IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
HOLDEN AT GWAGWALADA

THIS MONDAY, THE 9TH DAY OF MARCH 2020

BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI – JUDGE

SUIT NO: CV/2166/18
:
BETWEEN

SENATOR (ENGR) YISA EAST BRAIMOH .....PLAINTIFF

AND

1. HON. MINISTER FEDERAL CAPITAL TERRITORY ABUJA
2. FEDERAL CAPITAL DEVELOPMENT AUTHORITY(FCDA)
.....DEFENDANTS

JUDGMENT

The Plaintiff's claims against the Defendants as endorsed on the Writ of Summons and Statement of Claim dated 22nd June, 2018 are as follows:

i. **A Declaration that the Plaintiff is the legitimate and subsisting allotee of Plot No. 898, Cadastral Zone B01, measuring about 1581.92m^2 in Gudu District, Abuja, Federal Capital Territory pursuant to the grant of the offer of statutory right of occupancy dated the 14th day of December, 2010 for a term of 99 years by the Defendants.**

ii. **A Declaration that the purported revocation of the Plaintiff's right of ownership of Plot No.898, Cadastral Zone B01, measuring about 1581.92m^2 in Gudu District, Abuja, Federal Capital Territory Abuja discovered through legal search report dated the 30th April, 2018 is invalid, unlawful, null, void and unconstitutional.**

iii. **A Declaration that the purported revocation of the Plaintiff's right of ownership of Plot No.898, Cadastral Zone B01, measuring about 1581.92m^2 in Gudu District, Abuja, Federal Capital Territory without the service of notice of revocation or any form of complaint or hearing whatsoever is tantamount to denial of fair hearing contrary to Section 36 of the Constitution of the Federal Republic of Nigeria 1999 (as amended).**

iv. **An order of perpetual injunction restraining the Defendants whether by themselves or by their servants, privies, agents or assigns from re-allocating or constructing any structure whatsoever on the Plaintiff's Plot No.898, Cadastral Zone B01, measuring about 1581.92m^2 in Gudu District, Abuja during the subsistence of the Plaintiff's grant.**

v. **An order setting aside the purported revocation of Plot No.898, Cadastral Zone B01, measuring about 1581.92m^2 in Gudu District, Abuja belonging to the Plaintiff.**

vi. **An order setting aside and/or nullifying any grant made by the Defendants to any person(s) in respect of Plot No.898, Cadastral Zone B01, measuring about 1581.92m^2 in Gudu District, Abuja belonging to the Plaintiff.**

vii. **An order reinstating the Plaintiff to Plot No.898, Cadastral Zone B01, measuring about 1581.92m^2 in Gudu District, Abuja forthwith.**

viii. **A mandatory order directing the Defendants to forthwith issue to the Plaintiff the Certificate of Occupancy in respect of Plot No.898, Cadastral Zone B01, measuring about 1581.92m^2 in Gudu District, Abuja having paid for same.**

ix. **Cost of this action.**

From the Records, the Defendants were duly served with the originating court processes. Indeed in the course of proceedings, one Joseph Eriki of counsel appeared for Defendants and indicated that he was going to file their defence but

he never appeared again and did not file any process. From the records also, hearing notices were equally served on the Defendants all through the course of this proceedings but they never took any step(s) to defend this action.

In proof of his case, the Plaintiff testified as PW1. He deposed to a witness statement on oath dated 22/6/18 of 18 paragraphs which he adopted at plenary hearing. The summary and substance of his evidence is that sometime in 2008, he purchased plots 897 and 899, respectively at Gudu District from their original allotee and then applied to the Defendants for the allocation of Plot 898 since same was vacant and the Defendants granted the application and he was issued a statutory right of occupancy dated 14th December, 2010 which he accepted. He was then given a statutory right of occupancy bill and he duly paid the Defendants the sum of N7,936,578,50 (Seven Million, Nine Hundred and Thirty-Six Thousand, Five Hundred and Seventy Eight Naira) for the Certificate of Occupancy (C/O) and Survey Plan.

