IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA
BEFORE HIS LORDSHIP, HON. JUSTICE A.A.I. BANJOKO-JUDGE
DATED .... APRIL 2020

SUIT NO: FCT/HC/CV/5724/11

BETWEEN

1. MR. IMEH AKPAN

2. APOSTLE DANIEL OKPE……CLAIMANTS

AND

1. THE MINISTER, FEDERAL CAPITAL TERRITORY

2. FEDERAL CAPITAL DEVELOPMENT AUTHORITY……DEFENDANTS

- **S.C. PETERS ESQ AND E.J. AYINMODE ESQ REPRESENTING THE CLAIMANTS**
- **NO REPRESENTATION FOR THE DEFENCE**

JUDGMENT

Initially, there were Ten (10) Claimants who commenced this Suit against Three (3) Defendants through an Undated Writ of Summons filed on the 5th of September 2011. The Defendants on Record were served with the Writ and other Originating Processes on the 17th of November 2011, whilst the Abuja Environmental Protection Board (listed as 2nd Defendant), acknowledged receipt of the Originating Processes on the 18th of November 2011.

Five (5) Years down the line, the Claimants applied to Amend their Originating Process by: - (1). Striking out names of the 1st, 2nd, 4th, 5th, 6th, 8th, 9th and 10th Claimants, who were disinterested with further prosecution of this Suit as well as to also strike out the name of the 2nd Defendant, that is, the Abuja Environmental Protection Board; and (2). To consequentially Amend their

Court Processes as exhibited in the Motion.

Now, the Reliefs as contained in the Substantive Amended Writ of Summons, are namely: -

1. **A Declaration that the Demolition of the Claimants' House and destruction of the Claimants Properties by the Defendants without a Fair Hearing as to why these houses shall not be demolished is illegal, unconstitutional and unconscionable.**
2. **A Declaration that the Demolition of the Claimants' Houses and destruction of the Claimants' Properties by the Defendants who were not indigenes of Jikwoyi is unlawful and unconstitutional.**
3. **A Declaration that the Claimants are entitled to enjoy their Right to own both Moveable and Immoveable Properties at Jikwoyi, Abuja.**
4. **An Order of this Honourable Court compelling the Defendants to pay to the 1st Claimant the Sum of N13, 075, 500 (Thirteen Million, Seventy-Five Thousand, Five Hundred Naira) as Special Damages for the Unlawful Destruction of the 1st Claimant's Seven (7) Flats of One Bedroom that were situate at Jikwoyi, Phase 3, Abuja, Federal Capital Territory.**
5. **An Order compelling the Defendants to pay to the 2nd Claimant the Sum of N17, 926, 500 (Seventeen Million, Nine Hundred and Twenty-Six Thousand, Five Hundred Naira) only for the Unlawful Destruction of the 2nd Claimant's Four (4) Flats of One Bedroom each and another Three Bedroom Flat that were situate at Jikwoyi, Phase 3, Abuja, Federal Capital Territory.**
6. **The Sum of Fifty Million Naira (N50, 000, 000) to each of the Plaintiffs as exemplary damages for the Unconstitutional and Unlawful Destruction of each of the Claimants' houses and properties lying and situate at Jikwoyi, Phase 3, Abuja, Federal Capital Territory.**
7. **Ten Percent (10%) Interest on the Judgment Sum as Post Judgment**

Interest from the Date of Judgment until Judgment Sums to the Respective Claimants are finally liquidated.

8. **Cost of this Action.**

Upon Service of the Amended Processes, the Defendants did not file any response.

The case of the Claimants is that they built their houses on Parcels of Land given to them by the Gbagyi Indigenes of Jikwoyi Village of Abuja. They developed these houses in the same manner these Indigenes developed other Parcels of Land and inhabited them until sometime on the 5th of August 2011, when Officers of the Defendants marked their own houses for demolition. On the 17th of August 2011, they were warned that their houses would be pulled down without any Further Notice.

On the 14th of February 2012, whilst this Suit was pending and yet to be determined, Officers of the Defendants without allowing them to remove their belongings, demolished their houses and they do so, without any Court Order. The Defendant demolished their houses leaving unscathed, houses belonging to these Indigenes. The Claimants pleaded the Pictures/Photographs of the demolition.

