IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
HOLDEN AT ABUJA
ON FRIDAY 31ST JANUARY 2020
BEFORE HIS LORDSHIP: HON JUSTICE O. A. ADENIYI
SITTING AT COURT NO. 14 APO – ABUJA

SUIT NO: FCT/HC/CV/1113/12

BETWEEN:

1. REV. MARTINS OKEME
2. LAWAN SA'AD

CLAIMANTS

AND

1. FEDERAL CAPITAL DEVELOPMENT AUTHORITY
2. THE HON. MINISTER, FCT
3. NASIR SULEIMAN
4. MALLAM ISAH
5. OLUGBENGA BELLO

DEFENDANTS

JUDGMENT

The *res* of this action is the plot of land described as Plot 58, Kubwa Extension II Layout, Kubwa, Abuja. Both the 1st Claimant and the 4th Defendant laid claim to the plot. Interestingly, the two parties traced the origin of the titles

they claimed respectively, to a common grantor, by name ***Abubabkar Sadiq***, to whom the plot was claimed to have been originally allotted by the Abuja Municipal Area Council.

As it turned out, the 3rd Defendant, an officer of the Bwari Local Government, after investigation, informed the 1st Claimant that there was a case of double allocation with respect to the plot and that the plot belonged to the 4th Defendant; and that an alternative plot would be arranged for him.

The 1st Claimant, who had already commenced building on the plot, further contended that the 4th Defendant came on the plot and attempted to disturb his quiet enjoyment of the same, by also laying claim thereto.

Being aggrieved at the conclusions of the 3rd Defendant and the 4th Defendant's alleged threats to demolish the building the 1st Claimant had erected on the plot, the Claimants instituted the present suit in this Court by *Writ of Summons and Statement of Claim* filed on 5/12/2012. After series of amendments, the Claimants, by their *2nd Amended Statement of Claim* filed on 06/03/2014, pursuant to Court order of 27/02/2014, claimed against the Defendants, the reliefs set out as follows:

1. ***A declaration that the 2nd Plaintiff is the owner and holder of right of occupancy of all the property situate at Plot 58, Kubwa Extension II Layout, Kubwa, Abuja.***

2. ***A declaration that by a Deed of Assignment dated 7th April, 2008, the 2nd Plaintiff being the owner and holder of Right of Occupancy to Plot 58, Kubwa***

Extension II Layout, Kubwa, Abuja, transferred his equitable right over the property to the 1st Plaintiff.

3. ***A declaration that the 1st Plaintiff is entitled to quiet possession and enjoyment of the land situated at Plot 58, Kubwa Extension II Layout, Kubwa, Abuja.***

4. ***An Order of perpetual injunction restraining the Defendants either by themselves, their agents, privies, representatives or whosoever described from disturbing the quiet enjoyment of the disputed land by the 1st Plaintiff.***

5. ***Cost of litigation assessed at Five Hundred Thousand Naira (₦500,000.00).***

The 1st and 2nd Defendants, after many years of ignoring the suit, filed a motion on notice on 09/02/2018, for

extension of time within which to file *Memorandum of Appearance* and their *Statement of Defence* to the suit. On 30/05/2018, the date fixed for hearing of the motion, the 1st and 2nd Defendants were absent from Court and were also not represented by counsel and no reasons were communicated to the Court for their absence. As a result, the Court struck out the said motion on notice. Effectively, the 1st and 2nd Defendants did not defend the suit.

For the 3rd Defendant, his operative pleading was the *3rd Defendant's Amended Statement of Defence* filed on 21/04/2017. He contended that his action with respect to the disputes between the 1st Claimant and 4th Defendant over the plot in dispute was strictly official; that upon discovery that the plot was a case of double allocation, in

that the 4th Defendant has obtained certificate of occupancy over the plot, the 1st Claimant was offered alternative plot.

The 4th and 5th Defendants, also after series of amendments, filed their operative *4th and 5th Defendants' 3rd Amended Statement of Defence and Counter Claim* on 06/02/2017 pursuant to order of Court of 02/02/2017. They denied the entirety of the Claimants' claim. The 4th Defendant traced the origin of his acclaimed title over the plot through the 5th Defendant to ***Abubakar Sadiq***, the acclaimed original allottee from whom the 2nd Claimant also purportedly derived origin of his acclaimed title to the plot. The 4th Defendant claimed that he acquired the plot from the 5th Defendant in the name of his son, one **Mr. Alex Iriah**. The 4th and 5th Defendants contend that

investigations conducted by the Bwari Area Council revealed that valid title over the plot resided in the 5th Defendant, from and through whom the 4th Defendant derived title thereto. On the premises of these briefly stated facts, the 4th and 5th Defendants counterclaimed against the Claimants for the reliefs set out as follows:

1. ***A declaration that the Counter-Claimants are entitled to the right over Plot No. 58, Kubwa Extension II Layout, Kubwa, Abuja.***

2. ***Declaration that the Counter-Claimants have the valid title documents to the said plot described as Plot 58, Kubwa Extension II Layout, Kubwa, Abuja.***

3. ***A declaration that by further verification, vetting and acceptance of title document, by AACTRIS***

(Accelerated Area Council Title Reissuance Scheme) for the purpose of revalidation, receipt of payment acknowledged by AACTRIS, the Counter-Claimants have authentic and genuine title to the said plot as verified by AGIS.

