

**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  
COURT CLERKS: – T. P. SALLAH & ORS**

**COURT NUMBER: 13**

**DATE: 11/02/2020**

**FCT/HC/CV/3068/2015**

**BETWEEN:**

**CORPORATE IDEAL PROPERTY LTD-----**

**PLAINTIFF**

**AND**

**1. ALHAJI ALI MODU SHERIFF**

**2. HON. MINISTER, FCT**

**3. DEPARTMENT OF DEVELOPMENT CONTROL,**

**FEDERAL CAPITAL DEVELOPMENT AUTHORITY**

**DEFENDANTS**

**JUDGMENT**

By the amended statement of claim, the Plaintiff claims against the Defendants as follows:-

- a. The sum of Hundred Million Naira (100,000,000.00)as general damages for trespass.
- b. The sum of Five Hundred Million Naira (N500,000,000.00)as exemplary damages for trespass.
- c. An order of perpetual injunction restraining the 1<sup>st</sup> Defendant and his agents, servants, privies and anybody claiming through him from committing any further act of trespass on the Plaintiff's property at plot 773,Cadastral Zone A08, Adetokunbo Ademola Crescent, Wuse II, Abuja FCT.

d. An order compelling the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants to remove and demolish the fence and other illegal structures on the Plaintiff property at plot 773, Cadastral Zone A08, , Adetokunbo Ademola Crescent, Wuse II, Abuja FCT.

By the order of this Court granted on 17<sup>th</sup> December, 2015 the 1<sup>st</sup> Defendant was served with the processes in this suit by substituted service. On 19<sup>th</sup> January, 2016 the Court Bailiff deposed to an affidavit of service as having served the 1<sup>st</sup> Defendant with the writ of summons, statement of claim and other Court processes by pasting on the wall of a building premises known as plot 1201 Cadastral Zone A03 Wuse II, Abuja. Subsequently, on the 26<sup>th</sup> March, 2018 the 1<sup>st</sup> Defendant filed his statement of defence. The 2<sup>nd</sup> and 3<sup>rd</sup> Defendants by the order of this Court granted on 17<sup>th</sup> October, 2017 filed their statement of defence out of time. The Plaintiff filed a reply to the 1<sup>st</sup> Defendant's statement of defence out of time.

Pleadings having been duly filed and exchanged between the parties, on the 17<sup>th</sup> October, 2017, the Plaintiff commenced trial by calling three witnesses that testified on its behalf.

PW1 was one Aphonsus Oshole and he adopted his witness statement on oath deposed to on 12<sup>th</sup> May, 2016. Exhibit 1, the certified true copy of the judgment of the Court of Appeal and exhibit 2 the topographical survey plan of plot 773, A03, Wuse, II Abuja were admitted in evidence through PW1. Charles Uzodinma, a photographer testified as PW2 on the 27<sup>th</sup> March, 2018. He adopted his witness statement on oath as his evidence in this case. The certificate of compliance with section 84 of the Evidence Act and three (3) photographs were received through PW2 as exhibits 3, 4(a)-4(c) respectively. The Plaintiff's third witness, PW3, Tondu John an Estate Surveyor

testified on 21<sup>st</sup> March, 2019. He adopted his witness statement on oath as his evidence in this suit. The witness statement on oath was deposed to on 25<sup>th</sup> June, 2018. The survey plans of plot 1211 drawn by PW3 were adopted in evidence as exhibit 5 and 5 (a) respectively.

All the three (3) witnesses called by the Plaintiff were cross examined by the Defendants Counsel. At the close of evidence by the Plaintiff, the two sets of Defendants called a witness each in support of their respective defence.

DW1, Kamal Sani Bello testified on behalf of the 1<sup>st</sup> Defendant. DW1 adopted his witness statement on oath deposed to on 26<sup>th</sup> March, 2018 as his evidence in this suit. The letter of parks and recreation Department dated 28<sup>th</sup> July, 2011 was received in evidence as exhibit 6.

DW2, Hannatu Elizah on the otherhand testified on behalf of the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants. Her statement on oath deposed to on 9<sup>th</sup> June, 2017 was adopted by as her evidence in this suit. Exhibits 8, 8(a), 8 (b) and 9 were admitted in evidence through DW2 on behalf of the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants.

After DWs 1 and 2 had proffered their testimonies they were cross- examined by the Plaintiff's Counsel.

The brief facts and evidence of the Plaintiff's case is that it is the legal owner, occupier and holder of a Right of Occupancy over the property known as plot 773 Cadastral Zone A08, off Adetokunbo Ademola Crescent, Wuse II, Abuja. According to the Plaintiff, the legal ownership of Plot 773 Cadastral Zone A08 was confirmed by the Court of Appeal judgment delivered on 13<sup>th</sup> August, 2014. The certified true copy of the Court of Appeal judgment is exhibit 1.

The Plaintiff avers that it has been in possession of the property at all material times. The Plaintiff avers further that the 1<sup>st</sup> Defendant, a former Governor of Borno State is the occupier of the adjacent landed property known as plot 1201 Cadastral Zone AO8, Wuse II, Abuja. The topographic survey is admitted in evidence as exhibit 2.

At paragraphs 7-12 of the amended statement of claim, the Plaintiff avers that despite the judgment of the Court of Appeal, exhibit 1, the 1<sup>st</sup> Defendant encroached on the Plaintiff's property by erecting a fence on the Plaintiff's property wherein enclosing a portion of land consisting of about 1000 square meters and that the 1<sup>st</sup> Defendant is constructing structures on the encroached portion of land of the Plaintiff. The photographs of the encroached portion of the land were admitted in evidence as exhibits 4(a), 4(b) and 4(c) respectively.

In conclusion, the Plaintiff avers that despite exhibit 1 and its repeated appeals to the 1<sup>st</sup> Defendant to desist from such encroachment the 1<sup>st</sup> Defendant turned deaf ears, hence the Plaintiff claims the reliefs at paragraphs 13(a) – (d) of the amended statement of claim against the Defendants.

The 1<sup>st</sup> Defendant as I said earlier, called one Kamal SaniBello, DW1 who testified on its behalf. The brief facts and evidence presented by the 1<sup>st</sup> Defendant is that this suit is incompetent and the particulars of objection were set out at paragraph 1 of the 1<sup>st</sup> Defendant's statement of defence to the effect that the suit is caught up by action estoppel in that the suit has been laid to rest by the Court of Appeal in CA/A/445/2013.

At paragraphs 4-9 of the 1<sup>st</sup> Defendant statement of defence, it avers that the status of the Plaintiff as the owner of plot 1201 Cadastral Zone Ao8, Off AdetokunboAdemola Crescent, Wuse2

Abuja has nothing to do with the 1<sup>st</sup> Defendant as they have not at any point shared common interest on the said property and he never trespassed on the Plaintiff's plot. According to the 1<sup>st</sup> Defendant he is not only the occupier of plot 1201 Cadastral Zone Ao8 Off Adetokunbo Ademola Crescent Wuse II, Abuja but beneficial owner of same and all appurtenances based on the survey plan and allocation documents issued to him without interference. Exhibit 6 was tendered in evidence through DW1 which according to him was granted to the 1<sup>st</sup> Defendant by Parks and Recreation Department on 28<sup>th</sup> July, 2011. The 1<sup>st</sup> Defendant avers that he did not encroach on the Plaintiff's plot but that he is the statutory owner of plot 1201 Cadastral Zone Ao8 and he was put in possession of same long before the issues now settled in suit no. CA/A/445/2013 arose.

