

**IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY  
IN THE ABUJA JUDICIAL DIVISION  
HOLDEN AT JABI - ABUJA  
BEFORE HIS LORDSHIP HON. JUSTICE D.Z. SENCHI.  
HON. JUDGE HIGH COURT NO.13  
COURT CLERKS –T.P. SALLAH & ORS  
DATE:- 21/01/2020**

**FCT/HC/CV/907/14**

**BETWEEN:**

**BNNC PROPERTIES LIMITED-----**

**PLAINTIFF**

**AND**

- 1. THE HON. MINISTER, FCT ABUJA**
- 2. FEDERAL. CAPITAL. DEVELOPMENT. AUTHORITY**
- 3. THE CHAIRMAN, FED. CAP. ADMINISTRATION**
- 4. LERE PTY & DEV. CO.LTD**

**DEFENDANTS**

## **JUDGMENT**

The Plaintiff by a writ of summons and statement of claim filed on 29<sup>th</sup> December, 2014 commenced this suit against the Defendants claiming the following reliefs:-

1. A declaration that the right of occupancy no: FCT/MZTP/LA/99/MISC 199 granted to the Plaintiff over and in respect of plot No: CP50 cadastral Zone 08 06 at Apo Layout Abuja, Federal Capital Territory (within the jurisdiction of the Honourable Court), which right of occupancy was regularized, in accordance with the regularization of Land Titles and Documents of FCT Area Council dated the 10<sup>th</sup> day of March, 2007 with file no: MISC 1990, is still valid and subsisting.
2. A declaration that the purported revocation or any revocation of the Right of Occupancy No: FCT/MZTP/LA/99/MISC199 granted the Plaintiff over and in respect of Plot C.P 50 cadastral Zone 0806 at Apo layout Abuja duly regularized in accordance with the regularization of Land Titles and Documents of FCT

Area Council dated 10<sup>th</sup> March, 2007 with file number MISC 1990 by the 1<sup>st</sup> Defendant is unlawful, wrong and contrary to the provisions of law.

3. A declaration that the subsequent grant of another Right of occupancy to the 4<sup>th</sup> Defendant or any other person over and in respect of the same Plot C.P 50 Cadastral Zone 08 06 at Apo layout Abuja earlier granted to the Plaintiff by the 1<sup>st</sup> Defendant is unlawful, wrong and contrary to law, and a breach of the Plaintiff's right as enshrined in the Constitution of the Federal Republic of Nigeria 1999 (as amended)
4. An order of this Honourable Court declaring the Right of Occupancy granted to the 4<sup>th</sup> Defendant or any other person over and in respect of the Plaintiff's land, lying and situate at plot C.P 50 Cadastral Zone 08.06, Apo Layout Abuja as null and void and of no effect.
5. And order directing the 1<sup>st</sup> Defendant to re-validate the purported unlawfully revoked right of occupancy no. FCT/MZPT/LA/MSIC 199 in respect of plot C.P 50 Apo layout granted to the Plaintiff.
6. General damages in the sum of N50, 000,000.00 (Fifty Million Naira).

Then on the 23<sup>rd</sup> February, 2015 the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants were served with the Plaintiff's writ of summons, statement of claim and other accompanying processes of this suit. Equally, the 4<sup>th</sup> Defendant was also served with the Court processes on the 25<sup>th</sup> February, 2015.

The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants on the 10<sup>th</sup> April, 2015 filed a motion on notice for extension of time to file their processes in this suit. The motion on notice was however abandoned by the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants and it was accordingly struck out by the order of this Court granted on 26<sup>th</sup> January, 2016.

On the otherhand, the 4<sup>th</sup> Defendant on 3<sup>rd</sup> March, 2015 filed its memorandum of appearance and statement of defence in reply to the Plaintiff's statement of claim.

Pleadings having been filed and exchanged the matter was adjourned for hearing. The Plaintiff could not commence trial and on the 26<sup>th</sup> January, 2016 the suit of the Plaintiff was struck out for want of prosecution. However, on 7<sup>th</sup> March, 2016 the suit was relisted by the order of this Court. Then by the order of this Court granted on 8<sup>th</sup> May, 2017 the Plaintiff amended its statement of claim. Also on the 10<sup>th</sup> October, 2017 the 4<sup>th</sup> Defendant by the order of this Court amended its statement of defence.

On the 11<sup>th</sup> December, 2017, the Plaintiff opened its case for trial by calling two witnesses that testified on its behalf. The first witness, UcheOgoagwu testified as PW1 and he adopted his witness statement on oath deposed to on 16<sup>th</sup> May, 2017 as his evidence in this case. Sunday Olarewaju testified on 20<sup>th</sup> February, 2018. He adopted his witness statement on oath deposed to on 16<sup>th</sup> May, 2017 as his evidence in this case. Exhibits 1, 1 (a), 2,2(a)3,4 and 5 were admitted in evidence on behalf of the Plaintiff through PWs 1 and 2.