4. *A declaration that the Plaintiff's forceful entry and disturbance of the quiet possession of the Counter-Claimants over the plot amounts to trespass.*

5. *The sum of ₦2,000,000.00 (Two Million Naira) only being general damages in favour of the 4th and 5th Defendants for trespass over Plot 58, Kubwa Extension II Layout, Kubwa, Abuja in the exclusive ownership of the Counter-Claimants.*

6. ***Costs of this action assessed at ₦700,000.00 (Seven Hundred Thousand Naira) only.***

The Claimants filed *Reply* to the 3rd Defendant's *Amended Statement of Defence* on 05/05/2017; whilst they filed *Reply* to the *4th and 5th Defendants' 3rd Amended Statement of Defence and Defence to Counter Claim* on 09/03/2017.

At the plenary trial, the 1st Claimant testified in person on behalf of the Claimants and called no other witnesses. He adopted his written depositions on Oath as his evidence-in-chief. He tendered seventeen (17) sets of documents in evidence to further support the Claimants' claim. He was cross-examined by learned counsel for the respective, 3rd, 4th and 5th Defendants.

The 3rd Defendant testified in person. He adopted his written depositions on Oath as his evidence-in-chief and

was cross-examined by learned counsel for the respective 4th and 5th Defendants and the Claimants' learned counsel.

The 4th Defendant testified for himself and on behalf of the 5th Defendant. He adopted his written depositions on oath as his evidence-in-chief and he tendered in evidence a total of fifteen (15) sets of documents as exhibits. He was in turn subjected to cross-examination by learned counsel for the Claimants.

Upon conclusion of plenary trial parties filed and exchanged their written final addresses in the manner prescribed by the **Rules** of this Court.

In the final address filed on behalf of the 3rd Defendant on 29/10/2018, her learned counsel, **Charity O. Ifesemen (Miss),** raised two issues for determination, namely:

1. *Whether the Plaintiff from the evidence before the Court has proved his case to entitle him to his claim?*

2. *Whether the 3rd Defendant can be sued personally for acting in his official capacity as the Zonal Coordinator of the Zonal Land Office?*

The 4th and 5th Defendants filed their final written address on 23/07/2018, in which their learned counsel, **E. A. Iyede (Mrs.)** raised four issues as having arisen for determination in this suit, namely:

1. *Whether the 4th and 5th Defendants do not have a better title to the res than the Plaintiffs in this suit?*

2. *Whether the physical possession/occupation of the res by the Plaintiffs can translate to ownership in the face of the 4th and 5th Defendants' title documents*

confirmed to be genuine by the Abuja Geographic Information Systems?

3. *Whether the Plaintiffs/Defendants to the Counter-Claim have proved their case on the preponderance of evidence to be entitled to judgment of this Honourable Court in his favour?*

4. *Whether the 4th and 5th Defendants/Counter-Claimants are not entitled to a grant of their claims in their Counter-Claim.*

The Claimants in turn raised two issues for determination in the suit in the final written address filed on their behalves by **Ugbede Idachaba, Esq.,** of learned counsel, on 20/08/2018. The issues are:

1. *Whether the Plaintiffs are entitled to the reliefs sought in their Statement of Claim having established their case on the balance of probabilities?*

2. *Whether exhibits D14 and D15 are admissible in law?*

The Court had carefully examined the totality of the pleadings filed by the respective parties; the extensive oral and documentary evidence they led to support their respective claims and the totality of the circumstances of this case. It is common ground as between the Claimants on the one hand and the 4th and 5th Defendants on the other, that the radical title of the plot in dispute resided in a common vendor, by name ***Abubakar Sadiq***, to whom the plot was originally granted by the **Abuja Municipal Area Council**. This is clearly pleaded in *paragraph 7* of the

Claimants' *2nd Amended Statement of Claim*; and *paragraph 3* of the *4th and 5th Defendants' 3rd Amended Statement of Defence*. The evidence led on record by either side also clearly supports this claim.

Again, in the course of evaluating evidence led by parties, especially the 4th Defendant/Counterclaimant, it emerged that the documents of title relied on by the 4th Defendant/Counterclaimant, bore the name of one **Alex Iriah**, who is not a party to the suit. In his testimony, the 4th Defendant stated that the said **Alex Iriah**, is his son, in whose name he purportedly purchased the said plot. In the circumstances, the Court raised an issue *suo motu* for the determination as to whether the 4th Defendant is a proper party to Counter Claim on right of ownership with respect to the plot in dispute and thereon invited learned counsel

for the respective parties to file supplementary addresses which they all did, except the 1st and 2nd Defendants. The supplementary addresses were adopted on 21/11/2019.

In all therefore, the focal questions that call for determination in the substantive action and the Counter-Claim, without prejudice to the issues formulated by the respective learned counsel, in the Court's view, could be succinctly distilled as follows:

1. *Who, as between the Claimants on the one hand; and the 4th and 5th Defendants on the other hand, successfully traced his title to the plot in dispute, with credible evidence, to the common vendor?*

2. *Where both sides traced the origin of the title of the plot in dispute they lay rival claim to, to the common*

vendor, whose interest to the plot was created or ranked in priority?