The Plaintiff further avers that despite these payments, the C/O is yet to be issued to him and that since the allocation, he has not been able to develop the land because of presence of illegal squatters and that all efforts to get them to leave the land has not been successful.

That he accordingly wrote several letters to the Defendants to intervene and that in one of their replies, the Defendants indicated their inability to remove the squatters. Further that on 26th April, 2018, he paid for a legal search at the Defendants' office to ascertain the status of the property and when the report came out, he was shocked to discover on the report that the property or land had been revoked and that no notice of revocation was served on him and that the Defendants did not also hear from him before the purported revocation. That in the search report, it was indicated wrongly that his allocation was on 10th February, 2012 instead of 14th December, 2010. He finally testified that the revocation due to **"previous commitment"** is not plausible as he was not accorded fair hearing in the process leading to the purported revocation of his interest.

PW1 tendered in evidence, the following documents to wit:

1. **Application for grant and re-grant of a statutory right of occupancy acknowledgment October 21st August, 2009 admitted as Exhibit P1**

2. **Offer of statutory right of occupancy dated 14th December, 2010 admitted as Exhibit P2.**

3. **Letter of acceptance/refusal of Statutory grant of occupancy dated 14th December, 2010 admitted as Exhibit P3.**

4. **Statutory right of occupancy bill dated 14th December, 2010 admitted as Exhibit P4.**

5. **Two (2) revenue collections receipts by AGIS dated 23rd February, 2011 and 3rd January, 2012 admitted as Exhibits P5a and b.**

6. **Letters by Plaintiff dated 3rd May, 2011, 22nd April, 2013, 13th March, 2017, 13th December, 2017 admitted as Exhibits P6 a,b,c and d.**

7. **Letter by Department of Development Control dated 11th August, 2017 admitted as Exhibit P7.**

8. **Legal search report dated 30th April, 2018 and the search fee receipt dated 26th April, 2018 admitted as Exhibits P8a and b.**

PW1 then concluded his evidence by urging the court to grant all the reliefs as contained in his statement of claim.

As stated at the commencement of this Judgment, despite the service of the originating court processes and hearing notices at different times during the course of this proceedings, the Defendants chose or elected not to respond or appear in court. Now I recognize that fair hearing is a fundamental element of any trial process and it has some key attributes; these include that the court shall hear both sides of the divide on all material issues and also give equal treatment, opportunity and consideration to parties. See **Usani V Duke (2004) 7 N.W.L.R (pt.871) 16; Eshenake V Gbinijie (2006) 1 N.W.L.R (pt.961) 228.**

It must however be noted that notwithstanding the primacy of the right of fair hearing in any well conducted proceedings, it is however a right that must be circumscribed within proper limits and not allowed to run wild. No party has till

eternity to present or defend any action. See **London Borough of Hounslow V Twickenham Garden Dev. Ltd (1970) 3 All ER 326 at 343.**

The Defendants here have been given every opportunity to respond to the case made out by Plaintiff against them but they have exercised their right by not responding. Nobody begrudges this election. It is only apposite to reiterate that nobody is under any obligation to respond to any court process once properly served if he so chooses. I leave it at that.

In the final address of Plaintiff which was equally served on Defendants, learned counsel to the Plaintiff raised two (2) issues as arising for determination:

"**a. Whether or not the purported revocation of the Plaintiff's title relative to the property in dispute without being heard and under the guise of previous commitment which was not served on the Plaintiff is valid?**

b. Whether from the facts and evidence adduced, the Plaintiff has discharged the onus of proof to be entitled to the reliefs sought in this suit?"

I have here carefully considered the pleadings, and the evidence led and it does appear to me that while the above two(2) issues are apt but they can be collapsed or accommodated under one single issue to be formulated by court hereunder. In the court's considered opinion, the issue that arises for determination is simply **whether the Plaintiff has established his case against Defendants in the circumstances and therefore entitled to the reliefs sought.**

This issue fully captures and or incorporates the issues raised by Plaintiff and has succinctly captured the pith or crux of the contest that remains to be resolved shortly by court and it is therefore on the basis of this issue that I would now proceed to consider the evidence and submissions of counsel.