The brief facts of the Plaintiff's case is that by a conveyance of provisional approval granted on the 1<sup>st</sup> September, 1999 the Plaintiff was granted a right of occupancy in respect of plot no. C.P 50 Apo Layout measuring an area of about 7500 square meters by the Abuja Municipal Area Council. The Right of occupancy granted the Plaintiff by Abuja Municipal Area Council is exhibit 1.

The Plaintiff states at paragraphs 8-16 of its amended statement of claim to the effect that it has an acknowledgment of regularization of land title of plot C.P 50 Apo layout Abuja. The

acknowledgment was admitted in evidence as exhibit 3 while the receipt for payment of revalidation of Plot C.P 50 Apo Layout was received in evidence as exhibit 2 (a).

The Plaintiff avers that it later discovered that its land has been re-allocated to the 4<sup>th</sup> Defendant. According to the Plaintiff upon enquiring at the Abuja Geographic Information System (AGIS), it was confirmed that the land has been re-allocated to the 4<sup>th</sup> Defendant without proper revocation of the Plaintiff's existing rights of occupancy over the land and that its plot No. C.P 50 Apo layout has been renamed plot 1506 Apo layout and then re-allocated to the 4<sup>th</sup> Defendant. The Plaintiff tendered in evidence through PW1 the survey plan of its land, plot C.P 50 Apo layout and it was admitted in evidence as exhibit 1 (a). The Plaintiff further avers that it engaged one surveyor S.O Ishola, a registered surveyor to superimpose the survey plan of Plot C.P 50 Apo layout on Plot No, 1506 Cadastral Zone E27 Apo layout to determine if both plans are one and the same in respect of physical location after all efforts to get the survey plan from the 1<sup>st</sup>-3<sup>rd</sup> Defendants proved abortive. The letter of engagement of surveyor Ishola and the super imposed survey plan of plot C.P 50 Layout are exhibits 2 and 4 respectively.

Pursuant to the Plaintiff's averments at paragraphs 15-18 of the amended statement of claim, the Plaintiff avers at paragraphs 19-21 that the expert opinion of surveyor S.O Ishola of PengateGlobalServices Limited established the plans to be same. The expert opinion was received in evidence as exhibit 5.

In conclusion, the Plaintiff urged the Court to grant its claims as set out in paragraph 23 (a)-(f) of its amended statement of claim.

At the conclusion of evidence on 20<sup>th</sup> February, 2018 by the Plaintiff's witnesses, the case was adjourned to 26<sup>th</sup> April, 2018 for defence. However, when the matter came up for defence, the

learned Counsel for the Defendant was absent. The case was further adjourned to 7<sup>th</sup> June, 2018 for defence. The case was further adjourned to 20<sup>th</sup> September, 2018 for defence and on all these adjourned dates, neither the 4<sup>th</sup> Defendant or her Counsel were present to enter their defence. Consequently, the right of the 4<sup>th</sup> Defendant to call witness(es) or evidence in her defence was foreclosed by the order of this Court on 20<sup>th</sup> September, 2018. However on the 30<sup>th</sup> October, 2019 pursuant to an application filed by the 4<sup>th</sup> Defendant's Counsel, the order of 20<sup>th</sup> September, 2019 foreclosing the 4<sup>th</sup> Defendant from calling evidence was vacated. Instead of the 4<sup>th</sup> Defendant to enter her defence, the 4<sup>th</sup> Defendant's Counsel filed an application to further amend its defence. The application was granted and the matter adjourned to 4<sup>th</sup> March, 2019 for defence. On the 4<sup>th</sup> March, 2019 the Counsel to the 4<sup>th</sup> Defendant informed the Court that his witness was not in Court and consequently, by the order of this Court the Defendant's right to call evidence in this case was for the second time foreclosed and final written address ordered to be filed and exchanged between the parties.

The Plaintiff's Counsel filed his final written address on 21<sup>st</sup> March, 2019 and formulated four (4) issues for determination as follows:-

- (1) Whether by the Plaintiff's pleadings and evidence led, is the Plaintiff not entitled to the reliefs sought in this suit?
- (2) Whether having regards to the facts of this case, the Plaintiff has shown sufficient interest or right in the property, subject matter of this suit deserving protection by law?
- (3) Whether by the clear provisions of section 169 of the Evidence Act, 2011 (as amended) the Defendants are not estopped from denying the interest of the Plaintiff in the property known as plot CP 50 Apo layout (renamed plot No. 1506, Cadastral Zone E27, Apo layout)?

- (4) Whether the 1<sup>st</sup> -3<sup>rd</sup> Defendants can validly expropriate the right of occupancy granted to the Plaintiff in respect of Plot No. CP 50, Apo Layout without issuing any revocation notices in compliance with the law and to rename and re-allocate same to the 4<sup>th</sup> Defendant?