3. *Whether the 4th Defendant/Counter-Claimant is lawfully entitled to Counterclaim for title to the plot in dispute, when the documents of title he relied on did not bear his name?*

The resolution of these three focal issues will invariably determine both the main claim of the Claimants and the Counter-Claim of the 4th and 5th Defendants at once.

In proceeding to determine these focal issues together, the Court has also given careful consideration to and taken due benefits of the totality of the arguments canvassed by learned counsel for the respective parties in their final addresses and supplementary addresses. The Court shall

make specific references to learned counsel's arguments as it is considered needful in the course of this judgment.

SALIENT EVIDENCE ADDUCED BY THE CLAIMANTS IN RELATION TO ROOT OF TITLE:

As a starting point, I consider it pertinent to restate that even though the general principle is that there are five ways in which a party can prove ownership of land, as correctly submitted by the Claimants' learned counsel; however, there is a clear distinction and departure from the general rule when the land in question is within the Federal Capital Territory of Nigeria. This is because, in the Federal Capital Territory, the law seems to recognize just one way in proving right or title to land, which is by production of documents of title issued by or under the authority of or with the consent of the Minister of the

Federal Capital Territory, acting for the President of the Federal Republic of Nigeria; or by the authority of any other person or authority the President may so delegate his executive powers to in that regard. I make particular reference to the provisions of **sections 297(2)** and **304** of the **Constitution, sections 1(3)** and **18** of the **Federal Capital Territory Act;** and **section 51(2)** of the **Land Use Act.**

In *Madu Vs. Madu [2008] 6 NWLR (Pt. 1083) 296,* the Supreme Court made this point clear when it held as follows:

> ***"See also section 297(1) & (2) of the Constitution of the Federal Republic of Nigeria, section 236 of the Constitution of the Federal Republic of Nigeria, 1979 and section 1(3) Federal Capital Territory, Act 1976. Section 18 of the Federal Capital Territory Act, Cap. 503 Laws***

of the Federation of Nigeria, 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 the 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 Hon. Minister of the FCT there is no way any person including the respondent could acquire land in the FCT."

See also the recent authority of *Eboreime Vs. Olagbegi [2018] LPELR 63412(CA)*, where the Court of Appeal further made the point that the President of the Federal Republic of Nigeria, who is invested with powers to exercise authority of the Federal Government of Nigeria over all land within the Federal Capital Territory, could exercise such powers not only through the Minister of the

Federal Capital Territory, notwithstanding the provision of **section 18** of the **FCT Act;** but also through any of the Ministers of Government, by virtue of the provisions of **sections 5(1)(a), 147, 148** and **302** of the **Constitution,** to which the **FCT Act** is subject.

The implication therefore is that when it concerns land within the FCT, contrary to the contention of the Claimants' learned counsel, incidence of long possession without more, for instance, is not legally recognized as a method by which title could be established. Long possession must give way in the face of production of valid title document granted by or with the consent of the Minister of the Federal Capital Territory or any other Minister to whom the President may have delegated executive powers in that regard. I so hold.

Going further, it is also pertinent to restate the trite position of the law that once a party pleads and traces the root of his title to a particular person or source, that party must establish how that person or source derived his or their title to such land. See *Mogaji Vs. Cadbury Nigeria Ltd. [1985] 2 NWLR (Pt. 7) 393; Oyadiji Vs. Olaniyi [2005] 5 NWLR (Pt. 919) 561.*

In the instant case, the contention of the Claimants is that the 1st Claimant derived title to the plot in dispute from the 2nd Claimant, who in turn derived title from the original allottee, by name ***Abubakar Sadiq***. Accordingly, for the Claimants to succeed in their claim for declaration of title to the plot of land is dispute in the present action, the 1st Claimant must not only plead and establish his title thereto but also the title of the 2nd Claimant as well as that of the

said ***Abubakar Sadiq***, from whom he claims; for, he would not have acquired a valid title to the land in dispute if, in fact, his grantor at all material times had no valid title thereto.

Suffice to state that the same principles apply to the *Counter-Claim* of the *4th* and *5th* Defendants; in that in order for them to succeed, it is incumbent on them to trace their acclaimed title to the plot in dispute to their common grantor. As the legal maxim goes, *nemo dat quod non habet* meaning that no one can give that which he does not have. See *Mogaji Vs. Cadbury Nigeria Limited (supra) 393; Ogunleye Vs. Oni [1990] 2 NWLR (Pt. 135) 245; Ngene Vs. Igbo [2000] 4 NWLR (Pt. 651) 131.*

In *Oyadiji Vs. Olaniyi (supra)*, the Court of Appeal put the matter succinctly when it held, *per* **Adekeye, JCA** (as he then was), as follows:

> **"*Once a party pleads and traces his root of title in an action for declaration of title to land to a particular person or source and the averment is challenged, to succeed, the plaintiff must not only establish his title to such land he must also satisfy the court as to the title of the person or source from whom he claims. In the instant case, the appellants can only succeed if they can establish not only their title to the land in dispute, they must go further to satisfy the court on the validity of their grantor Oba Adeyanju's title.*"**

The starting point in the instant case therefore, is to determine whether or not the 1st Claimant has successfully established a valid assignment of title to the land in

dispute to him before proceeding to determine the validity of the title of his acclaimed predecessors-in-title, that is the 2nd Claimant, ***Lawan Sa'ad*** as well as ***Abubakar Sadiq***, the original grantor.