ISSUE 1

Whether the Plaintiff has established his case against Defendants in the circumstances and therefore entitled to the reliefs sought.

Now I had at the beginning of this judgment stated the claims of Plaintiff predicated essentially on declaration of title and other reliefs. I had also indicated that the Defendants were duly served with the originating court processes and

hearing notices during the course of this proceedings but they elected or chose not to file anything or adduce evidence in challenge to that offered by the Plaintiff. In law, it is now accepted principle of general application that in such circumstances, the defendant is assumed to have accepted the evidence adduced by plaintiffs and the trial court is entitled or is at liberty to act on the plaintiffs' unchallenged evidence. See **Tanarewa (Nig.) Ltd. vs. Arzai (2005) 4 NWLR (pt. 919) 593) at 636 C – F; Omoregbe vs. Lawani (1980) 3 – 7 SC 108 and Agagu vs. Dawodu (1990) 7 NWLR (pt. 160) 56.**

Notwithstanding the above general principle, the court is however still under a duty to examine the established facts of the case and then see whether it entitles the claimant to the relief(s) he seeks. I find support for this in the case **of Nnamdi Azikiwe University vs. Nwafor (1999) 1 NWLR (pt. 585) 116 at 140-141** where the Court of Appeal per Salami JCA expounded the point thus:

"The plaintiff in a case is to succeed on the strength of his own case and not on the weaknesses of the case of defendant or failure or default to call or produce evidence … the mere fact that a case is not defended does not entitle the trial court to over look the need to ascertain whether the facts adduced before it establish or prove the claim or not. In this vein, a trial court is at no time relieved of the burden of ensuring that the evidence adduced in support of a case sustains it irrespective of the posture of the defendant…"

A logical corollary that follows the above instructive dictum is the attitude of court to the issue of burden of proof where it is not satisfactorily discharged by the party upon which the burden lies. The Supreme Court in **Duru vs. Nwosu (1989) 4 NWLR (pt. 113) 24** stated thus:

"… **a trial judge ought always to start by considering the evidence led by the plaintiff to see whether he had led evidence on the material issue he needs to prove. If he has not so led evidence or if the evidence led by him is so patently unsatisfactory then he had not made out what is usually referred to as a *prima-facie* case, in which case the trial judge does not have to consider the case of the defendant at all."**

It is also apposite to state that the substance of the reliefs sought by plaintiff are Declaratory Reliefs. In law declarations are in the nature of special claims or reliefs to which the ordinary rules of pleadings particularly on admissions have no

application. Indeed it would be futile when declaratory reliefs are sought to seek refuge on the proposition that there were admissions by the adversary on the pleadings or that the Defendant did not defend the action. The authorities on this principle are legion. I will refer to a few.

In **Vincent Bello V. Magnus Eweka (1981)1 SC 101 at 182,** the Supreme Court stated aptly thus:

"It is true as was contended before us by the appellants counsel that the rules of court and evidence relieve a party of the need to prove what is admitted but where the court is called upon to make a declaration of a right, it is incumbent on the party claiming to be entitled to the declaration to satisfy the court by evidence not by admission in the pleading of the defendant that he is entitled to the declaration."

The law is thus established that to obtain a declaratory relief as to a right, there has to be credible evidence which supports an argument as to the entitlement to such a right. The right will not be conferred simply upon the state of the pleadings or by admissions therein.

In **Helzgar V. Department of Health and Social Welfare (1977)3 AII ER 444 at 451; Megarry V.C** eloquently stated as follows:

"The court does not make declarations just because the parties to litigation have chosen to admit something. The court declares what, it has found to be the law after proper argument, not merely after admissions by the parties. There are no declarations without argument. That is quite plain."