The Defendants had destroyed the 1st Claimant's Seven Flat of One Bedroom Each whose Current Value was Thirteen Million, Seventy-Five Thousand, Five Hundred Naira (N13, 075, 500).

They also destroyed the 2nd Claimant's Four Flat of One Bedroom each as well as his Three Bedroom Flat. The Current Values for both Flats were the Sums of Thirteen Million, Seventy-Five Thousand, Five Hundred Naira (N13, 075, 500) and Four Million, Two Hundred and Ninety-Six Thousand, Five Hundred Naira (N4, 296, 500) respectively.

In total, the Defendants demolished their houses valued at Thirty One Million, Two Thousand Naira (N31, 002, 000) and had rendered them homeless.

Finally, they were never given fair hearing nor informed as to why their houses were pulled down, without advancing to them a right to relocation or

compensation.

Further, the Defendants did not believe in the Rule of Law and Fair Hearing when carrying out demolition exercises on innocent individuals thereby displacing them.

Now, after a Total Period of Seven (7) Years, the Claimants opened their case on the 22nd of January 2018, by calling their Sole Witness, Mr. Imeh Akpan, as **PW1**, who on Oath adopted his Witness Statement of Oath dated the 4th of March 2016.

In his adopted Witness Statement on Oath, he had stated that he had obtained the Consent of the 2nd Claimant to make and lead evidence on his behalf.

Referred to **Paragraph 2(r)** of his Witness Statement on Oath, PW1 identified his signature containing a breakdown of the value of their belongings, which they had reduced into a Document, which was tendered and same was admitted into evidence as **Exhibit A.**

Referred to **Paragraph 2(w)** PW1 also identified the Photographs/Pictures of his demolished house, including that of the 2nd Claimant, which were tendered and admitted into evidence as **Exhibit B1 (1) to (4)** and **B2 (1) to (8).**

Finally, PW1 urged the Court to grant all their Claims presented before the Court.

The Case was adjourned for his Cross-Examination by the Defence.

On the 4th of February 2019, the Defence was represented by a Counsel but after Series of Adjournments with Hearing Notices, no representation was entered on behalf of the Defence.

On the 26th of March 2019, they were foreclosed and ordered to file Final Written Addresses, which they failed to file. Learned Counsel representing the Claimants then proceeded to file his Final Written Address, which was served together with Hearing Notice on the Defence, but yet again, the Defence elected not to respond.

On the 23rd of January 2020, Learned Counsel representing the Claimants adopted his Final Written Address wherein Three Issues for Determination were formulated, namely: -

"**1. Whether from the totality of both Oral and Documentary Evidence adduced by the Parties in this case, the Plaintiffs are entitled to the Declaratory Reliefs sought by the Plaintiffs in this Suit?**

2. Whether by virtue of the evidence adduced before this Honourable Court in this Suit the Plaintiffs are entitled to Damages as claimed by them against the Defendants before this Honourable Court?

3. Whether this Honourable Court can grant an Order for Post Judgment Interest to be paid on the Judgment Sum if the Court finds in the Plaintiffs' favour?"

This Final Written Address is now on Record.

Now, after a careful consideration of the facts and evidence led during Trial and reading through the Submissions and Arguments of Learned Counsel representing them, the Sole Issue for Determination, would be: **Whether the Demolition was Lawful thereby entitling the Claimants to the Declaratory Reliefs sought as well as to the Monetary Claims including Exemplary Damages and Post Judgment Interests.**

Before determining this Sole Issue, it is worth reiterating the point that during pendency of this Action, the Defendants on Record, did not file any Pleadings nor Cross-Examine the Claimants' Witness, or even, file any Written Address. In other words, there was no Defence whatsoever.

The Records of the Court shows that the Defendants upon being served with the Originating Court Processes, Hearing Notices for each Stage of Adjournment was also served on them as in seen from the Endorsement Copies of the Hearing Notices for the 5th of December 2011, 2nd of February

2012, the 29th of March 2012, 17th of November 2015, 14th of November 2016 and 26th of September 2017.

When the Claimants eventually opened their Case on the 22nd of January 2018, the Defendants were served with a Hearing Notice on the 18th of January 2018 and on the Date fixed for Hearing, they were absent and unrepresented and no Pleadings were in their regard. The Claimants led their Evidence and the Matter was adjourned to the 25th of April 2018 for Cross-Examination by the Defence.