The 1st Claimant testified in person for himself and on behalf of the 2nd the Claimant. He adopted five different *Statements on Oath* deposed to at different times, in his bid to establish the Claimants' claim. He also tendered in evidence a gamut of documents to support the Claimants' case. Nevertheless, as the Court is entitled to do, it shall restrict itself only to the salient evidence relevant for the resolution of the issues at hand.

The 1st Claimant testified that he bought the plot in dispute from the 2nd Claimant sometime in 2008 by virtue of a duly executed *Deed of Assignment*. The 1st Claimant also

tendered in evidence as **Exhibit P12,** original purchase receipt dated 7th April, 2008, by which the 2nd Claimant acknowledged payment of the sum of **₦1,000,000.00 (One Million Naira)** only made by the 1st Claimant with respect to the plot in dispute.

The unchallenged evidence on record is further that the 1st Claimant was put in possession of the plot and he had developed the same to a point before he was initially challenged sometime in 2008, by one **Cosmos Balogun;** and later, by the 4th Defendant, sometime in 2009.

Sadly, the 1st Claimant's attempt to put in evidence the said *Deed of Assignment* purportedly executed in his favour by the 2nd Claimant on 7th April, 2008, did not succeed; upon objection taken to its admissibility by learned counsel for the respective 3rd, 4th and 5th

Defendants, on the grounds that the instrument was unregistered.

Now, I am mindful of the specific claims of the 1st Claimant in this suit, one of which is a declaration that by a Deed of Assignment dated 7th April, 2008, the 2nd Claimant, being the owner and holder of Right of Occupancy to Plot 58, Kubwa Extension II Layout, Kubwa, Abuja, transferred his equitable right over the property to the 1st Claimant. The implication therefore, as correctly submitted by the 3rd Defendant's learned counsel, is that the main link that the 1st Claimant claimed to have to the plot in dispute, through the rejected *Deed of Assignment* purportedly executed in his favour by the 2nd Claimant, seemed to have collapsed.

But then, I am further mindful that the 1st Claimant also claimed relief to quiet possession and enjoyment of the

plot in dispute. This claim, however, can be hinged on the *purchase receipt* issued to him by the 2nd Claimant, **Exhibit P12,** which is evidence of payment of purchase price for the plot.

The position of the law has long been well settled that where a person pays for a land and obtains receipt for the payment, followed by his going into possession, equitable interest is created for him in the land such as would defeat the title of a subsequent legal purchaser with knowledge of the equitable estate in the land. See *Okoye Vs. Dumez Nig. Ltd. [1986] 1 NWLR (Pt. 785); UBA Plc. Vs. Ayinke [2000] 7 NWLR (Pt. 663) 83; Kachalla Vs. Banki [2006] 8 NWLR (Pt. 982) 364.*

As it stands therefore, even though the 1st Claimant had claimed entitlement to right of occupancy over the plot in

dispute by *Deed of Assignment* which he did not succeed in tendering in evidence, the Court would not overlook the pleaded *purchase receipt* which he successfully tendered in evidence to establish equitable interest coupled with possession. I so hold.

Whether or not the 1st Claimant's claim for possession would succeed at the end of the day will be determined upon evaluation of the evidence adduced by the 4th and 5th Defendants in support of their *Counter-Claim*.

Suffice to hold at this stage that the 1st Claimant succeeded in establishing equitable interest over the plot through purchase receipt issued to him by the 2nd Defendant on 07/04/2008 coupled with possession.

Now, I turn to the 2nd Claimant. The evidence on record is that he purportedly purchased the plot in dispute from the

original allottee, ***Abubakar Sadiq***, whose purported title is contained in the document being *Conveyance of Provisional Approval* issued to him on 15/06/95 by the Abuja Municipal Area Council, with respect to *Plot No. 58 of about 780 sq. metres at Kubwa II Extension Layout*. This document is inserted in the *Irrevocable Power of Attorney* made by the said ***Abubakar Sadiq*** in favour of the 2nd Claimant, ***Lawan Sa'ad***, on *15th February, 1997*. The said *Irrevocable Power of Attorney*, tendered in evidence as **Exhibit P11**, was registered at the Land Registry of the Abuja Municipal Area Council on 15/02/97 as No. 13 in Volume I of the Department of Land Administration of the Abuja Municipal Area Council, Abuja.

Sequel to the registration of the said *Irrevocable Power of Attorney*, the Bwari Area Council Abuja issued to the 2nd

Claimant on *9th July, 1998*, Conveyance of Provisional Approval, granting Customary right of Occupancy to the 2nd Claimant over the plot in dispute. The original Conveyance, tendered in evidence as **Exhibit P1**, is signed by one ***Abubakar Sulaiman***, Secretary, *Rural Land Use Adjudication Committee*.