I may also refer to the observations of Nnamani J.S.C of blessed memory in **Sorungbe V. Omotunwase (1988)3 N.S.C.C (vol.10)252 at 262 (1988)5 N.W.L.R (pt.92)90** as follows:

"The court of Appeal relied on the decision of this court in Lewis & Peat (N.R.I.) Ltd V. Akhimien (1976)7 SC 157 to the effect that an averment which is not expressly traversed is deemed to be admitted. Admittedly, one does not need to prove that which is admitted by the other side, but in a case such as one for declaration of title where the onus is clearly on the plaintiff to lead such strong and positive evidence to establish his case for such a declaration, an evasive averment...does not remove the burden on Plaintiff. See also Eke

V. Okwaranyia (2001)12 N.W.L.R (pt.726)181; Akaniwo V. Nsirim (2008)9 N.W.L.R (pt.1093)439; Maja V. Samouris (2002)7 N.W.L.R (pt.765)78 at 100-101."

The point from the above **authorities** is simply that declarations are not made because of the stance or position of parties in their pleadings but on proof by credible and convincing evidence at the hearing.

Again from the above, the point appears sufficiently made that the burden of proof lies on the plaintiff to establish his case on a balance of probability by providing credible evidence to sustain his claim irrespective of the presence and/or absence of the defendant. See the case of **Agu v. Nnadi (1990) 2 NWLR (pt. 589)131 at 142; Oyewole V. Oyekola (1999)7 N.W.L.R (pt.612) 560 at 564.**

Now the case of the claimant is one for declaration of title. In law, there are five independent ways of proving title to land as expounded by the Supreme Court in **Idundun v. Okumagba (1976) 9/10 SC 221** as follows:

(a) Proof by traditional evidence;

(b) Proof by production of documents of title duly authenticated, unless they are documents 20 or more years old, produced from proper custody;

(c) Proof of acts of ownership, in and over the land in dispute such as selling, leasing, making grants, renting out of any part of the land or farming on it or a portion thereof extending over a sufficient length of time numerous and positive enough as to warrant the inference that the persons exercising such proprietary acts are the true owners;

(d) Proof by acts of having possession and enjoyment of the land which prima facie may be regarded as evidence of ownership; and

(e) Proof of possession of connected or adjacent land in circumstance rendering it probable that the owner of such connected or adjacent land would in addition be the owner of the land in dispute.

See also **Oyedoke V The Registered Trustees of C.A.C (Supra)632 A-D.** In law, proof of title to land could be founded on any of the above way(s).

In this case, from the uncontroverted confluence of oral and documentary evidence before me which I find neither improbable or falling below the accepted standard expected in a particular case, I find the following facts as firmly established in this case namely:

(1) The Plaintiff applied for allocation of land and the application was duly received by Defendants and acknowledgment of receipt issued to Plaintiff vide **Exhibit P1**dated 21st August, 2009.

(2) By **Exhibit P2,** the offer of statutory right of occupancy dated 14th December, 2010, the Defendants allocated Plot 898 having an area approximately 1581.92m^2 in Cadastral Zone B01 at Gudu, F.C.T Abuja (therein referred to as the disputed Plot) to the Plaintiff. By **Exhibit P3** dated same 14th December, 2010, the Plaintiff accepted the offer.

(3) The Defendants also served or issued the Plaintiff with a statutory right of occupancy bill vide **Exhibit P4,** dated 14th December, 2010 in the sum of N7,936,578,00(Seven Million, Nine Hundred and Thirty Six Thousand, Five Hundred and Seventy Eight Naira) Only which the Plaintiff duly paid vide **Exhibits P5a and b,** the receipts issued by Defendants acknowledging these payments,

(4) The Plaintiff had difficulties taking possession of the land and developing same because of presence of illegal squatters and he wrote letters at different times to the Defendants vide **Exhibits P6a-d** dated 3rd May, 2011, 22nd April, 2013, 13th March, 2017, 13th December, 2017 seeking the intervention of the Defendants to evacuate/eject the illegal squatters or occupiers of the disputed plot.

(5) By **Exhibit P7,** dated 11th August, 2017 the Department of Development Control wrote to the Plaintiff stating their inability to remove the indigenes on the plot as the plot and other plots falls within an indigenous settlement but still advised Plaintiff to liase with the Department of Resettlement and compensation whose **"purview include valuation/resettlement matters in the F.C.T for guidance on the relocation of the indigenes.**

(6) Because of the above antecedents the Plaintiff sought to know in 2018 the status of the disputed property and accordingly applied and paid N10,000 legal search fee vide **Exhibit P8b** on 26th April, 2018 for a legal search report on the disputed land.