The Matter was subsequently heard on the 4th of February 2019 but prior to Hearing, Hearing Notice had been served on the Defence on the 1st of February 2019. On this Date of Hearing, the Defence even though absent, were represented by Learned Counsel, Mrs. Betty Umeagbulam, who prayed for an Adjournment to enable her to be abreast with the facts of the Case. Learned Counsel representing the Claimants challenged her Prayer for Adjournment submitting that the Defence be rather foreclosed from Cross-Examining his Witness and urged that the Case be set down for Defence. Learned Counsel's Submission was granted and Matter was adjourned to the 26th of March 2019 for Definite Defence and Hearing Notice with Affidavit of Service was also ordered.

On this Return Date, the Defence was absent and unrepresented and on this ground, Learned Counsel representing the Claimants submitted that the Defence was aware of this Date but had not filed any Pleading beforehand. Learned Counsel then prayed that the Defence be foreclosed and ordered to file their Final Written Address within Twenty-One (21) Days as prescribed by the Rules of this Court. The Case was adjourned to the 18th of June 2019 and Hearing Notice was also ordered with Affidavit of Service to be on the Record.

On this Return Date, all the Parties were absent and unrepresented and the Case was adjourned to the 14th of October 2019. The Case was not heard on this Date but rescheduled to the 6th of November 2019 and yet again, the Defence was served with Hearing Notice, indicating that the Matter was fixed for Adoption on the 21st of October 2019.

On this Return date, the Defence did not file any Final Written Address and another Date, being the 23rd of January 2020, was taken for Adoption of Final Written Addresses. Hearing Notice for this Date was served on the Defence but they entered no appearance on that note, Learned Counsel representing the Claimants adopted his Final Written Address dated the 12th of April 2019.

From the analysis of the Records, it can be seen that the Defence had been put on Notice during the Trial of this Case but had elected not to prosecute their Defence by either filing their Pleadings or Final Written Address. The Only Pleadings on Record remained that filed by the Claimants.

It is Trite that where the only Pleading filed is the Statement of Claim, absence of a Statement of Defence, means that no issue is joined. Reference is made to the Case of **EGESIMBA VS ONZURUIKE (2002) LPELR- 1043 (SC)**. Where issues are not joined, the Defence is deemed to have admitted the Claim or Relief in the Statement of Claim. Reference is made to the Cases of **AWOYEGBE VS OGBEIDE (1988) 1 NWLR PART 73 PAGE 695 AND OKOEBOR VS POLICE COUNCIL & ORS (2003) LPELR- 2458 (SC).**

Further, where the Claims and Evidence led are credible, the Reliefs may be granted as a matter of course on the basis that the Standard of Proof to be discharged is a Minimal One. Reference is made to the cases of **KHALED BARAKAT SHAMI VS UBA PLC (2010) SCNJ PAGE 23 PAGES 39, 40; ANNA VS UBA PLC (1997) 4 NWLR PART 498 PAGE 181 AT PAGE 189; MOGAJI VS ODOFIN (1978) 4 S.C. PAGE 9.**

However, in the Case of **CHIEF EDMUND AKANINWO & ORS VS CHIEF O. N. NSIRIM & 7 ORS (2008) 2 SCNJ PAGE 100 PAGES 113, 114, HIS LORDSHIP MOHAMMED JSC** held as Settled Law, where it concerns Declaratory Reliefs, a Court would not make Declarations of Right either on Mere Admissions or in Default of Defence without hearing Appropriate Evidence and being satisfied with such evidence. Reference is had to the Cases of **WILLENSTEINER VS MOIR (1974) 3 ALL E.R. PAGE 219; MOTUNWASE VS SORUNGBE (1988) 4 NWLR PAGE 92 AT PAGE 90; OKEDARE VS ADEBARA (1994) 6 NWLR PART 349 PAGE 157 AT PAGE 185; AGBAJE VS AGBOLUAJE (1970) 1 ALL NLR PAGE 21 AT PAGE 26; FABUNMI VS AGBE (1985) 1 NWLR PART 2**

PAGE 299 AT PAGE 318; CPC VS INEC (2011) 18 NWLR PART 1279 PAGE 493; NWOKIDU VS OKANU (2010) 3 NWLR PART 1181 PAGE 362; EKUNDAYO VS BARUWA (1955) 2 ALL NLR PAGE 211.