The 1<sup>st</sup> Defendant then stated that he did not harass or cause any harm to the Plaintiff that warrant the loss of the property of the Plaintiff.

The 2<sup>nd</sup> and 3<sup>rd</sup> Defendants called DW2, Hannatu Elizah who testified on their behalf. At paragraphs 7-13 of their statement of defence, they aver that the statutory responsibilities for the administration of the Federal Capital Territory Abuja including allocation of lands and registration of titles in the FCT as well as Rules and regulations guiding same is vested on the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants.

The 2<sup>nd</sup> and 3<sup>rd</sup> Defendants averred that the 1<sup>st</sup> Defendant was allocated plot 1211 Cadastral Zone Ao8, Wuse II, Abuja measuring approximately 1,441.03 square meters. The allocation to the 1<sup>st</sup> Defendant by the 2<sup>nd</sup> Defendant is received in evidence as exhibit 7. The 2<sup>nd</sup> and 3<sup>rd</sup> Defendants further aver that the Plaintiff was allocated plots 1007 and 773

Cadastral Zone Ao8 Wuse II, Abuja which grant was confirmed by the Court of Appeal in suit No. CA/A/445/2013. The 2<sup>nd</sup> and 3<sup>rd</sup> Defendants then contended that plot 773 Cadastral Zone Ao8 WuseII, Abuja is adjacent to plot 1211 Cadastral Zone Ao8 and by the inspection carried out of the plots, it revealed and showed that there was encroachment of plot 773 by plot 1211 Cadastral Zone Ao8 Wuse II, Abuja. The 2<sup>nd</sup> and 3<sup>rd</sup> Defendants tendered in evidence through DW2 the satellite imagery and the survey plan/ report and sketch showing the extent of encroachment as exhibits 8 and 8(a) respectively.

The 2<sup>nd</sup> and 3<sup>rd</sup> Defendants further aver at paragraph 14 of their statement of defence that though the 1<sup>st</sup> Defendant applied for extension, the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants did not grant approval to the extension applied by the 1<sup>st</sup> Defendant. The certified true copies of application for extension of plot 1211 Cadastral Zone AO8 Wuse II, Abuja was admitted in evidence as exhibit 9.

Having considered the brief facts and evidence of the Plaintiff and the two (2) sets of Defendants, pursuant to the order of Court granted on 9<sup>th</sup> April, 2019 that parties should file their respective final written address the Plaintiff in her final written address, after a brief introduction of the reliefs sought by the Plaintiff, also briefly x-ray the evidence of the Plaintiff, in support as well as the cases of the 1<sup>st</sup> , 2<sup>nd</sup> and 3<sup>rd</sup> Defendants and the evidence called in this case. The Plaintiff's Counsel then nominated the following issues for determination:-

- (1) Whether having regards to the state of pleadings and the position of extant laws, the reliefs claimed by the Plaintiff are not claimable and grantable in trespass.
- (2) Whether the Plaintiff's case disclosed a reasonable cause of action.

- (3) Whether on the preponderance of evidence before this Honourable Court the Plaintiff has not established a case of trespass into plot 773 Cadastral Zone AO8 Wuse II district, Abuja against the 1<sup>st</sup> Defendant.
- (4) Whether the trespass on plot 773 Cadastral Zone Ao8 WuseII District, Abuja is excused by law.

### **ISSUE ONE**

The Plaintiff's Counsel refers me to pages 5-7 paragraphs 4.0-4.11 of the 1<sup>st</sup> Defendant's Counsel final written address wherein he submitted that the suit of the Plaintiff is incompetent for "submitting reliefs and or reliefs irreconcilable with the pleadings and the case presented by the Plaintiff."

Learned Counsel submitted that the reliefs claimed by the Plaintiff are consistent with the state of the Pleadings. He relied and referred me to relevant paragraph of the amended statement of claim and his reply to the 1<sup>st</sup> Defendant's statement of defence.

Learned Counsel for the Plaintiff submitted that the claim by the Plaintiff are damages and injunction which are consistent with the facts pleaded. He contended that trespass is an action in tort and he relied on *CLERKS & LINDSELL ON TORT 15<sup>TH</sup> EDITION PAGE 110 PARAGRAPHS 22-08 thus:-*

*" Trespass is actionable at the suit of the person in possession on the land who can claim damages or injunction or both."*

He stated that under the case law, the remedies for action in trespass are usually damages and injunction. He therefore contended that the cases cited by the 1<sup>st</sup> Defendant's Counsel are not applicable as the cases did not decide that declaratory relief must be claimed in trespass. He then submitted that declaratory relief can only be claimed where ownership of property is in issue

along with trespass and that in the instant case, the claim is only for trespass to the exclusion of title. He relied on the case of ***UFOMBA V AUCHAOGU (2003) 8 NWLR (pt821) page 130 at 149.***

In conclusion, learned Counsel for the Plaintiff urged me to resolve issue one in favour of the Plaintiff.

## **ISSUE TWO**

The learned Counsel to the Plaintiff referred me to pages 7-15 paragraphs 5.0-5.20 of the final written address of the 1<sup>st</sup> Defendant's Counsel wherein he submitted that there is no cause of action disclosed by the Plaintiff in this suit to entitle it to the reliefs claimed.

The Plaintiff's Counsel submitted at paragraphs 8.2- 8.6 of his final address submitted to the effect that it is the pleadings of the Plaintiff that determines the jurisdiction of the Court. He relied on the case of ***ASSOCIATED DISCOUNT HOUSES LTD V AMALGAMATED TRUSTEES LTD (2006) 10 NWLR (pt989)page 635 at 650.***

Plaintiff's Counsel referred me to paragraph 1 of the statement of claim and submitted that in determining whether a case discloses a reasonable cause of action, the Court is to look at the statement of claim whether facts relevant to the Plaintiff's claim has been pleaded. He cited the case of ***A.G LAGOS STATE V EKO HOTELS LTD, (2006)18 NWLR (pt1011) page 378 at 439.***

Counsel to the Plaintiff then referred me to paragraphs 1,2,3,7,8,9 and 11 of the amended statement of claim and paragraph 2 of the reply to the 1<sup>st</sup> Defendant's statement of defence.



### **ISSUE THREE**

At paragraphs 9.2-9.11 of the final written address of the Plaintiff, learned Counsel submitted that the evidence before the Court established the fact of encroachment of plot 773 Cadastral Zone A08 Wuse 2, Abuja. Learned Counsel referred me to the testimonies of PWs 2,3 and DW2 as well as exhibits 1,2,3,4,5(a) 5(b), 7, 8(a) and 8 (b) and then contended that encroachment has been established. Thus, based on the testimonies of PWs 2,3 and DW2 that were unchallenged by the 1<sup>st</sup> Defendant, Counsel urged me to resolve issue number three in favour of the Plaintiff.