Subsequently, the 2nd Claimant made certain payments, shown in receipts tendered as **Exhibits P2, P3** and **P4** respectively. He was also issued with Conveyance of Approval for Development Plan over the plot on 8th August, 2003, by the Bwari Area Council, **Exhibit P5**. By **Exhibit P5,** the Bwari Area Council granted Building Plan Approval to the 2nd Claimant.

The 1st Claimant further tendered in evidence the Proposed Residential Development Drawing made for the

2nd Claimant in August, 2002 and approved on 08/08/2003; and the Architectural Drawings made in September, 2011, as **Exhibits P13** and **P14** respectively.

By the Acknowledgment of Regularization of Land Titles of FCT Area Councils dated 08/03/2006, **Exhibit P7**, issued by the FCT Administration to the 2nd Claimant, the Administration acknowledged receipt of his Right of Occupancy over the plot in dispute.

According to the evidence adduced by the 3rd Defendant under cross-examination by the Claimants' learned counsel, the issuance of **Exhibit P7** is a process introduced during the tenure of ***Mallam El Rufa'i*** as the Minister of the FCT, for the regularization of title documents to land issued by the FCT Area Councils prior to that time.

The position here is however that even though the 2nd Claimant succeeded in tracing how he acquired title to the plot from the said original allottee, his relief for declaration of ownership of the plot cannot also succeed for the simple reason that the case made out by the Claimants in their *3rd Amended Statement of Claim* is that the 2nd Defendant had already assigned his interest in the plot to the 1st Claimant; even though they were unsuccessful in establishing the assignment by credible evidence. That being the case, it is apparent that reliefs (1) and (2) of the Claimants' claim are inconsistent for the fact that the 2nd Claimant cannot in one breath claim to have assigned his interest over the plot in dispute to the 1st Claimant and at the same time claim ownership of the plot. I so hold.

At this juncture, I pause to examine the evidence adduced by the 4th and 5th Defendants by their *3rd Amended Counter Claim* with respect to their root of title to the plot in dispute.

The 4th Defendant testified for himself and on behalf of the 5th Defendant. He claimed to purchase the plot in dispute from the 5th Defendant, *vide* Sales Agreement dated *12th August, 1999* tendered as **Exhibit D15**; and a Power of Attorney dated *22nd August, 1999*, tendered in evidence as **Exhibit D14**.

Now, the first hurdle the 4th Defendant must cross is that even though he claimed to have purchased the plot from the 5th Defendant, the documents he relied upon for the said purchase did not bear his name. His oral explanation for this is contained in *paragraphs 9 to 17* of his written

depositions on Oath, which essentially is to the extent that he purchased the plot in the name of his son, one ***Alex Iriah*** (also referred to as ***Alex Iria*** and ***Alex Irial***).

Whilst testifying under cross-examination by the Claimants' learned counsel, he stated that as at 27/03/2018, when he gave evidence, the said ***Alex Iriah*** was about thirty years old, which presupposes that as at *August, 1999*, when the 4th Defendant claimed to purchase the plot from the 5th Defendant, the said ***Alex Iriah*** was already an adult who was lawfully competent to enter into contractual relationships.

The issue to be thrashed at this juncture, however, is whether in law the 4th Defendant can lawfully *Counter Claim* the Claimants with respect of the plot in proxy for

his said son, ***Alex Iriah***, without any legal authority so to do?

I had carefully considered the supplementary submissions of the respective learned counsel on this point. The summary of the contention of the Claimants' learned counsel is that it is the person in who enforceable right is vested that has the *locus standi* to sue on that right; and that no one else can properly sue for the enforcement of that right. Learned counsel thus contended that the 4th Defendant is not the proper party to have counterclaimed the Claimants in this action for the fact that the purported document of title tendered and relied on at trial by the 4th Defendant as basis of his claim of title to the plot in dispute, **Exhibits D14** and **D15** respectively, bore a different name from his. Learned counsel noted that even

though in his evidence the 4th Defendant testified that he purchased the plot in the name of his son, **Alex Iriah,** whose name appeared on the purported documents of title, he cannot lawfully counterclaim in proxy for the said **Alex Iriah**. Learned counsel relied on several authorities, including *Makinde Vs. Orion Engineering Services (UK) Ltd. [2004] 11 NWLR (Pt. 1471) 1; Opoto Vs. Anuan [2016] 16 NWLR (Pt. 1539) 437; and Tatu Vs. Estate of Late Isah Alhaji Adamu [2014] LPELR-24160(CA),* for the contention that the 4th Claimant lacked *locus standi* to have instituted the Counter-Claim and that a claimant for declaration of title, whether by main action or Counter-Claim, must establish his entitlement to the same.

Even though the issue in contention here had no bearing on the 3rd Defendant *per se*, his learned counsel however

made contributions. Learned counsel argued that regardless of the name on the title document, the evidence on record is that it was the 4th Defendant that was in possession of the plot in dispute since the time he purchased the same in his son's name; and that he also had in his possession original title documents of the disputed plot.