Where a Declaratory Relief is sought, the burden of Proof to be discharged makes the Scale quite heavy, as held in the **SUPREME COURT** Case of **DUMEZ (NIG) LIMITED VS NWAKHOBA (2008) 18 NWLR PART 1119 PAGE 361; EMENIKE VS PDP & ORS (2012) LPELR-7802 (SC).** This burden is heavy, as it rests throughout on the Claimant and never shifts. The only duty of the Defendant is merely to defend unless where there is a Counter-Claim. Otherwise the Defendant has no duty to prove his Title to the same Land in question. Reference is made to **His Lordship Ariwoola JSC** in the Case of **NRUAMAH VS EBUZOEME (2013) ALL FWLR PART 681 PAGE 1426 AT PAGE 1442; SEE ALSO AWUZIE VS NKPARIAMA (2002) 1 NWLR PART 747 PAGE 1 AT PAGE 9.**

The Grant or Refusal of a Declaratory Relief is at the Court's Discretion, which must be exercised judicially and with the greatest caution, when it is of the opinion that a Party is seeking such a Relief. See the Case of **RASHIDI ADEWOLU LADOJA VS INEC (2007) LPELR- 1738 (SC); MATTHEW OKECHUKWU ENEKWE VS INTERNATIONAL MERCHANT BANK OF NIGERIA LTD (2006) LPELR- 1140 (SC).**

Now, putting into context the above Judicial Precedents to this instant case, it is trite that the preponderance of evidence, as provided in **SECTIONS 135 AND 137 OF THE EVIDENCE ACT 2011 (AS AMENDED)** lies on the Claimants. They must satisfactorily plead and lead Credible and Cogent Evidence, before this Court would judicially exercise its Discretion in their favour or their Case is bound to fail. Reference is made to the Cases of **MAKANJUOLA VS AJILORE (2001) 12 NWLR PART 727 PAGE 416; ANYANRU VS MANDILAS LTD (2007) 4 SCNJ PAGE 288; OGUANUHU VS CHIEGBOKA (2013) 2 SCNJ PAGE 693 AT PAGE 707; MATANMI & ORS VS DADA & ANOR (2013) LPELR- 19929 SC.**

The Claimants in discharging the burden of proof placed on them, presented a Sole Witness, Mr. Imeh Akpan, the 1st Claimant who testified for himself. According to him, in his Witness Statement on Oath, he had also obtained the Consent of the 2nd Claimant, to testify on his behalf and during Trial, Two Documentary Evidence were admitted.

Now, in Civil Case, it is the Law that it is the Claimants that have the prerogative in determining the Number of Witnesses needed to be called as well as the Documents needed to be supplied to prove their case. Their case would either swim or sink depending on the probative value of the Evidence adduced by them. The Court agrees with the submissions of Learned Counsel representing the Claimant in regard to the Case Law Authorities of **AYOOLA VS YAHAYA (2005) 7 NWLR PART 923 PAGE 122 AT PAGE 138, 139 PARAS G-E PER ONNOGHEN JCA (AS HE THEN WAS); CROSS RIVER NEWSPAPER CORP VS ONI & 6 ORS (1995) 1 NWLR PART 371 PAGE 270.**

It was held in these Cases, that it was not a Rule of Law or Practice that a Plaintiff, in a Civil Suit, must be physically present in Court or testify, if he can prove his Case in any other manner. These Case Laws are sacrosanct and brooks no further argument. However, the Requirement of the Law is that **SATISFACTORY EVIDENCE MUST** be adduced when a Declaratory Relief is sought as highlighted in the Judicial Precedents cited above.

Now, from the facts and circumstances of this Case, it was alleged by the Claimants, that on the 14th day of February 2012, Officers of the Defendants demolished and destroyed houses in Jikwoyi Phase 3, Abuja. They challenged this demolition by seeking Two Declaratory Reliefs as well as another Declaratory Relief to the effect that they were entitled to enjoy their Right to own both the Movable and Immovable Properties.