(7) By **Exhibit P8a,** the legal search report dated 30th April, 2018 issued by the Department of Land Administration of the Defendants indicated that the statutory right of occupancy granted to Plaintiff **"dated 10th February, 2012"** for **"residential purpose'** was "**revoked due to previous commitment."**

(8) The Plaintiff stated that he was at no time served with any revocation notice; he was equally not at any time given any form of hearing before the purported revocation.

As already alluded to, the above pieces of evidence and or facts have not been challenged by the opposite party who has the opportunity to do so; it is therefore open to the court seized of the proceedings to act on the unchallenged evidence before it. See **Agagu V Dawodu (supra) 169 at 170.** This is so because in civil cases, the only criterion to arrive at a final decision at all time is by determining on which side of the scale the weight of evidence tilts. Consequently where a defendant chooses not to adduce evidence, the suit will be determined on the minimal evidence produced by the plaintiff. See **A.G. Oyo State V. Fair Lakes Hotels Ltd (No.2) (1989) 5 N.W.L.R (pt 121)255; A.B.U V Molokwu (2003) 9 N.W.L.R (pt 825) 265.**

Now in law, it is recognized that production of title document is one way of proving ownership of land. See **Idundun V. Okumagba (1976)9-10 SC 227; Raphael V. Ezi (2015)12 N.W.L.R (pt.1472)39 and Ilona V. Idakwo (2003)12 MJSC 35 at 54.**

On the evidence, I am abundantly satisfied that by a combined effect of **Exhibits P1, P2, P3, P4, P5a and b,** that when the Plaintiff applied for land in the F.C.T, he was properly and duly allocated the disputed Plot 898 by the Defendants who are the issuing authorities. The grant of statutory of occupancy by the Defendants indicated that the Defendants had taken all necessary steps within the purview of the Land Use Act including ensuring that the land is free from any encumbrances and that the Applicant had fulfilled all material requirements before the land was allocated to him.

Exhibit P2 or the statutory right of occupancy was issued to Plaintiff on certain defined conditions. One of the key conditions under **clause 2(i)** is that the Plaintiff will within three years of the commencement of this Right of Occupancy **"erect and complete on the said Plot buildings and other works that conform with the purpose for which the plot is granted…" Clause 4** also indicates clearly that the Right of Occupancy shall commence on the date of acceptance as signified by Plaintiff in writing.

The implication of these clauses above is that the land or property allocated is vacant and unencumbered. As evidence unequivocally showed and I will shortly deal with the point, the Defendants never kept to their side of the agreement as the Plaintiff after fulfilling all requirements could not take possession and develop the plot.

As already referred to in this judgment, the Defendants issued a statutory right of occupancy bill vide **Exhibit P4** which included fees for **"Certificate of Occupancy Preparation fee"** and **"Survey fee and cost of plan"** and the Plaintiff duly paid all these fees vide **Exhibits P5a and 5b** as far back as 2011.

Now on the evidence, since the allocation in 2010 and payment of all requisite fees in 2011, the Defendants for no discernable reasons have not issued the Plaintiff with the **certificate of occupancy (C/O).** As stated repeatedly, there is nothing from the other side of the aisle or from Defendants explaining why the C/O was not issued.

Similarly, contrary to the conditions in **Exhibit P2 (**the right of allocation), the Plaintiff could not access the land and take possession because of illegal squatters on the plot. By **Exhibits P6a-d,** he wrote at different times letters to the Defendants to intervene and by implication living up to their commitments under the right of offer and for which he has made all required payments.

Now what is interesting and surprising here is that the Defendants would appear to be unwilling to take steps to remove the people occupying the plots they allocated Plaintiff including the disputed plot 899. By **Exhibit P7** dated 11th August, 2017, the Defendants through the Department of Development Control, wrote the following letter to the Plaintiff as follows:

"RE-EVACUATION OF ILLEGAL SQUATTERS ON PLOTS 897, 898 AND 899 CADASTRAL ZONE BO1, GUDU DISTRICT, ABUJA

Above subject refers.