Learned counsel contended that since the Claimants sued the 4th Defendant as one they believed contested title and possession of the plot in dispute with them, he is a proper party to the counterclaim and that it is only his son, whose name is on the documents he presented that can challenge his ownership.

Learned counsel for the 4th and 5th Defendants/Counterclaimants in turn referred to the

pleadings of the 4th Defendant in *paragraphs 9 to 16* of the *3rd Amended Counter-Claim* and his unchallenged evidence thereupon as to the circumstances under which he purchased the plot in dispute in the name of his son, **Alex Iriah**, the summary of which is that because he was the one that transacted directly with the 5th Defendant with respect to the purchase of the plot in dispute, even though purchased in the name of his son; and the fact that he personally undertook all the processes with respect to perfecting the title which caused the Claimants to sue him personally, including payment of purchase price.

Learned counsel contended forcefully that the 4th Defendant never purchased the plot in dispute for his son but for himself by merely using his son's name in the documents of purchase; and that the right of the said son,

Alex Iriah, to the plot cannot be properly activated until the demise of the 4th Defendant who is recognized in law as the owner of the plot.

Learned counsel further contended that by purchasing the plot in dispute for himself but in the name of his son, the 4th Defendant created a trust relationship and that he is in law the trustee of his son.

Learned counsel further contended that the facts of the case form a classic illustration of the principle of resulting trust or implied trust, the type referred to as "purchase money resulting trust." Learned counsel further contended that evidence on record is that it was the 4th Defendant who signed all documents relating to the purchase of the plot, particularly **Exhibits D14** and **D15** respectively; that his intention was to exercise title over the *res* until his

demise, even though the legal owner seems to be the son, **Alex Iriah**; that the son's legal estate (if any) results in his father, the 4th Defendant, who advanced the purchase money to the 5th Defendant for the *res*. Learned counsel relied on the English authority of *Dyer Vs. Dyer [1788] 2 Cox E. Q 92 @ 93*, and further contended that title in the plot can only devolve on the 4th Defendant's son after the 4th Defendant's demise.

Learned counsel for the 4th and 5th Defendants therefore contended that the Claimant properly sued the 4th Defendant in the action and that the 4th Defendant also had *locus standi* to have counterclaimed the Claimants.

Learned counsel further contended that even if it is held that the 4th Defendant had no *locus* to have counterclaimed the Claimants, the presence of the 5th

Defendant, from who the 4th Defendant purportedly derived title to the plot in dispute would still sustain the Counter-Claim.

The trite position of the law is that documents of title to a plot of land are clear evidence of transaction between the parties thereto. See *Atunrase Vs. Philips [1996] 1 NWLR (Pt. 427) 637*.

It is the view of the Court that the issue as to whether or not the 4th Defendant indeed purchased the plot for himself, but in the name of his son, whose name is on documents he relied upon could not have been resolved in the absence of the said **Mr. Alex Iriah,** who ought to be the proper party to *Counter Claim* the Claimants in this suit. At best the 4th Defendant, being the one that undertook all processes with respect to the purported

purchase of the plot from the 5th Defendant, could be fielded as a witness for his son in whose name the documents exchanged with the 5th Defendant were made.

Or conversely, the said **Mr. Alex Iriah** could have been called as a witness to testify that he indeed held the plot as a resulting trust on behalf of his father, the 4th Defendant. But this was not the case as it is apparent on the record.

Learned counsel for the 4th and 5th Defendants agreed, in her submissions that either side has relied on documents of title in proof of their acclaimed title to the plot in dispute. That being the case, the 4th Defendant cannot rely on parole evidence to explain the relationship between him and the person whose name appears on **Exhibits D14** and

D15 as Donee and Purchaser respectively of the plot in dispute. I so hold.

In *Ezeanah Vs. Atta [2004] 7 NWLR (Pt. 873) 468,* the Supreme Court made the point emphatically clear that a person in whose name document of title is issued is the person to whom land is granted, regardless of who paid the application and all other fees.

In the present case therefore, even if the 4th Defendant claimed orally that he purportedly made payments and undertook processes with respect of the plot in dispute, in so far as the documents on record were made in the name of a third party, it is that third party that is entitled to make claims in respect of the plot. I so hold. This was the position of the Supreme Court in the authority of *Madu Vs. Madu (supra)*.

I must further hold that learned counsel for the 4th and 5th Defendants' clearly misapplied the principles of resulting to the instant suit. The Supreme Court, in *Madu Vs. Madu (supra)*, explained the purport of the principle as it held, *per* **Aderemi, JSC** (of blessed memory) as follows:

> ***"The court will impel or presume in a situation where a purchase of property is made in the name of another that, that other holds the property for the benefit of the person who advanced money for the purchase of the property. The law, in such a situation, presumes that the intention was that the property should be held on trust by the third transferee. I may go further to say that the same principle also applies where the purchase money was provided partly by the person to whom the property is transferred and partly by another or others. In such cases, the transferee holds the property in trust for all the persons who contributed to paying for it with each having***

beneficial interest proportionate to the amount of purchase money he advanced."