In proffering arguments on the issues formulated by the Plaintiff's Counsel, issues nos 1,2 and 3 were argued together. Thus, in arguing the three issues together, at paragraphs 5.3 -5.7 of the final written address, learned Counsel to the Plaintiff submitted to the effect that by the pleadings and evidence led by the Plaintiff's witnesses and the documents tendered and admitted in evidence, the Plaintiff has shown sufficient interest in the property the subject matter of this suit capable of protection by the law. He submitted that the Plaintiff led uncontroverted and unchallenged evidence that by the regularization and validation of the Plaintiff's Area Council right of occupancy in line with the 1<sup>st</sup> - 3<sup>rd</sup> Defendants policy of revalidation of Area Council documents, the Plaintiff had a statutory right of occupancy issued by the 1<sup>st</sup> - 3<sup>rd</sup> Defendants. On the effect of unchallenged evidence, learned Counsel relied on the cases of **OGUNYADE V OSHUNKEYE, (2007) 15 NWLR (pt 1057) page 218, MUOMAH V ENTERPRISE BANK LTD, (2015) LPELR CA/L/338/2012 and NZERIBE V DANE ENG.CO. LTD, (1994) 8 NWLR 124.**

Learned Counsel submitted that by the evidence of PW1, the Plaintiff stated how she acquired plot CP50, Apo Layout which was regularized by the 1<sup>st</sup>-3<sup>rd</sup> Defendants on payment of requisite fees. He then submitted that the Plaintiff has been in possession of the land until they discovered that the 1<sup>st</sup> -3<sup>rd</sup> Defendants had re-allocated the land to the 4<sup>th</sup> Defendant.

At paragraphs 5.8-5.13 of the Plaintiff's Counsel final written address, learned Counsel submitted to the effect that it is not in doubt that the Plaintiff previously had a right of occupancy issued

by Abuja Municipal Area Council and that the 1<sup>st</sup> -3<sup>rd</sup> Defendants had regularized the title of the Plaintiff by virtue of exhibit 3 dated 10<sup>th</sup> March, 2007. Counsel then contended that the 1<sup>st</sup> -3<sup>rd</sup> Defendants purportedly revoked the title of the Plaintiff in respect of plot CP50, Apo Layout renamed plot No. 1506 Cadastral Zone E27, Apo layout and re-allocated the land to the 4<sup>th</sup> Defendant which was done after the 1<sup>st</sup> -3<sup>rd</sup> Defendants had duly regularized the documents of the Plaintiff. He relied on the case of **BLESSED AND PRECIOUS CHILDREN ACADEMY LTD & ORS v FEDERAL CAPITAL DEVELOPMENT AUTHORITY & ORS** (suit no. FCT/HC/HC/CV/2138/2010 delivered by His Lordship Peter Affen J. and urged me to hold that the Plaintiff had a statutory right of occupancy over the subject matter of this suit.

Further, learned Counsel to the Plaintiff posed the question whether the 1<sup>st</sup> -3<sup>rd</sup> Defendants be allowed in law to revoke the right of occupancy of the Plaintiff and re-allocate same to the 4<sup>th</sup> Defendant without regard to due process of law after they had regularized or revalidated and acknowledged the interest of the Plaintiff over plot No. CP 50 Cadastral Zone 0806, Apo Layout? Learned Counsel stated that the 1<sup>st</sup> -3<sup>rd</sup> Defendants cannot be allowed to do that in law and he referred me to section 169 of the Evidence Act, 2011 (as amended).

Learned Counsel to the Plaintiff submitted further that the 1<sup>st</sup> -3<sup>rd</sup> Defendants having regularized the Plaintiff's title documents, the 1<sup>st</sup> -3<sup>rd</sup> Defendants are estopped in law to deny the interest of the Plaintiff in plot 50 Apo Layout. He relied on the cases of **C.N OKPALA & SONS LTD V NIGERIAN BREWERIES PLC (2018) 9 NWLR (pt 1623) page 16 at 34-35 paragraphs H.C and OLALEKAN V WEMA BANK PLC (2006) 13 NWLR (pt998) page 617 at 625-636 paragraphs H-G.**

Plaintiff's Counsel also submitted that the Plaintiff is in possession and thus recognized in law as having equitable interest worthy of

protection by law. He relied on the case of ***NSIEGBE V MGBEMENA (2007) 10 NWLR (pt 1042) page 364 at 395 paragraph B-C and YARO V AREWA CONSTRUCTION LTD, (2007) 17 NWLR (Pt 1063) page 333 at 373 paragraphs A-B.***

In conclusion on issues 1-3, Plaintiff's Counsel urged me to resolve all the issues in favour of the Plaintiff.

#### **ISSUE FOUR (4)**

In respect of issue four for determination, Plaintiff Counsel firstly stated that by section 43 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) guarantees the right of every citizen of Nigeria to acquire and own immovable properties anywhere in Nigeria including Abuja. He then contended that section 44 of the 1999 Constitution provides against arbitrary taking of the property of any citizen except in the manner as prescribed by law. He referred me to the case of ***ELF PETROLEUM NIGERIA LTD V UMAH, (2018) 10 NWLR (Pt 1628) page 428 at 443-444 paragraphs H-B.***

Learned Counsel further submitted that section 28 of the Land Use Act provides for the Procedure for revocation of a right of occupancy. The Plaintiff's Counsel stated also that there was no evidence that any notice of revocation was served on the Plaintiff by the 1<sup>st</sup> -3<sup>rd</sup> Defendants before the purported revocation and that none was admitted in this suit. Counsel to the Plaintiff cited plethora of judicial authorities at paragraphs 5.28 of his final address to buttress the Point that the 1<sup>st</sup> -3<sup>rd</sup> Defendants action of revoking the land without serving notice of revocation and re-allocating same to the 4<sup>th</sup> Defendant is unlawful.