This is to inform you with regret of the Department's inability to remove indigenes on Plots 897-899, Gudu District as it falls within an indigenous settlement.

You are therefore advise to liaise with the Department of Resettlement and Compensation whose purview include valuation/resettlement matters in the FCT for guidance n the relocation of the indigenes.

Thank you in anticipation of your understanding and cooperation.

Signed
Tpl Mukhtar Galadima Usman
Ag. Director Development Control
For: Ag. Coordinator, AMMC"

The above letter is self explanatory. The Defendants here through there agency or department acknowledged unequivocally the allocation to Plaintiff of the disputed plot but advised him to liase with another department of the Defendants **"for guidance on the relocation of the indigenes"** on the plot. It is logical to hold that if the Plaintiff was not the rightful allotee, he certainly would not have been given this advise.

On the evidence, this was the position when the Plaintiff conducted a search on the status of the property only to find that by **Exhibit P8a** dated 30th April, 2018 that the right of occupancy was **"revoked due to previous commitment."**

The Plaintiff stated in evidence that he was never notified at any time of the revocation of his right of occupancy and was also never called at any time by the Defendants to inform him of any concerns over his allocation or to give him a hearing before the revocation of his plot. The pertinent question is whether this revocation can be countenanced in law?

Let us first start with the contents of the search report. It is not clear what this sentence or phrase **(revoked due to previous commitments)** means or signifies but let us perhaps properly situate the comment on the legal search report, **Exhibit P8a** as follows:

"Other comment:

This Statutory Right of Occupancy (R-of-O) dated 10/02/2012 was granted YISA EAST BRAIMOH for Residential purpose, Power of Attorney was donated in favour of HOTEL BROADWAY LTD registered as No. FC 34 at page 34 Vol. 68 PA dated 15/10/2012 as at the date of this report. The title was revoked due to previous commitment."

Now the first observation here is that the search report indicates that the Right of Occupancy (R of O) granted to Plaintiff and which was revoked is dated 10th **February, 2012**. That obviously is incorrect. The Right of Occupancy issued to Plaintiff vide **Exhibit P2** is dated **14th February, 2010**. It is stating the obvious that the contents of the R of O cannot be altered or changed to suit a particular purpose. See **Section 128 (1) of the Evidence Act.** This search report in the absence of any explanation by defendants cannot legally be referencing **Exhibit P2.**

Secondly, the search report says that the plot was **"revoked due to previous commitment."** As stated earlier, no where was this sentence or phrase explained and the court cannot speculate. Now is such a reason even cognizable in law to justify revocation of landed plot or property? I have carefully perused the relevant laws and the reason given for the revocation cannot be situated within any of the grounds as recognized by law under **Sections 28 and 51(a)-(i) of the Land Use Act (L.U.A).**

Let me quickly underscore the point that Revocation of a right of occupancy must be done pursuant to the provisions of **Section 28 of the Land Use Act and the revocation must comply strictly with the provisions of the said section. See IBRAHIM VS. MOHAMMED (2003) 4 MJSC 1 at 18G-19A. A revocation of a right of occupancy is signified under the hand of a public officer duly authorized in that behalf and it is effective upon the notice of revocation being given to the holder of a right or certificate of occupancy. See IBRAHIM VS. MOHAMMED (supra) at 36C. A holder of a right of occupancy, whether evidenced by a certificate of occupancy or not, holds that right as long as it is not revoked and he will not lose his right of occupancy by revocation without his being notified first in writing and the subsequent revocation must also be notified to him in writing. The revocation must state the reason or reasons for the revocation. Any other method may be a mere declaration of intent; it will never be notice or revocation. Indeed, it will be a nullity. See OSHO VS FOREIGN FINANCE CORPORATION (1991) 4 NWLR (PT184) 157 at 187**

and NIGERIA ENGINEERING WORKS LTD VS DENAP LTD (2002) 2 MJSC 123 at 145.