In the instant case, the evidence of the 4th Defendant is that he purportedly purchased the property for himself, although in the name of his son. For a case of resulting trust to be properly made, evidence must come from the third party (in this case, **Alex Iriah**), to establish that even though the property was bought in his name, he holds the same in trust for or for the benefit of his father, who is the actual owner. This however the 4th Defendant failed to do in the present case. It will also not matter, as forcefully contended by **Mrs. Iyede**, of counsel for the 4th and 5th Defendants, that the 4th Defendant personally signed **Exhibits D14** and **D15**, the purported documents of title. As a matter of fact the 4th Defendant did not categorically state in his testimony before the Court that he signed the

documents, **Exhibits D14** and **D15** respectively. The law presumes signature written across a name as belonging to the bearer of the name. Learned counsel's submission that it was the 4th Defendant that signed the two purported documents of title will therefore amount to giving from the Bar, evidence the witness did not adduce in the witness box. The Court therefore rejects that line of argument.

To further puncture 4th and 5th Defendants' learned counsel's arguments that the principles of resulting trust applied to the instant *Counter Claim*, I make reference to the letters tendered by the 4th Defendant as **Exhibits D6, D7** and **D8** respectively. These were letters written by **Patrick A. Ameh, Esq.**, as Solicitor to **Mr. Alex Iriah**, to the Director, Abuja Geographic Information Systems (AGIS). In the letters, the said **Alex Iriah**, purported as the

owner, complained of unlawful encroachment of Plot No. 58, the plot in dispute. These letters further exposed the inconsistencies in the case the 4th Defendant tried to make, that he bought the property in dispute for himself, but in the name of his son.

I again refer to the letter, **Exhibit D12,** also tendered by the 4th Defendant. It is a letter dated 03/06/2006, written by the 5th Defendant and addressed **TO WHOM IT MAY CONCERN,** wherein he sought to certify that he sold Plot 58 in dispute to **"Mr. Alex Iriah;"** and that he had transferred all title documents to him. As such, no amount of oral evidence or oral explanation of the 4th Defendant could contradict the clear affirmation in **Exhibits D6, D7, D8, D12, D14 and D15,** that the transaction with respect

to the plot in dispute was between the 5th Defendant and **Mr. Alex Iriah** and not the 4th Defendant. I so hold.

My conclusion on this issue is therefore that the 4th Defendant is grossly incompetent to Counter Claim the Claimants for declaration of title over the plot in dispute for the fact that the purported documents of title he relied on did not bear his name. At worst, the said **Alex Iriah** ought to have donated Power of Attorney to the 4th Defendant in order to legitimately back up the basis of his presence in the Counter Claim.

It is also pertinent to remark that the Claimants were right to have sued the 4th Defendant since he was the one that was alleged to have trespassed on and disturbed the 2nd Claimant's purported quiet enjoyment of the plot.

Having held that the 4th Defendant is a stranger to the Counter Claim in that he is not the donee of the Power of Attorney, **Exhibit D14** and that the purported Sale Agreement, **Exhibit D15** was not executed with him by the 5th Defendant; the implication is that the Counter Claimants have failed to establish any legal link between the 4th Defendant and the plot in dispute.

Before I leave this point, I note that in the course of trial the Court admitted the documents **Exhibits D14** and **D15** in evidence. It is not in doubt that both documents were documents relating to purchase of Plot 58 and thus are registrable instruments. The documents were tendered to establish purported assignment of title to Plot 58 by the 5th Defendant to **Mr. Alex Iriah**. But the two documents were not registered as required by law. I note that in the

course of trial, the Claimants' attempt to tender a similar Deed of Assignment between **Lawan Sa'ad** and **Martins Okeme,** the 1st Claimant, was rejected by the Court on the ground that the document, being a registrable instrument, was not registered.

Although I must note that in the course of time, the Supreme Court delivered two decisions of *Benjamin Vs. Kalio [2018] 15 NWLR (Pt. 1641) 38* and *Anagbado Vs. Faruk [2018] LPELR 45223-SC*, wherein the apex Court held that a document, being an unregistered registrable document relating to land transaction, in so far as it is admissible in evidence under the **Evidence Act**, cannot be rendered inadmissible by the Land Instrument Registration Law enacted by the House of Assembly of any State for the reason that the **Evidence Act**, being a Federal

enactment, is superior to the Land Instrument Registration Law of the States.

However, in a more recent decision of the same apex Court in <u>*Abdullahi Vs. Adetutu*</u> *[2019] LPELR-47384(SC)*, it was held, *per* **Nweze, JSC**, as follows:

> ***"I must note right away that the admissibility or otherwise of an unregistered registrable instrument depends on the purpose for which it is being sought to be admitted. An unregistered registrable instrument, sought to be tendered for the purpose of proving or establishing title to land or interest in land would be inadmissible under section of the Land Instruments Law of Lagos State."***

I note that the provisions of the Land Instrument Laws of Lagos State that forbids the pleading and tendering of unregistered registrable instruments are in *pari materia*

with the Land Instrument Registration Laws of the different States of the Federation (including the FCT).