In conclusion, Counsel to the Plaintiff urged me to enter judgment in favour of the Plaintiff against the Defendants in terms of the amended statement of claim.



The 4<sup>th</sup> Defendant's Counsel filed on the 19<sup>th</sup> March, 2019 a reply to the Plaintiff's final written address. After a brief facts of the case at pages 2-4 of the reply address, the 4<sup>th</sup> Defendant's Counsel set out two issues for determination as follows:-

- (1) Whether the Plaintiff has the locus standi to institute the action.
- (2) Whether the Plaintiff was able to prove its claims independent of evidence of the 4<sup>th</sup> Defendant.

### **ISSUE ONE**

"Whether the Plaintiff has the locus standi to institute the action"

The learned Counsel to the 4<sup>th</sup> Defendant submitted that the Plaintiff in this case has no locus standi to institute this case, because it has no right of action. He submitted that the Plaintiff has no legally recognizable interest in the matter.

He relied on the case of ***OJUKWU V OJUKWU, (2000) 11 NWLR (Pt 677) page 65 at 72 ratio 6.***

Learned Counsel submitted that the nature of this case is about a piece of land allocated by Abuja Municipal Area Council (AMAC) and not whether the customary right of occupancy was duly regularized or validated or whether or not it was revoked by the Minister of the Federal Capital Territory Abuja and re-allocated to the 4<sup>th</sup> Defendant.

Learned Counsel to the 4<sup>th</sup> Defendant submitted further that the Plaintiff lacks locus standi to institute this action because there is no rural land in Abuja over which customary right of occupancy could be granted since all land in the Federal Capital Territory is urban land granted only by the Honourable Minister of the Federal Capital Territory as a delegate of the President of the Federal Republic of Nigeria. He contended that the customary right of occupancy paraded by the Plaintiff not being granted by the

Federal Capital Development Authority (FCDA) is not in existence in the eyes of the law and this robs this Honourable Court the competence and jurisdiction to adjudicate on the matter.

Learned Counsel relied on section 6 (6) (b) of the 1999 Constitution (as amended) and the case of **OGUNMOKUN V THE MILAD OF OSUN STATE, (1999) 3 NWLR (pt 594) page 261 at 286.**

Learned Counsel to the 4<sup>th</sup> Defendant further submitted that the Federal Capital Territory was created by the FCT Act No6 of 1996 and that by section 1(3) of the Act it vests absolute ownership of all lands within the Federal Capital Territory in the Federal Government of Nigeria Territory under section 297 (2) of the 1999 Constitution (as amended)

The 4<sup>th</sup> Defendant's Counsel submitted that the Plaintiff has not been able to discharge the burden placed on it to prove that the customary right of occupancy is issued by the appropriate authority and therefore the burden cannot shift to the Defendants.

Conversely, learned Counsel for the 4<sup>th</sup> Defendant submitted that the 1<sup>st</sup> -3<sup>rd</sup> Defendants in this case have a legitimate right to allocate plot No. 1506 Cadastral Zone E27 Apo District Abuja to the 4<sup>th</sup> Defendant and hence there would be no cause of action against the 1<sup>st</sup> -3<sup>rd</sup> Defendants for performing what is a legitimate function. He relied on the case of **U.B.A PLC V SAMBA PET. CO LTD, (2002)16 NWLR (pt 793)page 361 at 401.**

He also contended that the issue over ownership or title to land in the Federal Capital Territory Abuja has been settled in the case of **ENGR. YAKUBU & 3ORS V SIMON I. OBAJE, (2005) ALL FWLR (Pt 282) page 65 at 77.**

## **ISSUE TWO**

“Whether the Plaintiff was able to prove its case independent of the evidence of the 4<sup>th</sup> Defendant.”

It is the submission of the 4<sup>th</sup> Defendant’s Counsel that the Plaintiff was not able to prove its case on its own strength independent of the evidence of the 4<sup>th</sup> Defendant. He stated that the Plaintiff’s evidence failed to prove the claims of the Plaintiff on its own merit. He relied on the case of ***HAWAD INTERNATIONAL SCHOOLS LTD V MINNA PROJECTS VENTURES LTD (2003) 39 WRN page 59.***

At pages 11-15 of the final written address of the 4<sup>th</sup> Defendant’s Counsel, learned Counsel referred me to order 15 rule 7 (2) of the High Court of the Federal Capital Territory (Civil Procedure) Rules, 2018 to the effect that the Plaintiff failed to specifically plead sections 28 and 29 of the land Use Act, 1978 as it pertains to the subject plot CP50 Apo Layout Abuja and also for compensation. He further relied on section 6 (3) & (4) of the Federal Capital Territory, Act 1976.

The 4<sup>th</sup> Defendant’ Counsel also submitted that the action of the Plaintiff is caught up with section 2 (a) of the Public Officers Protection Act Cap 379 LFN 2004.

