemed to have admitted them. The position of the law is trite on the effect of this. I adopt the reasoning and resolution therein canvassed and find that the plaintiff's case before the court has sufficiently discharged the burden of proof placed on her by law for entitlement to this relief. I therefore find the defendants afore stated actions to be without justifiable cause, and illegal act of trespass to the property of the plaintiff. And I therefore so hold.

The second relief is for order invalidating any purported revocation and/or re allocation of the plot to the 3rd to 6th defendants. The 4th, 5th and 6th defendants' names were in the cause of this proceedings struck out. The outstanding defendants are 1st, 2nd, 3rd and 7th (who is now

referred to as the 4th defendant).The issue of revocation, withdrawal and cancellation have already been also dealt with hitherto. Now, Exhibit D purported to withdraw/cancel the grant of allocation. The word 'revocation' is defined in BLACK'S LAW DICTIONARY 10 EDITION as follows:

> *"1. An annulment, cancellation, or reversal, usu. of an act or power.*
>
> *2. Contracts. Withdrawal of an offer by the offeror."*

See also

DR. (MRS) MODUPE AROWOJOLU V. MRS. C. O. ODEYEMI & ANOR (2017) LPELR-42605 (CA) PG. 21 Para A where the court held that:

> *"Revocation is an act by which one annuls something he has done."*

The above elucidation of the word 'revocation' is to show that it also contemplates of the notice issued in Exhibit D.

Having held the manner of withdrawal/ cancellation of grant to be invalid, I adopt the reasoning hitherto analyzed and find the purported revocation to be invalid in the circumstance. The DW1 under cross examination agreed that the grant under ADP cannot be sold. This position is undisputed by the parties and therefore renders any subsequent sale by 3rd defendant under the circumstance to be ab intio invalid also.

And concomitantly, the re allocation to the 3rd defendant no longer has any legs to stand on. It is well settled that you cannot give what you don't have which is in line with the often used maxim; nemo dat qui non habet- meaning:- no one gives who doesn't possess.

Until and only after the grant of the plot is legally and validly extinguished defendants have not the powers to allocate same to another person. See

ORIANZI V. AG RIVERS STATE & ORS. (2017) (SC) LPELR-41737 (SC) at Pg. 49-50 Paras. A-C.

And

HANNAH K. AGUNDO V. MERCY N. GBERBO & ANOR. (1999) LPELR-6644 (CA) 42-43 Paras. C-E. where it was held:

> *"It was the finding of the trial Court that before purporting to issue Certificate of Occupancy to the Appellant, the Military Administrator did not revoke the prior existing right of the 1st Respondent over the same piece of land in accordance with Section 28 of the Act. The finding is supported by the evidence on record and the pleadings. It is in that light that Belgore J.S.C. said in Ogunleye v. Oni cited supra at P. 773 that- "The State has no right to dispossess a person of his property lawfully acquired without reason and that reason shall be in the public interest with adequate provisions made in the enabling statute to pay compensation that is jus. So has the Land Use Act done." Returning to the issue at hand, section 5 of the Act which vests the Military Governor with powers to grant statutory right of Occupancy the act of which shall extinguish all existing rights to use and occupation by a prior holder is limited by, subject to and contingent upon divesting a prior holder of his title in accordance with S.28 of the Act. Further except where the grantee is the prior holder, the holder of an earlier title shall be the rightful holder and his title will not be extinguished by reason only that a fresh and later Certificate of Occupancy is issued to another person by the Governor acting under the power conferred on him by S. 5 of the Act. For Section 5 of the Act to apply, the circumstances of each case has to be considered."*

See also

IBRAHIM V. MOHAMMED (2003) LPELR-1409 (SC) Pg. 53 Paras. F. where his lordship Ayoola, J.S.C. held that:

> *"Sub-section (6) and (7) of section 28 do not seem to leave any room for implied revocation of a prior right of occupancy by another grant of a statutory right of occupancy to a second person over the same land"*

Thus the defendants cannot validly have granted nor re-allocated the same plot to 3rd defendant or any other person, considering that the interest of the plaintiff therein is still subsisting. In line with the foregoing, the grant or re-allocation of plot 1003 to 3rddefendant is hereby found to be invalid and I so hold.