By these Declaratory Reliefs, it is clear the Claimants perceived they had Rights protected by Law and it is a General Principle of Law that where there is a Right there is also Remedy. The Stronghold of their Case is that, they were

not given Fair Hearing Constitutionally Guaranteed under **Section 36(2) of the Constitution of the Federal Republic of Nigeria 1999 (As Amended).**

According to Learned Counsel, the Defendants demolished the Claimants houses without availing them the opportunity to be heard before the decision to demolish was taken. Reference was had to **Section 36(2) of the 1999 Constitution** and to the Cases of **OKOYE VS LAGOS STATE GOVERNMENT (1990) 3 NWLR PART 136 PAGE 115 AT PAGE 126 PARAS B-D; ADIGUN VS A.G. OF OYO STATE & ORS (1987) NWLR PART 53 PAGE 678 AT PAGE 744 PARAS C-F; OBIKOYA & SONS LTD VS GOVERNOR OF LAGOS STATE (1987) 1 NWLR PART 50 PAGE 385 AT PAGE 403 PARAS D-H.**

Further, it was submitted that the Defendants used their arbitrary powers by resorting to self-help contrary to the Rule of Law, when they illegally and forcefully entered into and demolished the Claimants' houses, and in the process, destroying the Claimants' Properties. Reference was made to the Cases of **CHIEF D.M. OKOCHI VS CHIEF AMUKALI ANIMKWOI (2003) 18 NWLR PART 851 PAGE 1; AGBOR VS METROPOLITAN POLICE COMMISSIONER (1969) 1 WLR PAGE 703; GOV. LAGOS STATE VS OJUKWU (1986) 1 NWLR PART 18 PAGE 621; ELIOCHIN (NIG) LTD VS MBADIWE (1986) 1 NWLR PART 14 PAGE 47 AT PAGE 60 PARAS F-G, AMONGST OTHERS.**

Apart from that, it was argued by Learned Counsel that the Defendants carried out this demolition exercise during the pendency of this Suit and he relied on the Cases of **ODIBA VS AKAAZUE MUEME (1999) NWLR PART 622 PAGE 174; ODIBA VS AZEGE (1998) 9 NWLR PART 556 PAGE 370 AT PAGE 384 PARAS C-E,** to argue the fact of lis pendens.

In conclusion, Learned Counsel surmised that the Claimants' Complaint and Unchallenged Facts all show that the Defendants' act of destroying the Claimants' Properties, Movable and Immovable, were unconstitutional, illegal, wrongful, null and void and for which reasons, the Claimants were entitled to their Reliefs.

Now, the Question of Lawfulness of the Demolition is invariably linked to the Question of Title to Land. This is because the Claimants did not build their Residential Houses in the air. Rather, they built on a Land, which is the Foundation upon which their Properties, Movable and Immovable rested on, prior to the demolition. Therefore, it is imperative to consider whether the Claimants indeed had a Legal Right to own these Immovable Properties, that is, both the Land and the houses erected thereon before determining the Lawfulness or otherwise of that Demolition.

Generally, a Right to Acquire and Own Immovable of Property in Nigeria is a Constitutional Right guaranteed under **Chapter IV of the Constitution of the Federal Republic of Nigeria 1999 (As Amended),** which provides **SECTION 43** that, "*Subject to the provisions of this Constitution, every citizen of Nigeria shall have the right to acquire and own immovable property anywhere in Nigeria*."

However, the Constitution does not exhaustively answer the Questions of **HOW** land is Acquired and Owned nor does it say **WHO,** is the Constitutional Establishment to be engaged with, when desiring to build an Immovable Property on the Land. The Constitution only provides **WHO** had the Ultimate Ownership of all Lands within the Federal Republic of Nigeria.

From the facts and evidence led at Trial, the spotlight focuses on Lands within the Federal Capital Territory, precisely in Jikwoyi Phase 3 of Abuja. The Claimants had alleged that they were "GIVEN" Parcels of Land by Indigents of Jikwoyi whereupon they built houses and inhabited them until they were displaced by the Defendants, who demolished the houses.

The Claimants' Unchallenged Facts and Evidence, must be balanced side by side viz-a-viz the Law on the Proverbial Scale, to understand where the Weight lies.

Now, having known the Case of the Claimants, **WHAT** does the Law have to say on this Subject, as it is the Law that births both a Right as well as a Remedy.