Thirdly, a **legal search report** is not a **notice of revocation** to the holder as prescribed by the Land Use Act and cannot be used as a conduit to issue a notice of revocation. As already alluded to but the point needs be re-emphasised, and in clear terms for purposes of understanding, that under **Section 28(6) of the Land Use Act,** the revocation of a right of occupancy shall be signified under the hand of a public officer duly authorized in that behalf by the Governor and notice thereof shall be given to the holder

The above provision is unambiguous and self explanatory. The word used therein is **shall** which is word of command or a mandatory word and imposes a clear duty. It denotes obligation and gives no room to discretion. See **Environmental Dev. Construction & Anor V. Umara Associates Nigeria (2000)4 N.W.L.R (pt.652)293 at 303.**

Section 44 of the Act then provides clear modalities for service of notices as follows:

Any notice required by this Act to be served on any person shall be effectively served on him -

"a. By delivering it to the person on whom it is to be served; or

b. By leaving it at the usual or last known place of abode of that person; or

c. By sending it in a prepaid registered letter addressed to that person at his usual or last known place of abode; or

d. In the case of an incorporated company or body, by delivering it to the secretary or clerk of the company or body at its registered or principal office or sending it in a prepaid registered letter addressed to the secretary or clerk of the company or body at that office; or

e. **If it is not practicable after reasonable inquiry to ascertain the name or address of a holder or occupier of land on whom it should be served, by addressing it to him by the description of "holder" or "occupier" of the premises (naming them) to which it relates, and by delivering it to some**

person on the premises or, if there is no person on the premises to whom it can be delivered, by affixing it, or a copy of it, to some conspicuous part of the premises."

Again the above provision on how service is to be effected is equally self explanatory. It is only after proper and effective service of the notice of revocation that a right of occupancy can be said to have been extinguished. **Section 28(7) of the Land Use Act** provides that **"the title of the holder of a right of occupancy shall be extinguished on receipt by him of a notice given under subsection (6) of this section or on such later date as may be stated in the notice."**

In the case, there is a complete failure by the Defendants and issuing authorities to comply with the clear provisions of the law on the revocation of a right of occupancy of the Plaintiff over the disputed plot. What is curious is that in this case, the Plaintiff was in constant communication with Defendants vide **Exhibits P6a-d and P7** and they never informed him of any revocation or even heard from him before the purported revocation. The purported revocation (if at all it can be so described) is also in blatant and clear violation of **Sections 43 and 44 of the 1999 Constitution** and clearly does not qualify as a revocation under the Land Use Act and therefore unlawful.

Since the law is that revocation of a right of occupancy must be predicated on clear streamlined conditions under **Section 28 and 51(a)-(i)** and is then signified under the hand of a public officer duly authorized in that behalf and the revocation is effective upon notice of revocation being given to the holder of a right of occupancy and this evidence is totally lacking in this case. It follows that the Defendants have failed in establishing that the Right of Occupancy of Plaintiff was legally revoked or his right over the land in dispute is otherwise extinguished. The clear implication is that the Right of occupancy issued by Defendants on 14th February, 2010 vide **Exhibit P2** remains validly in existence. There cannot be a valid revocation of a right of occupancy when the holder of the land has not been served with the revocation notice duly issued under **Section 28 of the Land Use Act.** See **Lateju V. Fabayo (2012) 1 N.W.L.R (Pt.1304)159 at 179; C.S.S. Bookshop Ltd V. R.T.M.C.R.S (2006)11 N.W.L.R (pt.992)530; L.S.D.P.C V. Foreign Finance Corp (1987)1 N.W.L.R (pt.50)413; Estate of Abacha V. Eke Spiff (2009)7 N.W.L.R (pt.1139)150; Nigerian Engineering Works Ltd V. Penap Ltd (2001)18 N.W.L.R (pt.746)734.**

The bottom line is that there is absolutely no evidence before me that the **Right of Occupancy** granted to Plaintiff was legally revoked or otherwise extinguished. The said Right of Occupancy vide **Exhibit P2** remains valid and existing and has established Plaintiff's right to the land in dispute. Having addressed all the key issues arising in this case, the resolution now provides both factual and legal basis to now determine whether the reliefs sought by Plaintiff are availing.