It is the contention of the 4<sup>th</sup> Defendant’s Counsel that a proprietary injury and or interest is involved in the instant case and that makes the Act to apply mutatis mutandis. He then stated that Plaintiff’s cause of action arose after 14<sup>th</sup> April, 2011 and that PW1 under cross examination knew about the revocation when the 4<sup>th</sup> Defendant’s agent brought the title documents to the Plaintiff for sale. He then contended that the Plaintiff did not report officially or tender any documentary evidence of his report to the 1<sup>st</sup> -3<sup>rd</sup> Defendants contrary to section 6(3) and (4) of the FCT Act.

In conclusion, the 4<sup>th</sup> Defendant's Counsel urged me to dismiss the Plaintiff's action with N50,000,000.00 cost against it.

The Plaintiff's Counsel filed a reply to the 4<sup>th</sup> Defendant's final written address. At paragraphs 1.2 – 1.6 of the Claimant's reply, learned Counsel submitted that what the Court considers in determining whether a Plaintiff or a claimant has locus standi is his statement of claim. He relied on the cases of ***TAIWO V ADEGBORO(2011) 11 NWLR (pt 1259) page 562 at 580 paragraphs A-B, EJIWUNMI V COSTAIN (WA) PLC , (1998) 12 NWLR (pt 576) page 149 and DANIYAN V LYAGIN, (2002) 7 NWLR (pt 766) page 375 paragraphs F-G.***

Counsel to the Claimant further submitted that a Defendant who challenges the locus standi of a Plaintiff is deemed to have accepted as true the averments in the Plaintiff's statement of claim. He referred me to the case of ***ALHAJI KAMORU AGBAJE & ORS V MISS ADESOLA OTUNLA & ANOR (2017) LPELR 42382 (CA).***

Learned Counsel submitted that by paragraphs 6-14 of the statement of claim, the Claimant has established their legal interest in the property known as plot CP50 Apo Layout Abuja. He therefore submitted that the Claimant has a legal interest in the property, the subject matter of the suit.

In respect of whether section 2 (a) of the Public Officers Protection Act applies, learned Counsel to the claimant submitted that Public Officers Protection Act does not apply in cases of recovery of land, breaches of contract and claims for work and labour done. He relied on the cases of ***NIGERIAN PORTS AUTHORITY V CONSTUZONI GENERALI FARSURA COGEFAR SPA & ANOR (1974) 1 ALL NLR (pt2) FGN V ZEBRA ENERGY LTD, (2002) 18 NWLR (pt 798) page 162.***

Counsel to the claimant also submitted that section 2(a) Public Officers Protection Act is subject to the provision of the 1999 Constitution in that a public officer who contravenes the provisions of the Constitution (as amended) particularly as it relates to fundamental rights in execution of a public duty cannot claim protection under the Act. He relied on the case of **MOHAMMED VA.B.U ZARIA (2014) 7 NWLR (pt1407) page 500 at 539-540.**

He then submitted that the claimant's right to acquire and own immovable property anywhere in Nigeria is a Constitutional right as provided by section 43 of the 1999 Constitution (as amended). He cited the case of **EYO V OKPA, (2010) 6 NNLR(Pt1191) page 611 at 637 paragraphs C-E.**

Learned Counsel to the Plaintiff then submitted that a public officer who acts outside the colour of his office cannot claim the protection of section 2 (a) of the Public Officers Protection Act and he relied on the case of **HASSAN V ALIYU, (2010) 17 NWLR (pt1223) page 547 at page 620 paragraphs E-G.**

In his reply address on points of law as to whether the Plaintiff is entitled to its reliefs on the preponderance of evidence before the Honourable Court, at paragraphs 1-13-1.16 of the reply, learned Counsel submitted to the effect that the pleadings and evidence of the Plaintiff in this suit is uncontroverted by the Defendants.

In conclusion, learned Counsel urged me to grant the reliefs of the Plaintiff.

To determine this case, the two issues distilled by the 4<sup>th</sup> Defendant's Counsel, to my mind are all encompassing with the issues formulated by the Plaintiff's Counsel. I will therefore adopt the two issues as follows:-

- (1) Whether the Plaintiff has locus standi to institute the action.
- (2) Whether the Plaintiff was able to prove its claims independent of the evidence of the 4<sup>th</sup> Defendant.

In the course of dealing with the above two issues, I will also consider issues nos. 3 and 4 of the Plaintiff's Counsel i.e.

- (3) Whether by the clear provisions of section 169 of the Evidence Act 2011 (as amended) the Defendants are not estopped from denying the interest of the Plaintiff in the property known as plot CP50, Apo Layout (renamed plot No. 1506, Cadastral Zone E27 Apo Layout)?
- (4) Whether the 1<sup>st</sup> -3<sup>rd</sup> Defendants can validly expropriate the right of occupancy granted to the Plaintiff in respect of plot No. CP50 Apo layout without issuing any revocation notices in compliance with the law and to rename and re-allocate same to the 4<sup>th</sup> Defendant.