The Constitution in answering the **WHO** owns Lands within the Federal

Capital Territory, states in **Section 297(2)** that, "*the Ownership of all Lands within the Federal Capital Territory is vested in the Government of the Federal Republic of Nigeria.*" In Support is also **Section 1(3)** of the **Federal Capital Territory Act CAP F6 Law of the Federation 2004,** which provides in that**: -** "*The Area contained in the Capital Territory shall, as from the commencement of this Act, cease to be a Portion of the States concerned and shall henceforth be Governed and Administered by or under the Control of the Government of the Federation to the exclusion of any other Person or Authority whatsoever and the Ownership of the Lands comprised in the Federal Capital Territory shall likewise vest absolutely in the Government of the Federation***."**

Further, **Section 302 of the Constitution** provides that: -
"*The President may, in exercise of the powers conferred upon him by **Section 147 of this Constitution**, appoint for the Federal Capital Territory, Abuja, a Minister who shall exercise such Powers and Perform such Functions as may be delegated to him by the President, from time to time.* "In tandem with this Constitutional Provision is also in **Section 18(a) of the Federal Capital Territory Act CAP F6 Law of the Federation 2004; and Section 51(2) of the Land Use Act 1990 (Abuja).**

In other words, within the Federal Capital Territory, **ONLY** the Minister has the Executive Powers to deal with **ALL** Lands within the Territory. The Minister in carrying out his Executive Powers is further enabled by Law, as to **HOW** Lands entrusted to him are to be acquired by able Citizens of Nigeria. The Enabling Law is the **Land Use Act of 1990 (Abuja)**, which creates Instruments through which Title is transferred from him to any Citizen after following the laid down Administrative Steps for acquiring an Interest in Land within the Territory. These Instruments issued by the Minister are either a Certificate of Occupancy or a Statutory Right of Occupancy as prescribed in **Sections 8 and 9 of the Act.**

Upon acquiring any of these Titles, one of the Covenants a Title Holder is enjoined to do on the Land, is to develop on the Land depending on the Land Use. This is where the Provision of Section **Sections 3(1) and (2)** the **Federal Capital Territory Act CAP F6 Law of the Federation 2004**, comes into play which established the 2nd Defendant, that is, the **Federal Capital Development Authority** (hereinafter referred to as "**Authority**"), and whose Functions and Powers are set out in **Section 4.**

This is the ONLY Appropriate Authority **WHO** must be approached by **ALL** Persons intending to develop or build an Immovable Property on the Land exclusively owned by the Federal Government. Their Powers are fully entrenched in **Section 7(1),** which states that: -

"*As from the Commencement of this Act, no Person or Body shall within the Federal Capital Territory, carry out **ANY DEVELOPMENT** within the meaning of this Act **UNLESS THE WRITTEN APPROVAL** of the Authority has been obtained by such Person or Body:*

Provided that the Authority may make a general order with respect to the interim development of land within the Federal Capital Territory and may make special orders with respect to the interim development of any portion of land within any particular area."

Subsection (2) further provides that: -

"*The Authority shall have power to require every Person who, otherwise than in pursuance of an Approval granted or Order made under **Subsection (1) of this Section**, proceeds with or does any work within the Federal Capital Territory to remove any work performed, and reinstate the land or, where applicable, the building, in the condition in which it was before the commencement of such work, and in the event of any failure on the part of any such Person to comply with any such requirement, the Authority shall cause the necessary work to be carried out, and may recover the expenses thereof from such person as a debt.*"

All the aforesaid Laws are Extant and it is General Principle of Law that Ignorance of the Law is not an Excuse.
Having known what the Law provides, **WHAT** did the Claimants in accordance with the Law produce to entitle them to the enjoyment of that Right to Own the Parcels of Land, build and inhabit the houses in Jikwoyi Phase 3 of Abuja?

Before this Court are Two Exhibits namely: -

1. **Exhibit A,** Cost Analysis of the Movable and Immovable Properties of the Claimants
2. **Exhibit B1 (1) to (4)** and **B2 (1) to (8)** representing

Photographs/Pictures of their Demolished Houses

Apart from these Documentary Exhibits, no other Instrument or Title Document whatsoever was presented by the Claimants that fits into the description of what the Law requires. Further, there is no Documentary Evidence showing the Mode of Alienation from Indigenous People of Jikwoyi Village to the Claimants. The Claimants did not lead evidence on how they were given the Parcels of Land, whether by Sale, Gift or some Private Arrangement. It is not the duty of this Court to speculate on the Mode of Alienation adopted, but to conclude that the absence of any Documentary Evidence could only mean that an Oral Grant was the Viable Mode used to bestow Title on the Claimants.