### **ISSUE FOUR**

On this issue for determination, at paragraphs 10.2-10.4 of the Plaintiff's final written address, learned Counsel submitted that the judgment of the Court of Appeal, exhibit 1 is binding and enforceable against the Defendants on two grounds. According to Counsel, the judgment, exhibit 1 is a judgment in rem affecting interest in land and therefore binding on the whole world including the Defendants herein. He relied on the case of ***OGBAHAN V REGD TRUSTEES LLL (2002)1 NWLR (pt749) page 675 at 710.***

Secondly learned Counsel submitted that the judgment is binding on the 2<sup>nd</sup> Defendant as a party in exhibit 1 and on the 1<sup>st</sup> Defendant being a privy of the 2<sup>nd</sup> Defendant who was a party to the judgment. He relied on the case of ***OKE V ATOLOYE (1986) 1 NWLR (pt15)page 241***

At paragraphs 10.5-10.11 of the final written address of the Plaintiff, learned Counsel submitted to the effect that DW1 tendered in evidence exhibit 6, a letter dated 28<sup>th</sup> July, 2011 written by Parks and Recreation Department of Abuja Metropolitan Management Council to the effect that the

1<sup>st</sup> Defendant was given permission to use plot 773 B Wuse 2 District as green area.

Learned Counsel contended that the Director of Parks and Recreation Department who conveyed the permission to the 1<sup>st</sup> Defendant does not have such power to do so. He relied on the evidence of DW2 to the effect that the Director does not have such power unless acting under the authority or direction of the 2<sup>nd</sup> Defendant i.e the Honourable Minister of the FCT. According to learned Counsel the letter exhibit 6 does not indicate that the Director acted on behalf of the 2<sup>nd</sup> Defendant and thus, the letter, exhibit 6 lacks evidential value and cannot excuse encroachment unto plot 773 by the 1<sup>st</sup> Defendant. Counsel relied on the case of ***DABO V ABDULLAHI (2005)7 NWLR (pt 923) page 181 at 212-213*** where the Court laid five (5) ways for probative value and appraisal of documents.

He also relied on the case of ***NGENE V IGBO. (2000)4 NWLR (pt651) page 131 at 146-147.***

The learned Counsel to the Plaintiff also submitted that assuming without conceding that the Director has the power he contended that the act of constructing a fence across plot 773 is not what was authorized by exhibit 6. He relied on the testimony of DW2 to the effect that the act of encroachment of plot 773 does not have the approval of the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants.

Further, learned Counsel submitted that exhibit 6 is of no relevance because it, does not refer to plot 773 which is the plot in issue. He also contended that plot 773 B is not in existence on any of the survey plans exhibits 8 (a) and 8 (b).

In conclusion, learned Counsel urged me to resolve all the four issues in favour of the Plaintiff.

The 1<sup>st</sup> Defendant's Counsel by the order of this Court granted on 18<sup>th</sup> September, 2019 filed the 1<sup>st</sup> Defendant's final written address out of time. He equally filed a reply on points of law to the Plaintiff's final written address on 17<sup>th</sup> September, 2019.

In the final written address, the 1<sup>st</sup> Defendant's Counsel distilled the following issues for determination:-

- (a) Whether the suit is not incompetent for submitting reliefs and or reliefs irreconcilable with the pleadings and case presented by the Plaintiff.
- (b) Whether there is a cause of action in this suit to avail the Plaintiff to be granted her reliefs.
- (c) Whether from the facts and evidence led by the Plaintiff before this Honourable Court, there is in fact and indeed any proof of trespass against the 1<sup>st</sup> Defendant as alleged by the Plaintiff.
- (d) Whether from the totality of evidence adduced, the Plaintiff has discharged the onus of proof placed on him as per the declaratory reliefs expected to be sought in a claim on trespass to be entitled to the reliefs sought.

### **ISSUE ONE**

At paragraphs 4.3 -4.7 of the 1<sup>st</sup> Defendant's final written address, learned Counsel to the 1<sup>st</sup> Defendant refers to paragraphs 1,2,3,7,8,9,11 and 12 of the statement of claim and then submitted to the effect that it is only after evaluation of evidence of witnesses that the land belongs exclusively to the Plaintiff that the Court will be in a position to pronounce on the entitlement of the Plaintiff's damages for trespass. He relied on the case of ***AKOLEDOWO V OJUBULU, (2012) 16 NWLR (pt1325) page 1 at 23.***

Learned Counsel posits that it is only when the Plaintiff, by the evidence adduced before the Court, the Court has declared the 1<sup>st</sup> Defendant's act as trespass then the relief for damages would follow and then grantable. He then submitted that in the instant case there is no declaratory claim that the 1<sup>st</sup> Defendant trespass on the plot of the Plaintiff and consequently the ancillary reliefs would now follow and be grantable.

He therefore contended that where a principal relief is absent, then the Court cannot grant same as the Court is not a father Christmas as the Court has no jurisdiction to grant the relief sought. He relied on the cases of **AYOADE V SPRING BANK, (2014) 4 NWLR (pt93)at 132, DUMEZ (NIG) LTD V NWAZKHOB, (2008) 18 NWLR (pt1119) page 361 at 366.**

Thus, Counsel submitted that where a Court refuses a principal relief or has no power over a principal relief, it cannot grant the incidental or ancillary reliefs. He relied on the cases of **HENSIAM (NIG) LTD V PETROTECH (NIG) LTD (1993) 3 NWLR (pt283) page 548 at 553-554, AKAPO V HAKEEM HABEEB, (1992)6 NWLR (pt 242) page 260 at 296-297 and 304.**

At paragraphs 5.2 of the 1<sup>st</sup> Defendant's final written address, the Counsel contended that there are no issues whatsoever between the 1<sup>st</sup> Defendant and the Plaintiff as the Plaintiff only claimed plot 733 and not any other. According to Counsel that the 1<sup>st</sup> Defendant has no business whatsoever with the said plot 773 as the 1<sup>st</sup> Defendant only occupies plot 773B as the allottee and beneficial owner of plot 773B, a green area allocated to it by Department of Parks and Recreation.

At paragraphs 5.3- 5.7 of the final written address of the 1<sup>st</sup> Defendant, Counsel submitted to the effect that the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants whose office is primarily created to allocate property did not at all deny this position while defending suit. Counsel also

stated that the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants even revealed before the Court that they do not have power over allocation like plot 773 B which is a green area. He therefore submitted that there is no cause of action on between the parties on record. He then refers to exhibit 6 the evidence of allocation of plot 773B to the 1<sup>st</sup> Defendant and he also refers to the evidence of PW1 under cross examination that by exhibit 4, the Court of Appeal declared the Plaintiff as owner of Plot 1007 and 773 respectively. Counsel equally refers to the evidence of DW2 under cross examination to the effect that neither the Plaintiff nor the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants has the power to grant approval or revoke an approval for the use and maintenance of green areas.

Then at paragraphs 5.10 – 5.14 of the final written address on behalf of the 1<sup>st</sup> Defendant, learned Counsel submitted to the effect that the Plaintiff has no reasonable cause of action, and as to constitute reasonable cause of action he cited plethora of judicial decisions to the effect that a cause of action is the bundle or aggregate of facts which the law will recognize as giving the Plaintiff as substantive right to make a claim for the relief or remedy sought.

The 1<sup>st</sup> Defendant's Counsel adopted his arguments of issues 3 on issues number two. I will therefore proceed to consider issue four (4).

The 1<sup>st</sup> Defendant's Counsel submitted on this issue that the case of the Plaintiff is solely based on trespass and consequent upon which he is seeking for damages. He then contended that trespass is actionable tort, but it requires the Court to determine and declare whether in practical sense there is trespass and it is upon determination of whether or not there is trespass that Court will now take further steps as to whether or not to award damages.

In conclusion, learned Counsel urged me to resolve the four issues for determination in favour of the 1<sup>st</sup> Defendant and accordingly dismiss the suit of the Plaintiff for lacking in merit.