Reliefs (i), (ii), (iii) and **(v)** succeed on the basis of the findings of court that the Right of Occupancy issued to Plaintiff dated 12th October, 2010 vide **Exhibit P2** remains valid and subsisting and that the purported revocation is unconstitutional, illegal and of no effect whatsoever and the revocation is accordingly set aside. With the success of **Reliefs (i), (ii), (iii) and (v)**, **Relief (iv)** succeeds however to the extent that the Defendants and their agents are restrained from acts capable of affecting the lawful and subsisting interest of the Plaintiff over the disputed Plot **898** as guaranteed under the **Land Use Act and the 1999 Constitution of the Federal Republic Nigeria**

Relief (vi) however fails. There is absolutely no evidence before me showing that the said Plot 898 was allocated to anybody or that there was any subsequent grant of the same land to any other person.

Relief (vii) is struck out. Having already determined that the Plaintiffs' Right of Occupancy remains extant and valid and that it was not validly revoked, the question of reinstatement becomes redundant.

Relief (viii) succeeds. Having on the evidence found that the Right of Occupancy of Plaintiff is valid and that he has paid all necessary fees demanded by Defendants since 2011 for issuance of a certificate of occupancy, there would appear to be no basis for the Defendants to now refuse to issue the certificate of occupancy.

The final Relief is for cost of action which is a question or matter of discretion under **Order 56 Rule 1 (3) and (4) of the Rules of Court.** With the success of the Plaintiffs' case, Cost in the Court's considered opinion will be availing.

On the whole and for the avoidance of doubt, the sole issue for determination is answered substantially in favour of the Plaintiff. Judgment is accordingly entered as follows:

1. **It is hereby declared that the Plaintiff is the legitimate and subsisting allotee of Plot No. 898, Cadastral Zone B01, measuring about 1581.92m^2 in Gudu District, Abuja, Federal Capital Territory pursuant to the grant of the offer of statutory right of occupancy dated the 14th day of December, 2010 for a term of 99 years by the Defendants.**

2. **It is hereby declared that the Revocation of Plaintiff's Right of Occupancy of Plot No. 898 Cadastral Zone B01, measuring about 1581.92m^2 in Gudu District, Abuja, Federal Capital Territory discovered through legal search report dated the 30th April, 2018 is invalid, unlawful, null, void and unconstitutional.**

3. **It is hereby Declared that the Revocation of Plaintiff's Right of Occupancy of Plot No.898, Cadastral Zone B01, measuring about 1581.92m^2 in Gudu District, Abuja, Federal Capital Territory without the service of notice of revocation or any form of complaint or hearing whatsoever is tantamount to denial of fair hearing contrary to Section 36 of the Constitution of the Federal Republic of Nigeria 1999 (as amended).**

4. **The Defendants and their agents are restrained from acts capable of affecting the lawful and subsisting interest of the Plaintiff over Plot No. 898 as guaranteed under the Land Use Act and the 1999 Constitution of the Federal Republic Nigeria.**

5. **The Revocation of the Plaintiffs Right of Occupancy of Plot No. 898, Cadastral Zone B01, measuring about 1581.92m^2 in Gudu District Abuja is hereby set aside.**

6. **Relief (vi) fail and is dismissed.**

7. **Relief (vii) have been overtaken by events is struck out.**

8. **The Defendants are hereby ordered to issue the Plaintiff forthwith with the Certificate of Occupancy in respect of the disputed Plot No. 898 having paid all necessary fees for same in compliance with the Land Use Act and the 1999 Constitution.**

9. I award cost assessed in sum of ₦30, 000 payable by the Defendants to the Plaintiff.

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Hon. Justice A. I. Kutigi

Appearances:

1. **E. Jatto, Esq., for the Plaintiff**

2. **Abdulrasaq Jimoh, Esq., for the Defendants**