Having said the above, I want to state right from the onset that the 1<sup>st</sup> -3<sup>rd</sup> Defendants despite service of the Plaintiff's originating processes, they never filed any defence and they did not call evidence in the instant suit. Secondly, the 4<sup>th</sup> Defendant as I noted earlier in the course of this judgment, filed a defence but did not call any witness (es) and the 4<sup>th</sup> Defendant's right to call witness (es) was eventually foreclosed by the order of this Court.

The Plaintiff's Counsel has raised in both his final written address and reply to the 4<sup>th</sup> Defendant's Counsel final written address submitted that the pleading and evidence of the Plaintiff is uncontroverted and unchallenged by the 1<sup>st</sup> -3<sup>rd</sup> Defendants and that the Court is bound to accept it and rely on it.

Firstly, it is important to refer to the reliefs claimed by the Plaintiff in his amended statement of claim. The first three (3) reliefs of the Plaintiff are declaratory reliefs and they are the

principal reliefs. The law is that declaratory reliefs are granted to a party on the strength of the party's evidence before the Court. See **AYODELE IGBO KOYI & ORS V RAHEEM ADETORO LAWAL, (2013) LPELR 22006 (CA)**.

Further, the claim of the Plaintiff in the instant case is for declaration of title to land. It is the law that a declaratory relief is not granted even on admission. A party claiming a declaratory relief must satisfy the Court that he is entitled to the relief. See **JOSHUA MOSUNMOLA AKINTOYE V JOSEPH FOLAYIN (2014) LPELR 24125 (CA), SAIDU SANUSI DONGARI & ORS V SAHEED SA'ANUN (2013) LPELR 2204 (CA) AYARRU V MANDILAS LTD, (2007) 4SC (pt111) page 58 and DUMAZ (NIG) LTD V NWAKHOPA, (2008) 18 NWLR (pt119) page 361.**

Thus, in the instant case, the fact that the 1<sup>st</sup> -3<sup>rd</sup> Defendants and indeed the 4<sup>th</sup> Defendant failed, neglected or refused to file a defence or file a defence but failed to call evidence, the Plaintiff's burden of proof does not shift but he must succeed on the strength of his own case and evidence.

Premised on the aforesaid, the law is trite that declaratory reliefs or remedies are resorted to when a Plaintiff feels that he has a right he would like to protect in order to prevent or stop a wrong. See **IBIDAPO AWOJOLU V ODEYEMI & ORS (2012) LPELR 14 796 (CA)**

The question that requires an answer in the instant case is whether the Plaintiff has a right over plot CP 50 Apo layout worthy of protection to avoid a wrong committed thereof? The question takes me to the first issue for determination distilled by the 4<sup>th</sup> Defendant's Counsel that the Plaintiff has no locus standi to institute this action. This is a jurisdictional issue raised by the 4<sup>th</sup> Defendant's Counsel. And in his final written address, he

contended that the nature of this case is about a piece of land allocated by Abuja Municipal Area Council (AMAC) and not whether the customary right of occupancy was duly regularized or validated or whether or not it was revoked by the Minister of Federal Capital Territory Abuja and re-allocated to the 4<sup>th</sup> Defendant.

The Plaintiff on the otherhand is saying that by the allocation of plot CP50 Apo layout by the Abuja Municipal Area Council, the Plaintiff duly regularized their title with the 1<sup>st</sup> -3<sup>rd</sup> Defendants and that the Plaintiff's evidence is uncontroverted and unchallenged.

Now the law is crystal clear that where there is a challenge as regards a party's locus standi, what it denotes is that legal capacity to institute an action in a Court of law. In otherwords the fundamental aspect of locus standi is that it focuses on the party seeking to get his complaint laid before the Court. See **OJUKWU V CHINYERE OJUKWU & ANOR (2008) LPELR 2401 (SC), SAKA OPOBIYI & ORS V LAYIWOLA MUNIRU, (2011) LPELR 8232 (SC).**

In the instant case, does the Plaintiff have the locus standi to institute this action? In the case of **THE HONOURABLE MINISTER OF FEDERAL CAPITAL TERRITORY & ANOR V OLAYINKA OYELAMI HOTELS LIMITED, (2017) LPELR 42876**, the Court of Appeal held:-

“ The two acid tests for determining whether or not a person has locus standi to institute an action are:-

(a) The action must be justiciable; and

(b) There must be a dispute between the contending parties.”

The Court of Appeal further held, “in deciding whether a Plaintiff has locus standi, the judge is expected to meticulously examine



the statement of claim to see if it discloses a cause of action. The averments in the statement of claim or as in the instant case, the affidavit deposed to in support of the originating summons filed by the Applicant, must disclose in clear terms the right and obligations or interest of the Plaintiff which have been or about to be violated; see **THOMAS V OLUFOSOYE (1986) 1 NWLR (pt 18) page 669, ADEFULU V OYESILE, (1989)5 NWLR (pt122) page 377.**

Now by paragraphs 6,7 and 8 of the amended statement of claim, the Plaintiff avers that he was granted a conveyance of provisional approval of the Right of occupancy in respect of plot no. CP50 Apo Layout measuring approximately 7500 square meters by Abuja Municipal Area Council. The right of occupancy is exhibit 1. According to the Plaintiff's pleadings, the right of occupancy, exhibit 1 was re- certified or regularized by the 1<sup>st</sup>-3<sup>rd</sup> Defendants. The Plaintiff tendered exhibit 3, the regularisation of land titles and documents of FCT Area Councils acknowledgement slip dated 10<sup>th</sup> March, 2007.