As I said earlier, the 1<sup>st</sup> Defendant's Counsel filed a reply on points of law to the Plaintiff's final written address. I will therefore refer to the reply on points of law where necessary.

Now before I proceed to resolve and determine the issues in contention in this suit, I must of necessity consider the processes filed by each party in the instant suit.

Firstly, the Plaintiff commenced or filed his originating processes in this suit on 22<sup>nd</sup> October, 2015. From the proof of service filed by the Court bailiff together with the affidavit of service, the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants were served on 21<sup>st</sup> December, 2015. Then the 2<sup>nd</sup> and 3<sup>rd</sup> Defendant on the 6<sup>th</sup> June, 2017 filed a motion on notice for an order extending time to the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants to file their statement of defence out of time. The application of the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants was granted on 17<sup>th</sup> October, 2017.

On the otherhand, the 1<sup>st</sup> Defendant was served with the originating processes in this suit by substituted service by pasting on the wall of the building known as plot 1201 Cadastral Zone Ao8 Wuse 2, Abuja granted on 17<sup>th</sup> December, 2015. A hearing notice was equally issued and served on the 1<sup>st</sup> Defendant. The duplicate copy of the hearing notice and the certificate of service of the Court Bailiff were both filed in Court as evidence of service on the 1<sup>st</sup> Defendant. By the proof of service on the 1<sup>st</sup> Defendant filed in Court, the 1<sup>st</sup> Defendant was served on 19<sup>th</sup> January, 2016. However, the 1<sup>st</sup> Defendant filed his statement of defence on 26<sup>th</sup> March, 2018, two years after the service of the originating processes in this suit. Equally, the 1<sup>st</sup> Defendant never filed any application for extension of time to file his statement of defence out of time. In otherwords, the 1<sup>st</sup> Defendant did not adduce any

reason (s) why he failed to file his statement of defence as prescribed by the Rules of this Court.

The second observation I must make in the course of writing this judgment is in respect of the submission of the 1<sup>st</sup> Defendant's Counsel at paragraph 1.5 of his final written address where he stated thus:-

*"By an amended statement of defence granted by the order of Court, the 1<sup>st</sup> Defendant raised three grounds of preliminary objection incorporated on the face of the statement of defence asking the Court to dismiss or strike out the suit of the Plaintiff for being incompetent"*

From the records and perusal of the proceedings in this case there was no time the 1<sup>st</sup> Defendant ever filed an application for amendment of his statement of defence. Such a mysterious application was neither filed, heard or granted as submitted by the learned Counsel to the 1<sup>st</sup> Defendant. The Counsel to the 1<sup>st</sup> Defendant even from his submission stated that the amended statement of defence granted by the order of the Court without stating the date when the order was granted. Hence, such an order only exist in the imagination of the 1<sup>st</sup> Defendant's Counsel.

Further, by the records and or proceedings of this case, on the 18<sup>th</sup> September, 2019, the 1<sup>st</sup> Defendant's Counsel Alex Akoja informed the Court that that he has a motion on notice to file their final written address out of time and that the motion on notice is dated and filed on the 10<sup>th</sup> May, 2019. The Plaintiff's Counsel acknowledged the motion on notice and that he has been served. I then granted the application on 18<sup>th</sup> September, 2019. However, in the course of writing the instant judgment, no such motion dated and filed on 10<sup>th</sup> May, 2019 was brought to the notice of this Court. In other words, Mr. Alex Akoja Esq filed and served the Plaintiff's Counsel but refused or failed to bring or

submit a copy of the motion to this Court. Thus on the 5<sup>th</sup> February, 2010, I ordered the Registrar of this Court to bring to the notice of Counsel to the 1<sup>st</sup> Defendant that both the purported motion filed on 10<sup>th</sup> May, 2019 and the final written address are not before the Court. Subsequently, the Counsel on the 6<sup>th</sup> February, 2020 made available to the Court his final written address but he refused or failed to produce to the Court the purported motion on notice he claimed to have filed on 10<sup>th</sup> May, 2019.

Having said the above, considering the attitude of Counsel to the 1<sup>st</sup> defendant, Mr. Alex Akoja Esq, all the processes he has filed in this instant suit were filed out of time and there is no single application before this Court for enlargement of time to file out of time.

In any event, applications or motions of such nature to regularize a process or an act, though discretionary upon good reasons(s) shown, if I should consider the fact that Mr. Alex Akoja Esq, Counsel to the 1<sup>st</sup> Defendant is chosen by his client to act and conduct his client's case in a manner befitting his professional competence and ability and further Alex Akoja Esq who is in law, the dominis-litis in the conduct of the instant case, I would have thrown away all processes filed by him in this case. However, doing so would not meet the interest of justice especially as it affects his client, the 1<sup>st</sup> Defendant.

On record, although the 1<sup>st</sup> Defendant did not regularize his processes, the Plaintiff has however responded to same thereby joining issues. And the law is that once a defence has been filed, the Court must consider it before delivering its judgment, it cannot turn a blind eye to it even if it was filed out of time. See ***SENATOR MOHAMMED MANA V PDP & ORS, (2011)LPELR 19754 (CA) BUHARI V OBASANJO, U.B.A. V NWORAH,***



**(1978) 2 LRN 149 and MR. ADEJOLA ADEPOJU ADEBOWALE  
V MR. DUROJAIYE SEGUN ROBINSON (2018)LPELR (CA).**

In the instant case all the processes filed by the 1<sup>st</sup> Defendant i.e statement of defence, final written address and the reply to the Plaintiff's final written address, in the interest of justice are hereby deemed as properly filed and served, appropriate fees and penalty having been paid as prescribed by the rules.

To resolve and determine the issues in this suit, I will and I hereby adopt issue (c) as formulated by the 1<sup>st</sup> Defendant's Counsel thus:-

*"Whether from the facts and evidence led by the Plaintiff before this Honourable Court, there is in fact and indeed any proof of trespass against the 1<sup>st</sup> Defendant as alleged by the Plaintiff."*

However, before I consider the issues nominated for determination, the 1<sup>st</sup> Defendant at paragraph 1 of his statement of defence raised preliminary objection to the competence of this suit in that:-

- (a) The Suit is caught up by action estoppel
- (b) The suit constitutes an abuse of process of this Honourable Court the matter having been laid to rest by the Court of Appeal in CA/A/445/13.
- (c) No cause of action has been disclosed against the 1<sup>st</sup> Defendant.

The Plaintiff at paragraphs 1(a) –(c) of his reply to the 1<sup>st</sup> Defendant's preliminary objection raised in his statement of defence joined issues with the 1<sup>st</sup> Defendant as regards the competence of the instant suit.

To determine the preliminary objection raised in the 1<sup>st</sup> Defendant's statement of defence, firstly, it is important to understand the subject matter of the objection and issues (a) and (c) can be married or merged together and same resolve. In other words, when does cause of action estoppel arise? In the case of **MACKSON IKENI & ANOR V CHIEF WILLIAM AKUMA EFAMO & ORS, (2001) LPELR 1474**, the supreme Court held thus:-

*" For cause of action estoppel to arise, the cause of action in the latter proceedings must be identical with the cause of action in the earlier proceedings. When a defence of cause of action estoppel is raised, the defence connotes that the legal rights and obligations of the parties in respect of the subject matter of the action are conclusively determined by the earlier action. Cause of action estoppel requires identity not only of subject matter but also of parties and issues in the latter and earlier proceedings"*

In the instant case, does the cause of action in suit no. CA/A/445/2013 same as the cause of action in the present suit no. FCT/HC/CV/3068/18?