As earlier stated, Ignorance of the Law is not an Excuse and the Law can be imputed on the Claimants because it is deemed they had Knowledge of the Law as well as Knowledge of the Lawful Channel to follow for the purposes of acquiring and owning Land in the Federal Capital Territory. They deliberately boycotted this Lawful Channel by engaging with the Indigenous People of Jikwoyi.

The Claimants certainly knew from whom they obtained access into the Parcels of Land in Jikwoyi Phase 3. They were being clever by half to conceal the identity of the Jikwoyi Indigenes from whom they obtained Title and did not produce anyone of them as Witnesses to testify on their behalf thereby concealing the Identity of the Persons who bestowed Title on them.

Further, whether or not ANY or ALL the Indigenes were produced to testify in regard to the Title that moved from them to the Claimants, that would certainly not change the position of the Law, as the Law is the Law and would always remain, the Law. The Law does not recognize them as the Bestower of Title within the Federal Capital Territory including in Jikwoyi Phase 3, where they are resident. The Oral Grant of Title conferred on the Claimants by the Jikwoyi Indigenes was absolutely, Unknown to Law and they were swimming against the tide of the Law. This was their First Wrong!!!

Further, the Claimants proceeded to build Residential Houses on the Land

without obtaining the Written Approval of the 2nd Defendant.

Now, from the Pleadings and Documentary Evidence before the Court, the Claimants had contended that their Movable and Immovable Properties were destroyed and tendered into evidence **Exhibit A,** the Cost Analysis of the Properties demolished and **Exhibit B Series,** the Photographs of the destruction.

It can be seen that **Exhibit B Series,** evidenced the Destruction of Immovable Built Structures and things appurtenant to them. However, it did not evidence the destruction of any Movable Property as claimed, such a Cushion Seats, Tables, TV Set as claimed by the Claimants in **Exhibit A**.

In other words, **Exhibit B** does not corroborate **Exhibit A**, in terms of the Claimants' claim that their Movable Property were included in the destruction. Consequently, there appears not to be a Pedestal on which their Right to Ownership of a Movable Property would rest. What is apparent before the Court is Demolition of Immovable and things that were not possible to evacuate, because they were affixed to the Immovable Houses allegedly destroyed by the Defendants.

The 1st Claimant had alleged that he built a Seven Flat of One Bedroom each at the Current Value of Thirteen Million, Seventy-Five Thousand, Five Hundred Naira (N13, 075, 500), evidenced in **Exhibit A.**

Also alleged by the 2nd Claimant, was that he built a Four Flat of One Bedroom each for the at the Current Value Sum of Thirteen Million, Seventy-Five Thousand, Five Hundred Naira (N13, 075, 500) and a Three Bedroom Flat, at the Current Value Sum of Four Million, Two Hundred and Ninety-Six Thousand, Five Hundred Naira (N4, 296, 500), also evidenced in **Exhibit A**.

In total, the Combined Sum claimed by the Claimants' for their demolished property, both movable and Immovable was the Sum of Thirty-One Million, Two Thousand Naira (N31, 002, 000).

It is important to state that during Trial, the Sole Witness for the Claimants did not tender any Receipt evidencing purchase of any Building Material affixed

on the Immovable Property nor any Receipt of Purchase of Movable Property that were moved into their houses. No Receipt whatsoever was placed before Court evidencing purchase **BEFORE** the demolition was carried out by the Defendants on the 14th of February 2012.

The **2nd Claimant**, **"APOSTLE" DANIEL OKPE**, who consented that evidence be led on his behalf, was alleged to have expended the Sum of Thirteen Million, Seventy-Five Thousand, Five Hundred Naira (N13, 075, 500) for the Four Flats consisting of One Bedroom Each. This Sum, was at variance with the Documentary Evidence backing up his Claim, as seen in **Exhibit A,** which had stated the Sum to be Thirteen Million, Six Hundred and Thirty Thousand Naira (N13, 630, 000), which leaves an Excess Amount of Five Hundred and Fifty- Four Thousand, Five Hundred Naira (N554, 500). This surely would change the Total Amount of Expenditure incurred by the Claimants in **Paragraph 17 and Relief 5 of their Amended Pleadings**. It is Trite Law that any Evidence led by a Party which is at variance with his Pleadings, ought to be discountenanced and disregarded, as going to no issue. Reference is made to the Cases of **ANIEMEKA EMEGOKWE VS JAMES OKADIGBO (1973) 4 SC PAGE 113 AT PAGE 117; WOLUCHEM VS GUDI (1981) 5 SC PAGE 291; IWUOHA VS NIPOST (2003) 8 NWLR PART 822 PAGE 308 AT PAGE 339; AKPAPUNA & ORS VS OBI NZEKA & ORS (1983) 2 SCNLR PAGE 1.**