The Plaintiff at paragraph 2 of his amended statement of claim avers thus:-

*"The 1<sup>st</sup> Defendant is the Honourable Minister of the Federal Capital Territory and the one who has the statutory duty to grant right of occupancy to all prospective land Applicants."*

By the averments of the Plaintiff at paragraphs 2 and 6 of the amended statement of claim, the question that begs for an answer is who has the statutory power to allocate land in the Federal Capital Territory, Abuja. The answer to the above question can be found in the case of **JOSIAH MICAH & ORS V HON. MINISTER OF THE FEDERAL CAPITAL TERRITORY & ORS (2018) LPELR 44917**, where the Court held thus:-

"I must add at this juncture all lands in the Federal Capital Territory Abuja belong to the Federal Government of Nigeria, who has vested the Power and control of such lands on the Minister of the Federal Capital Territory. See sections 1 (3) and 18 of the Federal Capital Territory Act, as well as section 297 of the 1999 Constitution."

Then by section 1 (3) and 18 of the Federal Capital Territory Act, it provides.

"1(3) The Area contained in the Capital Territory shall, as from the commencement of this Act, lease to be apportion of the State concerned and shall henceforth be governed and administered by or under the control of the Government of the Federation to the exclusion of any other person or authority whatsoever and the ownership of the lands comprised in the Federal Capital Territory shall likewise vest absolutely in the Government of the Federation."

(18) As from the 28<sup>th</sup> May, 1984, the President has delegated to the Minister of the Federal Capital Territory the following functions that is to say:-

(b) Any executive power of the Federal Government vested in the President pursuant to section 299 (a) or any other section of the Constitution of the Federal Republic of Nigeria and exercisable within the Federal Capital Territory;

(C) Any function or power conferred by any law set out in the second schedule to this Act vested in the Governor or Military Governor of a State.

By virtue of the decision in JOSIAH MICAH V HON MINISTER FCT ABUJA (supra), sections 1 (3), 18 of the FCT Act and section 297 of the 1999 Constitution and indeed section 2 of the Land Use Act, all lands comprised in the Federal Capital Territory vests on

the Federal Government of Nigeria and the President by the powers conferred on him by the Constitution of the Federal Republic of Nigeria delegated his powers on land allocation in the Federal Capital Territory to the Minister of the Federal Capital Territory Abuja.

The Law is also crystal clear that apart from the Honourable Minister of the Federal Capital Territory Abuja, no person or authority has the power to allocate land comprised in the Federal Capital Territory. See section 18 of the FCT Act. In fact in the case of **FRANK ERIBENNE V MR. ALI SUNDAY & ANOR (2007) LPPELR 4172**, the Court of Appeal held as follows:-

"The Federal Government has been clothed with exclusive right on the land as its owner and not just holding it in trust for the people. By virtue of section 18 of the Federal Capital Territory Act, only the Minister for the Federal Capital Territory can grant statutory rights of occupancy over lands situate in the Federal Capital Territory. Whatever customary rights the original owners of the land had prior to the acquisition of the entire area ceased to exist as from February, 1976 when the Federal Capital Territory came into effect."

The implication of the above judicial authorities and sections 1(3), 18 of the FCT Act, section 297 (2) of the Constitution of the Federal Republic of Nigeria and the Land Use Act, irrespective of section 1 (2) of the FCT Act, customary right of occupancy does not exist in the Federal Capital Territory, Abuja and this point is made clearer in the case of **MADU V DR. BETRAM MADU, (2008) LPELR 1806**, the Supreme Court of Nigeria held:-

"Section 18 of the Federal Capital Territory Act Cap 503 LFN 1990, vests power in the Minister for the FCT to grant statutory rights of occupancy over lands situate in the Federal capital Territory to any person. By this law, ownership of land within FCT

vests in the Federal Government of Nigeria who through the Minister of FCT vest same to every citizen individually upon application. Thus, without an allocation or grant by the Honourable Minister of the FCT, there is no way any person including the Respondent could acquire land in the FCT.”

Thus, having said the above, by paragraph 6 of the amended statement of claim, the grant to the Plaintiff of plot CP50 Apo layout tendered as exhibit 1 was a grant by Abuja Municipal Area Council. As I said earlier, though section 1(2) of the FCT Act recognizes the six Area Councils in the FCT, they have no authority to allocate land to any person by virtue of sections 1(3) and 18 of the FCT Act as well as the Land Use Act because all lands comprised in the Federal Capital Territory are urban lands.

The Plaintiff’s Counsel in both their pleadings and final address made heavy weather on recertification, revalidation or regularisation of title documents with the 1<sup>st</sup> -3<sup>rd</sup> Defendants. It appears to me the Plaintiff’s Counsel did not appreciate the import of exhibit 3 and the purported regularisation of title documents. At the bottom of exhibit 3, the acknowledgement slip which Plaintiff’s Counsel heavily relied that their title documents have been regularized by the 1<sup>st</sup>-3<sup>rd</sup> Defendants, exhibit 3 contained a disclaimer and it states:-

“This acknowledgment does not in any way validate the authenticity of the documents described above. All documents are subject to further verification for authenticity.”