By the pleadings of the Plaintiff in his amended statement of claim the cause of action in the instant suit is not the same with the judgment of the Court of Appeal, exhibit 1. And this leads me to comment on the distinction between cause of action estoppel and issue estoppel. In the case of **OKAFOR ADONE V OZO GABRIEL IKEBUDU & ORS (2001) LPELR 191**, the supreme Court held:-

*"The distinction between cause of action estoppel and issue estoppel is long standing and has been pronounced upon in several cases coming before this*

*Court. Both are regarded as specie of the doctrine of res-judicata. In UKAEGBU&ORS V UGOJI & ORS (1991) 6 NWLR (pt196) page 127 at 168, Akpata JSC, stated the distinction between the two thus:- the classification of estoppels under estoppel by judgment is related to the purpose for which the judgment is used. If it is intended to be used to prevent another suit founded on the same cause of action as the original suit, the decision in the original action is said to constitute res judicata. If, on the otherhand, the subsequent proceedings are based on a different cause of action, issues estoppel can operate only to prevent certain issues which were decided in the original action from arising for further consideration by the Court."*

The first class of estoppel i.e cause of action estoppel as I said earlier does not arise in the instant case. And from the submissions of learned Counsel for the 1<sup>st</sup> Defendant at paragraphs 5.4- 5.9 of his Counsel's final address, appears to completely misunderstand the case of the Plaintiff. The 1<sup>st</sup> Defendant's Counsel contended that there is no cause of action between the parties i.e the Plaintiff and the 1<sup>st</sup> Defendant.

To determine the Plaintiff's cause of action the only process that the Court will look at is the originating process or statement of claim filed by the Plaintiff. In the case of **CBN V JUDGMENT BUREAU DECHANGE LTD (2017) LPELR 43274**, THE Court of Appeal held:-

*" The trite law is that a cause of action is determined by the claims of the Plaintiff in its pleadings or the originating summons and facts it support."*

The Supreme Court in the case of **MR. IRE MATHEW OWURU & ANOR V HON. AGI MICHAEL ADIGWU, (2017)LPELR 42763** held:-

*"I agree that it is the claim of the Plaintiff that determines the cause of action between the parties."*

Having understood how a cause of action or a reasonable cause of action is determined by reference to only the originating process or statement of claim of the Plaintiff, I must correct an erroneous submission and position of the 1<sup>st</sup> Defendant's Counsel when he refers to the statement of defence of the two (2) sets of Defendants and the evidence of witnesses and exhibit 6 to posit that there is no cause of action in this suit in that the 1<sup>st</sup> Defendant allocation is plot 773B.

This Honourable Court cannot refer or look at the pleadings or evidence adduced by the Defendants to determine a cause of action. In the cases of **BAKARE V N.R.C, (2007)17 NWLR (pt1064) page 606 ABUBAKAR V B.O & A.P LTD (2007) 18 NWLR (pt1066) page 319 and 7UP BOTTLING CO. V ABIOLA & SONS**, the Supreme Court held:-

*"In determining whether the Plaintiff's action discloses any cause of action, the Court will necessarily restrict itself to the Plaintiff's statement of claim without recourse to the Defendant's statement of defence. In necessarily restricting itself to the statement of claim, the Court is not obliged to consider seriatim all the averments that form the statement of claim. It is sufficient if the Court looks at same as whole and or refers to few averments that form the grave man of the claim."*

Arising from the above, a close look at paragraphs 1, 2,4,7,8 and 9 of the amended statement of claim the Plaintiff avers facts constituting or raising questions or issues for the determination of this Court. Especially at paragraphs 4,7,8 and 9 of the amended statement of claim the Plaintiff avers to the effect that the 1<sup>st</sup> Defendant is the occupier of plot 1201 Cadastral Zone AO8 Wuse II Abuja which plot is adjacent to the Plaintiff's Plot 773 and that the 1<sup>st</sup> Defendant encroached into plot 773 Cadastral Zone AO8Wuse II, Abuja and erected a fence and or constructing structures on the encroached portion of the Plaintiff's Plot. Thus, the claim of the Plaintiff is for general damages for trespass.

By the claim or averments of the Plaintiff at paragraphs 4,7,8,9 and 11 of the amended statement of claim I hold the view that the Plaintiff has disclosed a reasonable cause of action in the instant suit and I so hold.

The 1<sup>st</sup> Defendant's Counsel has at the beginning of the 1<sup>st</sup> Defendant's statement of claim raise the issue of action estoppel. I have held earlier that cause of action estoppel does not arise in the instant case. However, by exhibit 1, the judgment of the Court of Appeal in CA/A/445/2013, and by the averment of the Plaintiff at paragraphs 1,2,3,7 and 11 of the amended statement of claim, issue estoppel arise in this case. The reason is that the Court of Appeal in CA/A/445/2013 affirmed the Plaintiff as the lawful owner of plot 773 Cadastral Zone Ao8, Wuse II, Abuja, the subject of encroachment. In other words, by exhibit 1, the Plaintiff can enforce same against the instant Defendants or any other person(s), corporate or incorporate. And I hold the view that issue estoppel is establish and I so hold.

On whether the suit is not incompetent for submitting reliefs irreconcilable with the pleadings and case presented by the Plaintiff.

I have perused the submissions of learned Counsel for the 1<sup>st</sup> Defendant at paragraphs 4.2- 4.9 of his final address to the effect that the reliefs for N100,000,000.00 as general damages for trespass is incompetent in that the relief depends on the declaration that the act of the 1<sup>st</sup> Defendant constitutes trespass. In otherwords 1<sup>st</sup> Defendant's Counsel submitted that the reliefs claimed by the Plaintiff are ancillary reliefs that ought to depend on the principal reliefs if established i.e declaration that the act of the 1<sup>st</sup> Defendant constitute trespass.

Now in the instant case, the reliefs claimed by the Plaintiff in his amended statement of claim are :-

- (a) The sum of N100,000,000.00 as general damages for trespass;
- (b) The sum of N500,000,000.00 as exemplary damages for trespass;
- (c) An order of perpetual injunction restraining the 1<sup>st</sup> Defendant and his agents, servant, privies anybody claiming through him from committing any further act of trespass on the Plaintiff's property at plot 773, Cadastral Zone Ao8 Wuse II, Abuja.
- (d) An order compelling the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants to remove and demolish the fence and other illegal structures on the Plaintiff's property at plot 773 Cadastral Zone AO8 Wuse II, Abuja.

The above claims or reliefs are the reliefs learned Counsel to the 1<sup>st</sup> Defendant posits that they are ancillary reliefs, in which their grant would depend if the Plaintiff had asked for a declaration of the act of the 1<sup>st</sup> Defendant constituting trespass, being the principal relief, then the ancillary reliefs would follow.

Firstly, let me start by saying that the main function of pleadings is to ascertain with as much certainty as possible the various

matters that are in dispute between the parties and those in which there are agreement or which no issues have been joined, so as to avoid surprise by either party. Thus, in determining a matter, the Court is to consider the entire pleadings of parties as a whole and the evidence in support of same.