The 3rd prayer is for special damages of N3million against the defendants.

Special damages as the words connote refers to damages that have been specially and particularly articulated. They must, thus, be specifically or specially pleaded and strictly proved. See

CHIEF TITUS ANAMASONYE ONWUGBELU V. MR. EJIOFOR EZEBUO &ORS(2013) LPELR-20401(CA) PG. 72 Para E-F.

MANTEC WATER TREATMENT NIG. LTD V. PETROLEUM (SPECIAL) TRUST FUND (2007) LPELR-9030 (CA) PP.31-32, Paras. E-D.

The receipts tendered through PW1 have not been linked with credible evidence before the court nor has the claim itself been particularised in the pleadings nor evidence of parties. This falls short of the requirement of the law in the authorities cited above. The plaintiff has therefore failed to discharge the legal burden placed on her by law to prove the claim for special damages. Same would therefore have to fail and I so hold.

The next relief is for general damages for trespass. It is elementary law that trespass is actionable per se. It is also well settled that a plaintiff who has successfully established his action for trespass to

land is entitled to damages whether or not he proved that he suffered any loss or damage whatsoever. See

LOT ENYIOKO & ORS V. SIR JOYFUL ONYEMA & ORS (2017) LPELR-42623 (CA) PG. 24-25 Paras C-A

OGBENNA & ORS V. KANU & ORS (2018) LPELR-45072 (CA) Pg. 76-79, Paras. B-D. Per Lokulo-Sodipe JCA.

Suffice to say under the circumstance that I find the plaintiff would be entitled to damages for trespass and I therefore so hold.

The last relief is for perpetual injunction. Perpetual injunction is an equitable relief usually based on the final determination of the rights of parties. It is intended to forestall permanent infringement of those rights and obviate the necessity for multiple actions for remedy of such infringements. See

ANYANWU & ORS V. UZOWUAKA & ORS (2009) LPELR-515 (SC) P. 56 PARAS. E-F.

OGUEJIOFOR V. NWAKALOR (2011) LPELR-4691 (CA) PP. 19-20, PARAS. F-A.

The grant of perpetual injunction is a consequential relief which should naturally flow from declaratory order sought and granted by the court. See

GOLDMARK (NIG) LTD & ORS V. IBAFON CO. LTD & ORS (2012) (SC) LPELR-9349 Per ADEKEYE JSC PG. 65 Para B-D.

Suffice to say that having obtained the declaratory orders sought, the plaintiff is entitled to an order of perpetual injunction as claimed.

In the light of the forgoing and in the final analysis, I hold that the plaintiff has successfully established entitlement to reliefs numbers a.) for declaration for trespass, b.) for invalidation of revocation and re - allocation, d.) for general damages and e.) for perpetual injunction.

The relief c.) for special damages has not been successfully proved, it fails and is hereby accordingly dismissed.

Consequently, judgement for outstanding reliefs is hereby entered in favour of the plaintiff and orders accordingly made against the defendants jointly and severally as follows:

1. A declaration that the demolition of plaintiff's property situate and lying at Plot 1003, Utako District Abuja by the defendant constitutes an illegal act of trespass to the said property of the plaintiff.
2. Order invalidating any purported revocation and/or re-allocation of Plot 1003, Utako District Abuja to the 3rd defendant.
3. Damages of N200,000.00 is to be paid by the defendants to the plaintiff for trespass.
4. Order of perpetual injunction restraining the defendants(whether by themselves, agents, servants or representatives in the interest) from any further acts of trespass or unlawful damage to the plaintiffs'property situate and lying at Plot 1003, Utako District, Abuja.

Signed

Honourable Justice M. E. Anenih

Appearances:

Richard Lifu Esq for the plaintiffs.

G.A. Idiagbonya Esqfor 1st and 2nd defendants

Innocent Lagi Esq for 4th Defendant

3rd Defendant unrepresented.