In other words, by exhibit 3, it does not validate or authenticate the Plaintiff’s title documents as the rightful allottee neither does exhibit 3 confers the Plaintiff a statutory right of occupancy.

Further, the Plaintiff’s Counsel relied on the case of **BLESSED AND PRECIOUS CHILDREN ACADEMY LTD & ORS V FED CAP DEV AUTHORITY (supra)** to hold the view that by the 1<sup>st</sup>-

3<sup>rd</sup> Defendants regularizing their title documents, that the Plaintiff holds a statutory right of occupancy. I disagree with the view expressed by the learned Counsel and the instant case is not in all fours with the case of **BLESSED AND PRECIOUS CHILDREN ACADEMY LTD (supra)** and this put to rest issues number 3 and 4 formulated by the Plaintiff and they are resolved in favour of the Defendants.

As I said earlier, the acid test in determining a person or party's locus standi in a suit is whether the party has a justiciable right to institute the action and the dispute that arisen therefrom. The Black's Law Dictionary defined the word "justiciable at page 944 9<sup>th</sup> Edition as follows:-

"A case or dispute properly brought before a Court of justice capable of being disposed judicially"

See also **CHIEF REAGAN UFOMBA V INEC (2017) LPELR 4207 (SC).**

Thus a justiciable right or a right is justiciable when it is capable of being legally enforced when it is derived from the existence of reciprocal rights, duties and obligations between the created statutes. See **CHIEF JOEL SIMEON OBU & ORS V THE SHELL PETROLEUM DEV. COMPANY OF NIGERIA LTD & ANOR, (2013) LPELR 21241 (CA).** Further, the Supreme Court in the case of **BARR. J.C UWAZURONYE V THE GOVERNOR OF IMO STATE & ORS, (2012) LPELR 20604** held:-

*"A justiciable matter is one in which the Plaintiff has a cause of action. Courts only consider justiciable issues or controversy and do not bother spending precious judicial time with hypothetical disputes or one that is academic or moot."*

Hence therefore, arising from the pleading of the Plaintiff in the instant case, the rights or obligations imposed by statute on the first Defendant i.e the Minister of the Federal Capital Territory Abuja to allocate land to the Plaintiff has not been evoked. The authority that issued exhibit 1, a customary right of occupancy to the Plaintiff by his paragraph 3 of the amended statement of claim, by sections 1 (3) and 18 of the FCT Act and the land Use Act, does not possess such power or authority to do so in the FCT. In otherwords, from the amended statement of claim the Plaintiff has no justiciable right or a legal right capable of enforcement between him and the Defendants especially the 1<sup>st</sup>-3<sup>rd</sup> Defendants. In short, the Plaintiff has no locus standi to institute the instant case because ab-initio the grantor has no authority in law to grant what it purports to grant to the Plaintiff. It is trite law that you cannot put something on nothing and expert it to stand. See **AFRICAN PEOPLES PARTY V MR. WILLE OBIANO, (2018) LPELR 44-64 (CA) MACFOY V UAC, (1962)AC 152 at160 and SKEN CONSULT (NIG) LTD V UKEY, (1981)1SC page 6 at 15.**

The effect of the above cases is that where an act is void,(in this case the grant by Abuja Municipal Area Council), then it is in law a nullity. It is not only bad but incurably bad. And every proceeding which is founded on the instant grant to the Plaintiff is also bad and incurably bad.

Thus, issue number one submitted for determination distilled by the 4<sup>th</sup> Defendant and issue number two (2) of the Plaintiff are hereby resolved in favour of the Defendants and against the Plaintiff.

In conclusion, having resolved the issues of locus stand in favour of the Defendants, the issue of whether the Plaintiff has proved his case and therefore entitled to the reliefs claimed becomes an exercise in futility.

In otherwords, the Plaintiff is not able to prove the declarations sought by tendering title documents emanating from the 1<sup>st</sup>-3<sup>rd</sup> Defendants. Consequently, the Plaintiff having failed to prove his title to plot CP50 Apo Layout in accordance with the established principles of law in the cases of ***IDUNDUN V OKUMAGBA (1976) 7 -10 SC page 244 at 227, ANI V EWO, (2004)1 SC (pt11) page 115 at 133 and EZUKWU V UKACHUKWU, (2000) 1 NWLR (pt 642)page 657 at 679***, the suit of the Plaintiff failed and he is not entitled to the reliefs or declarations sought. Accordingly, the claims of the Plaintiff and the entire suit is hereby dismissed.

---

**HON. JUSTICE D.Z. SENCHI  
(PRESIDING JUDGE)  
21/01/2020**

Parties:- Absent.

C.U Onyeukwu:-For the claimant

Dr.NnannaEwa:-For the 4<sup>th</sup> Defendant.

1<sup>st</sup> -3<sup>rd</sup> Defendants not represented by Counsel.

**Sign  
Judge  
21/01/2020**