Then on the effect of a relief claimed that did not emanate from the pleaded facts in the parties pleadings, in the case of **MATHIAS UMEANOZIE V FIRST BANK OF NIGERIA PLC (2016) LPPPELR 41038**, the Court of Appeal held thus:-

*"It is the facts pleaded in the statement of claim that show entitlement to reliefs claimed therein. So unless there are facts pleaded in the statement of claim showing entitlement to a relief claimed therein, then the claim for that relief facts on the pleadings and does not qualify for trial."*

Further, in the case of **ALHAJI RABIU MUSA V ALHAJI MOHAMMED YAKUBU & ORS (2015) LPELR 40377**, the Court of Appeal stated:-

*"It is thus settled law that reliefs claimed in a case must relate to, arise from or be based on the facts set out in the party's pleadings, as the pleaded facts being the foundation from which the reliefs must be built or pegged without which foundation, the relief would have no legs t*

*o stand or no structure to be pegged upon, any relief claimed that does not find its root from the pleaded facts in the party's pleadings, cannot stand in law."*

See also **AMOSUN VINEC, (2010) LPELR 4943 (CA)**.

In the instant case, by paragraphs 1,3,4,7,8,9,10 and 11 of the amended statement of claim and paragraphs 2 (a) and (b) of the Plaintiff's reply to the 1<sup>st</sup> Defendant's statement of defence, the Plaintiff avers facts to the effect that it has been in possession of plot 773 Cadastral Zone AO8 Wuse II, Abuja and that the 1<sup>st</sup> Defendant is the lawful owner of adjacent plot 1211 Cadastral Zone Ao8 Wuse II, Abuja. The Plaintiff further avers that the 1<sup>st</sup> Defendant trespassed and encroached on plot 773 allocated to the Plaintiff and that the area trespassed and encroached in which the 1<sup>st</sup> Defendant erected structures to be 721. 547 square meters.

It is in view of the pleaded facts at paragraphs aforesaid in the amended statement of claim and reply of the Plaintiff to the 1<sup>st</sup> Defendant's statement of claim that she claims the sum of N100,000,000.00 as general damages for trespass. Thus, I am of the humble and considered view that the facts as pleaded by the Plaintiff gives rise to claim of N100,000,000.00 general damages for trespass and hence the relief is competent and I so hold.

I have gone through the cases cited by the 1<sup>st</sup> Defendant's Counsel to support his position at paragraphs 4.4-4.9 of his final written address. The cases i.e **AKOLEDOWO V OJUBUTU, AYOADE V SPRING BANK (SUPRA) DUMEZ (NIG) LTD V NNAZKHOB**A (*supra*) are not in all fours with the facts of this case and thus, not helpful to the 1<sup>st</sup> Defendant's Counsel.

In the same breadth, I have gone through the submissions of the Plaintiff's Counsel at paragraphs 7.5-7.8 of his final written address and his reliance on the case of **UFOMBA V AUCHAOGU, (supra)** to the effect that declaratory reliefs can only be claimed where ownership of property is in issue along with trespass. I have perused the facts of the case of **UFOMBA V AUCHAOGU. I** agree with position of the Plaintiff's Counsel. In that case, the



Supreme Court per Ogundare JSC (as he then was and of blessed memory) delivering the leading judgment held:-

“A claim for damages for trespass coupled with a claim for an injunction against trespass does not automatically put the title to the land in dispute.”

See the cases of **ADANI V IGWE (1957) 2FSC 87, AJAKA IZENKW & ORS V O. NNADOZIE (1953) 1`4 WACA 361.**

However, in the Supreme Court decision of **EGBULEFU ONYERO & ANOR V AUGUSTINE NWADIKE (2011)LPELR 8147**, the Court as per Ngwuta JSC held:-

“When a claim for damages for trespass is combined with a claim for injunction as in this case title to the land is in issue and the issue of title has to be resolved before the claim for damages for trespass and injunction could be determined.”

I have earlier held the view that exhibit 1 operates as issue estoppel. And in fact and indeed, there is no dispute as to the ownership of plot 773 Cadastral ZoneAo8 Wuse 2 Abuja belonging to the Plaintiff which had earlier been determined as regards title by the Court of Appeal. In any event issue of title is not the contention of the 1<sup>st</sup> Defendant as regards the reliefs claimed by the Plaintiff.

Thus, in view of the facts as pleaded by the Plaintiff in the amended statement of claim and reply to the 1<sup>st</sup> Defendant's defence and the evidence of Plaintiff's witnesses, DW2and exhibited documents I come to the conclusion that issues numbers 1 and 2 of the 1<sup>st</sup> Defendant are hereby resolved in favour of the Plaintiff and against the 1<sup>st</sup> Defendant. Equally issues numbers 1 and 2 of the Plaintiff are hereby resolved in his favour and against the 1<sup>st</sup> Defendant.

The next issue nominated for determination by the parties are issue no 3 of the Plaintiff as well as that of the 1<sup>st</sup> Defendant. Issue no 4 by the Plaintiff and that of the 1<sup>st</sup> Defendant can also be collapsed into issue number three earlier adopted by me for determination. I will therefore consider the remaining issues together. The 1<sup>st</sup> Defendant's issues nos 3 and 4 are:-

(3) Whether from the facts and evidence led by the Plaintiff before this Honourable Court, there is in fact and indeed any proof of trespass against the 1<sup>st</sup> Defendant as alleged by the Plaintiff.

(4) Whether from the totality of evidence adduced, the Plaintiff has discharged the onus of proof placed on him as per the declaratory reliefs expected to be sought in a claim on trespass to be entitled to the reliefs sought.

The above issues nos. 3 and 4 are closely identical or the same with the Plaintiff's Counsel issues nos 3 and 4. As I said I will consider them together and resolve as well.

The simple question to ask is whether there is indeed trespass by the 1<sup>st</sup> Defendant on plot 773 Cadastral Zone Ao8 Wuse II, Abuja. In the instant case both the Plaintiff and the 1<sup>st</sup> Defendant agreed and there is no dispute that the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants are responsible for the administration, control, management of land and governance of the Federal Capital Territory Abuja. Further, the Plaintiff and the 1<sup>st</sup> Defendant are not in dispute as to the powers of the 2<sup>nd</sup> Defendant in land management including power of allocation of land in the FCT pursuant to sections 1(3), and 18 of the FCT Act, the Land Use Act and the Constitution of the Federal Republic of Nigeria 1999 (as altered)

Having said the above, the Plaintiff at paragraphs 7, 8,9,10 and 11 of the amended statement of claim and paragraphs 2 (a) and

(b) of the reply to the 1<sup>st</sup> Defendant's statement of defence avers facts of encroachment or trespass by the 1<sup>st</sup> Defendant on his plot 773 Cadastral Zone Ao8 Adetokunbo Ademola Crescent, Wuse II, Abuja. The averments above are supported by the testimonies of PW1 at paragraphs 6-11 of his sworn testimony, and PW2, Charles Uzodinma at paragraphs 3 and 4 of his witness statement on oath deposed to on 5<sup>th</sup> December, 2017. PW3 also testify at paragraphs 2-8 of his sworn testimony deposed to on 25<sup>th</sup> June, 2018 and tendered survey drawings showing the extent of encroachment on the Plaintiff's plot 773. The Plaintiff in support of its pleadings also tendered exhibits 2, 3, 4 (a) 4 (c) as well as exhibits 5 and 5 (a).