In the circumstances therefore, I must hold myself bound by the most recent decision of the Supreme Court in *Abdullahi Vs. Adetutu (supra)*, in agreeing with the Claimants' learned counsel that the instruments, **Exhibits D14** and **D15** are inadmissible in law for being unregistered registrable instruments. And that being the case, I must and I hereby expunge the documents from the records of proceedings in this case, as I am entitled to do. See *Nwabuoko Vs. Onwordi [2006] 5 S.C. (Pt. III) 103*, where the Supreme Court held that a trial Judge has the competence to either completely reject admitted evidence or disregard such evidence admitted at the stage of

writing judgment if he comes to the conclusion that the evidence, documentary or oral, was wrongly admitted.

I must proceed to further note that the 4th and 5th Defendants failed to establish the link of the 5th Defendant to the said original allottee as pleaded in *paragraph 3* of their *3rd Amended Statement of Defence* and *paragraphs 2, 3 and 4* of the *Counter Claim*. In his evidence under cross-examination by the Claimants' learned counsel, the 4th Defendant testified as follows:

> ***"The 5th Defendant did not hand over to me any documents of transfer of title made between him and Abubakar Sadiq."***

I have again noted that in the manner in which the 4th and 5th couched the reliefs claimed by their *3rd Amended Counter Claim*, they have laid joint claims to the plot in

dispute, even though the evidence on record did not support any such joint grant. The 4th Defendant further testified under cross-examination by the Claimants' learned counsel, that he would not know the whereabouts of the 5th Defendant, whether he was alive or not.

The implication is that the 4th and 5th Defendants must swim or sink together; and having failed to establish a link to their purported root of title, **Abubakar Sadiq**, their *Counter Claim* must fail in its totality. I so hold.

As it stands, on the basis of the evidence analyzed in the foregoing the Claimants' on the one side and the 4th and 5th Defendants, on the other have failed to establish ownership or right of occupancy to the plot in dispute. To this extent, the declarations claimed by the Claimants in reliefs (1) and (2) of their claim must fail in that regard.

The Claimants have further claimed declaration that the 1st Claimant is entitled to quiet possession and enjoyment of the land and perpetual injunction to restrain the Defendants from disturbing his quiet enjoyment of the plot.

The overwhelming evidence on record is that the 1st Claimant was in possession of the plot in dispute prior to the commencement of this action. I make reference to the 1st Claimant's testimonies in *paragraphs 9, 13, 16 and 26* of his *Statement on Oath* of 06/03/2014; and *paragraph 6* of his *Statement on Oath* of 16/09/2014, in response to the Counter Claim of the 4th and 5th Defendants; which establish that he has erected a building on the plot of which he was in occupation at the material time until the 4th Defendant challenged him in 2009.

The 4th Defendant admitted as much the 1st Claimant's claim of possession when he testified, under cross-examination by the Claimants' learned counsel as follows:

> ***"I am aware that a church is presently holding on the plot. It is correct that I was unable to develop the plot because Rev. Martins encroached on the plot."***

The position of the law is that proof of exclusive possession of land gives the person in such possession the right to retain it and to undisturbed enjoyment of it against all wrong doers except a person who could establish a better title. See *Oyadare Vs. Keji [2005] 7 NWLR (Pt. 925) 571.*

In the instant case, neither the Claimants nor the 4th and 5th Defendants/Counter Claimants have succeeded in proving legal title to the plot. However, evidence adduced on record established that the 1st Claimant was in possession

at the material time. As such, the 1st Claimant is entitled to the declaration for his entitlement to possession and quiet enjoyment of the plot in dispute. I so hold.

The Claimants relief for perpetual injunction must however fail in that a claim for perpetual injunction is only predicated on a successful proof of title to land. See *Ilona Vs. Idakwo [2003] 11 NWLR (Pt. 830) 53.*

On the basis of the foregoing analyses therefore, I must resolve issues (1) and (2) as set out in the foregoing against the Claimants and the 4th and 5th Defendants together. I also resolve issue three against the 4th Defendant/Counter Claimant.

On a last note, I should state that from the reliefs claimed and on the basis of the evidence led on the record, the Claimants have failed to establish any claim whatsoever

against the 1st – 3rd Defendants in this case. In that regard, I must dismiss the suit as against the 1st – 3rd Defendants.

In the overall analysis, only relief (3) of the Claimants' claim succeeds. Accordingly it is hereby declared that the 1st Claimant is entitled to quiet possession and enjoyment of the land in dispute, being **Plot 58, Kubwa Extension II Layout, Kubwa, Abuja.**

In the same token the entirety of the *Counter Claim* of the 4th and 5th Defendants having failed; the same shall be and is hereby accordingly dismissed.

Parties shall bear their respective costs of this action.

OLUKAYODE A. ADENIYI
(*Presiding Judge*)
31/01/2020

***Legal representation*:**

Ugbede Idachaba, Esq. (with **Victoria Oguine (Mrs.) & O. I. Oladunmoye, Esq.)** – *for the Claimants*

Charity O. Ifesemen (Mrs.) – *for the 3rd Defendant*

E. A. Iyede (Mrs.) – *for the 4th and 5th Defendants*

1st and 2nd Respondent unrepresented by counsel