The 1<sup>st</sup> Defendant in order to disprove encroachment of plot 773 of the Plaintiff called DW1 who adopted his witness statement on oath deposed to on 26<sup>th</sup> March, 2018 as his evidence. At paragraphs 6,7 and 9 of DW1's sworn testimony, he avers to the effect that the 1<sup>st</sup> Defendant is the statutory allottee of plot 1201 Cadastral Zone Ao8 and in possession of same and further, the 1<sup>st</sup> Defendant applied to the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants to acquire green area close to his plot delineated as Cadastral Ao8, plot 773 B Wuse II, District, Abuja and same was approved vide exhibit 6. DW1 also avers that the 1<sup>st</sup> Defendant did not encroach on the Plaintiff's Plot. The testimony of DW1 in his sworn testimony supports paragraphs 4-7 of the 1<sup>st</sup> Defendant's statement of defence.

In a nutshell, the above is the evidence of both the Plaintiff and the 1<sup>st</sup> Defendant in support of their respective cases. Thus, on the preponderance of evidence, where does the pendulum tilt?

Under cross examination by the 1<sup>st</sup> Defendant's Counsel, PW3, the surveyor who authors exhibits 5 and 5 (a) states as follows:-

*"The Survey Department of FCT are the statutory body to determine encroachment."*

The Plaintiff has on the 2<sup>nd</sup> March, 2018 applied for issuance of a subpoena duces tecum testificandum on one Mrs. Hannatu Elizah of the 3<sup>rd</sup> Defendant's survey and mapping. The Honourable Court on 6<sup>th</sup> March, 2018 issued the subpoena to be served on the said witness. However, it appears the Plaintiff abandoned the said Mrs. Hannatu Elizah as her witness and the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants called her as DW2. DW2 adopted her witness statement on oath deposed to on 9<sup>th</sup> June, 2017 as her evidence on behalf of the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants. At paragraphs 12, 13 and 14 of the evidence of DW2 she testified that plot 773 Cadastral Zone Ao8 Wuse II Abuja is adjacent to plot 1211 Cadastral Zone Ao8 Wuse II, Abuja. Exhibits 8, 8(a) and 8 (b) certified true copies of site plan and satellite imagery tendered by DW2 showed that there was encroachment of plot 773 by Plot 1211, Cadastral Zone Ao8 Wuse II, Abuja.

The evidence of DW2, a surveyor of the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants whose responsibility includes administration, management, Governance and allocation of land clearly supports the case of the Plaintiff that plot 1211 of the 1<sup>st</sup> Defendant has encroached on plot 773 of the Plaintiff. Exhibit 8, the site plan clearly shows the delineation by beacons and its co-ordinates of plot 773 and plot 1211 while exhibit 8 (a), the site plan indicates and clearly established the encroached area, which plot 1211 extended into plot 773. Further, by exhibit 8 (b), the satellite images showing the existing structures, the plot of the Plaintiff 773 is shown by red ink marking while plot 1211 is shown by black ink lines and the erected structures can be seen on plot 773 carried out by the 1<sup>st</sup> Defendant as extension of plot 1211.

Apart from exhibits 8, 8 (a) and 8(b) of the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants, the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants being the custodian of records of transaction as regards Administration management, Governance and allocation of land in the FCT tendered exhibits 7 and 9. Exhibit 7 is the certified true Copy of the certificate of occupancy granted by the 2<sup>nd</sup> Defendant to the 1<sup>st</sup> Defendant in respect of plot 1211 with an attached site plan showing its beacons and co-ordinates. Exhibit 9 is the application of the 1<sup>st</sup> Defendant to the Director, Department of Urban and Regional Planning for extension of plot 1211 and attached to the application is a duly completed Federal Capital Development Authority application form for the said extension. At paragraph 11 of DW2' witness statement on oath, she testified that the encroachment was without the consent or knowledge of the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants.

Under cross examination by the Plaintiff's Counsel, DW2 testified as follows:-

"I only know of plot 1211 and 773. Plot 773 was the one granted to the Plaintiff. Plot 1211 was granted to the 1<sup>st</sup> Defendant. The two plots are adjacent to each other. I have visited the two plots to determine whether there was encroachment. I made a finding of my visit to the two plots. My findings showed that there was encroachment on plot 773 by plot 1211. The size of the encroachment is 721 square metres. The encroachment was done by erecting a fence on 773. The fence erected is inside plot 773"

DW2 further testified under cross examination thus: "The 1<sup>st</sup> Defendant applied for extension of his plot. The extension applied for by the 1<sup>st</sup> Defendant was not granted by the urban and Regional Planning."

The testimony of DW2 under cross examination supports the case of the Plaintiff that the 1<sup>st</sup> Defendant trespassed on plot 733 Cadastral Zone Ao8 Wuse 2, Abuja belonging to the Plaintiff and erected structures therein without the consent of the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants especially, the Urban and Regional planning department of the 3<sup>rd</sup> Defendant that is vested with statutory responsibilities to approve or regulate building plans approval.

Now looking at the elicited evidence from DW2 under cross examination, it clearly supports the Plaintiff's pleadings. And the law is firmly stated in the case of **ISRAEL PIUS V THE STATE, (2015) LPELR 24446**, the Supreme Court held:-

"Evidence elicited during cross examination, if it relates to a fact in issue, has the same probative value, and is as valid and authentic, as evidence elicited during examination in- chief". See also **GAJI V PAYE, (2003) 8 NWLR (pt823) page 583 and DAGGASH V BULUMA (2004) 14 NWLR (pt 892) page 114.**

On the contrary, a close perusal of the evidence in – chief of DW1 and the answers elicited from him during cross examination, it appears the 1<sup>st</sup> Defendant's witness, DW1 is not abreast with the facts or evidence of the case of the 1<sup>st</sup> Defendant. In his evidence in- chief at paragraphs 1,5 and 9 he is consistent that the 1<sup>st</sup> Defendant's plot is plot 1201 Cadastral Zone AO8, Off AdetokunboAdemola Crescent Wuse II Abuja. And that is the case as presented by the 1<sup>st</sup> Defendant in his pleading especially paragraphs 4 and 9 of his statement of defence. However, during cross examination by the Counsel to the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants. DW1 at one breadth testified thus:-

"Plot no 773 was allocated to the 1<sup>st</sup> Defendant."

Then when DW1 was confronted with exhibit 6 by the Counsel to the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants, he answered as follows:-

*"The plot covered by exhibit 6 is 773B. No, there is no plot allocated to the 1<sup>st</sup> Defendant apart from 773B. I can see exhibit 6. Exhibit 6 is an allocation."*

Then DW1 also testified under cross examination that he stands by his paragraphs of his witness statement on oath which is to the effect that the 1<sup>st</sup> Defendant is the occupier and beneficial owner of plot 1201 Cadastral Zone Ao8 Abuja.

Apart from the above confusion in the testimony of DW1 and his apparent contradiction the Counsel to the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants during cross examination also elicited the following testimony from DW1:-

*"The 1<sup>st</sup> Defendant has one allocation and we requested for a green area which was conveyed to us by exhibit 6. The 1<sup>st</sup> defendant definitely has an allocation of plot 1201. I don't know the size of plot 1201. Plot 773 B is not among the Plot originally allocated to the 1<sup>st</sup> Defendant. I am not aware that the Plaintiff applied for extension. I am not aware also that the 1<sup>st</sup> Defendant has the right to extend the size of his original plot allocated to him."*

DW1 also testified during cross examination thus:-

*"The approval granted vide exhibit 6 is to maintain the green area."*

Finally, DW1 testified under cross examination by Counsel to the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants as follows:-

"I am not aware that the 2<sup>nd</sup> Defendant's approval for plot 1201 includes plot 773 B. I am aware the 2<sup>nd</sup> Defendant granted plot 1201 to the 1<sup>st</sup> Defendant." The Plaintiff's Counsel during cross examination of DW1, DW1 testified to the effect that in exhibit 6,

the plot number is 1211 while in paragraph 1 of his witness statement on oath he referred to it as plot 1201. DW1 also testified that the Plaintiff was allocated plot 773 and when shown exhibits 5 and 5a, he identifies exhibit 5 as containing plot 773 while exhibit 5 (a) has the 1<sup>st</sup> Defendant's plot 1211 and that he cannot see plot 1201 on exhibit 5(a)

The evidence of DW1 in his sworn testimony and his oral testimonies under cross examination in open Court is replete with his lack of knowledge of the facts of the subject matter and inconsistency. In the case of **ANNAMAECHE V THE STATE, (2016) LPELR 40977**, the Court of Appeal held thus:-

*"The learned Counsel was also on very firm pedestal when he cited **Nwodo v the state, (1991)4 NWLR (pt185)page 341 at 345**; where the Court decided that when a witness is shown to have made a previous statement as in this case inconsistent with the evidence given by that witness at the trial, the trial judge should not merely reject the evidence given at the trial as being unreliable, but that the judge should also hold that the previous one whether sworn or unsworn, does not constitute credible evidence which can acted upon."*

I am not unmindful of the fact that minor inconsistency between a previous written statement and subsequent oral testimony does not necessarily destroy the credibility of a witness. However, where the inconsistencies in the evidence of a witness goes to the root of the issues, then it renders the evidence unreliable. See **ONYECHI EROKWU V JACKSON EROKWU, (2016) LPELR 41515 (CA) AND BASIL V FAJEBE 4 SCNJ 257 at 269.**

Now, DW1, apart from his inconsistent testimonies that touches on the root of the subject dispute, at the time DW1 was testifying and answering question during cross examination, I have closely



watched his demeanour in the witness box. The witness is not a witness of truth and therefore I cannot attach probative value to both his sworn statement on oath and his oral testimonies in open Court.

The learned Counsel to the 1<sup>st</sup> Defendant has submitted at paragraphs 6.4-6.8 of his final written address to the effect that all the evidences tendered by the Plaintiff i.e exhibits 1,2,3,4,5 and 5(a) are in respect of plot 773 Cadastral Zone Ao8 off AdetokunboAdemola Crescent Wuse II, Abuja and that no evidence tendered either by the Plaintiff or 2<sup>nd</sup> and 3<sup>rd</sup> Defendants who has power to allocate land which indicates that plot 733B is a parcel of land existing in error.

I am of the humble view that learned Counsel is missing the point and he appears not to have appreciated the crux of the claim of the Plaintiff. The issue is not whether plot 773B existed or not but whether there is trespass or encroachment by the 1<sup>st</sup> Defendant on plot 773 Cadastral Zone Ao8 off AdetokunboAdemola Crescent, Wuse II, Abuja?

The 1<sup>st</sup> Defendant has conceded that it was the 2<sup>nd</sup> Defendant, the Minister FCT that possesses the statutory powers to allocate land in the FCT. The Plaintiff has shown by credible evidence that plot 773 allocated to it by the 2<sup>nd</sup> Defendant has been encroached by the 1<sup>st</sup> Defendant vide the testimonies of PWs1,2,3 DW2, a surveyor from the office of the 3<sup>rd</sup> Defendant and exhibits 5,5 (a), 8,8 (a) and 9 including exhibits 4-4(c). These pieces of evidence are never discredited, challenged or denied by the 1<sup>st</sup> Defendant.

Further exhibit 6, which purports to grant plot 773B to the 1<sup>st</sup> Defendant is not a grant for the 1<sup>st</sup> Defendant to erect structures e.g a fence. And by the evidence of DW2, the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants did not grant any approval to the 1<sup>st</sup> Defendant to erect any structure and by exhibits 8,8 (a), 8(b) it clearly

establish the beacons of plot 773 of the Plaintiff and plot 1211 of the 1<sup>st</sup> Defendant from where the 1<sup>st</sup> Defendant encroached on plot 773 from plot 1211.

The learned Counsel at paragraphs 6.14 -6.17 of his final address that exhibits 8 (a) and 9 were made during the pendency of this suit contrary to section 83 (3) of the Evidence Act and further that exhibits 5,5(a) 8 (a) and 9 are worthless documents and be discountenanced.

Firstly, on exhibit 8(a) and 8(b) which are survey plans made by the department of survey and mapping of the 3<sup>rd</sup> Defendant. And section 53 of the Evidence Act states:-

*"Statements of facts in issues or relevant fact made in published map or drafts generally offered for public sale or in maps or plans made under the authority of Government as to matters usually represented in such charts or plans are themselves admissible."*

By virtue of the above section, exhibits 8(a) and 8(b) are admissible in evidence. Further, on the allegation that the documents were made during the pendency of this suit is incorrect. By the evidence of DW2 exhibits 8(a) and 8(b) were made by the Department of survey and mapping when the matter was referred to them in respect of the dispute between the Plaintiff and the 1<sup>st</sup> Defendant. Thus, exhibits 8(a) and (b) were not made by the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants as persons interested in the dispute or subject matter. Hence therefore I hold that section 83 (3) of the Evidence Act is not applicable in the instant suit and I so hold.

Thus, therefore, on the preponderance of evidence adduced by the Plaintiff especially the testimonies of PWs1, 2,3, DW2 and exhibit 1,2,3,4-4 C, 5,5(a),8,8(a), 8(b) and 9, the Plaintiff has

established trespass against the 1<sup>st</sup> Defendant wherein the 1<sup>st</sup> defendant encroached on plot 773 Cadastral Zone Ao8 Adetokunbo Ademola Crescent Wuse II, Abuja and erected illegal structures without the consent of the 3<sup>rd</sup> Defendant. Hence, the Plaintiff is entitled to general damages for trespass against the 1<sup>st</sup> Defendant. Accordingly the sum of N25,000,000.00 is hereby awarded to the Plaintiff against the 1<sup>st</sup> Defendant as general damages for trespass on Plaintiff's plot 773 Cadastral Zone Ao8 Wuse II, Abuja. The claim for N500,000,000.00 as exemplary damages for trespass is hereby refused as the sum of N25,000,000.00 would assuage the Plaintiff of all inconveniences. Having established trespass, the consequential reliefs (c) and (d) are equally granted as prayed.

In conclusion, issues nos 3 and 4 are hereby resolved in favour of the Plaintiff and against the Defendants.

That is the judgment of this Court.

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**HON. JUSTICE D.Z. SENCHI**  
**(PRESIDING JUDGE)**  
**11/02/2020**

Parties:- Absent.

IfunanyaOranuba:-With me is M.U. Okeke for the Plaintiff.

A.B Eleburuike:-For the 1<sup>st</sup> Defendant. With me are Kehinde

Pele, Mohammed Suleiman, KaltunMusa Adamu and BilkisuIshola.

R.J Goyol: For the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants

Court:- Have the 1<sup>st</sup> Defendant paid the necessary fees as penalty as prescribed by the rules on late filing of statement of defence?

Eleburnike:- We have paid the sum of N14,400.00 and I have  
The receipt i.e revenue receipt and it is hereby  
exhibited.

**Sign**  
**Judge**  
**11/02/2020**