As regards, the **1st Claimant**, Mr. Imeh Akpan in his Cost Analysis, he titled it thus, "***The cost break down of the seven flats of one bedroom flat demolish (Sic) by the FCDA ON the 14/2/2011 in Jikwoyi Phase 1".***

He summed up his Expenses to be N13, 075, 500 but failed to furnish the Date, Time and Receipts for each expenditure. While it is possible to have one's personal note of one's expenses, the point is that to Reclaim these Expenses and Expenditure Legally, Positive Evidence must be evinced to demonstrate their existence, their true value, the date of purchase, the receipts of fees for workmanship for both the Movable and Immovable Possessions. There is absolutely nothing by way of Proof anchoring the Claimants' contention of Cost breakdown. It would have been so easy to show the Receipts for Toilet Seats and W/C, Floor Tiles, Furnitures, just as it would have been easy to call

or summon either the Carpenter or Electrician or Plumber to testify in their regard, as to the work carried out. There was no basis for these Calculations and no Receipts or other Evidence to justify the Sum they claimed they expended.

The Cost Breakdown for both Claimants must have been conjured after a good Shot of Milk, for fear of stating what Shot of Drink it actually was, that was drunk!!!

Now, the presence of the Claimants Residential Houses on the Land was Illegal, more especially that they failed to obtain the Land from the proper source, the 1st Defendant and failed to obtained the Vital Approval from the 2nd Defendant. This again was their Second Wrong and they were beholden to a looming demolition!!!

It is clear that the Claimants committed Two Wrongs, which can certainly not equate to any Right under the Law. Illegality was in their hands. They ran afoul of the Law knowing fully well that one day, the Law they had consecutively abused, would surely take its course. The Claimants should know that, Nothing Illegal, Last Long!!!

The handwriting on their wall was a testament that the Claimants had been weighed and found wanting. They cannot wail that the handwriting on the wall was discriminatory nor could they ask for any compensation, when they knew they had no Right Standing, to ask for it.

Now, on the 5th of August 2011, Officers of the Defendants marked the Claimants' houses for Demolition. Twelve Days later, precisely on the 17th of August 2011, they were warned that their houses would be pull down without further Notice. This evidences the fact that ample opportunity was given to them to evacuate their Movable Properties out of the house. However, they took the choice of running to Court for refuge instead.

According to the Claimants in their Amended Pleadings, they had a Pending Action in Court and it was required of the Defendants to obtain a Court Order before they could proceed with the Demolition. They further claimed that the demolition embarked on by the Defendants was Extra-Judicial in that they

were disallowed from their Right to Fair Hearing before the Defendants demolished their Houses.

Now, to determine the Lawfulness of the Demolition, the Record of the Court comes into full view. From the Court's Record, the Initial Ten Claimants filed a Writ of Summons on the 5th of September 2011, Three Weeks after the Final Notice of a Demolition. Their Writ was accompanied by a Motion on Notice for Injunction also filed on the 5th of September, staying the demolition of parts of Jikwoyi Phase 3 until when the Claimants were heard, relocated and compensated. Both the Writ and Motion were served on the Defendants on the 17th of November 2011.

The Service of the Writ and the Motion for Injunction had put the Defendants on Notice and they were aware of the Pendency of the Action.

It is Trite Law where a Party is aware of a pending Court Process, and whether the Court has not given a Specific Injunctive Order, Parties are bound to maintain status quo pending the determination of the Court Process. They should on no account resort to self-help. See **Government of Lagos State vs. Ojukwu (supra); Obeya Memorial Hospital vs. A.G. Federation (supra) and Ezegbu vs. F.A.T.B. (supra).** It is impermissible for a Party to take any step during the Pendency of the Suit which may have the effect of foisting upon the court a situation of complete helplessness or which may give the impression that the court is being used as a mere subterfuge, to tie the hands of one party while the other party helps himself extra-judicially.

Both parties are expected to await the result of the litigation and the appropriate Order of Court before acting further. Once the Court is seized of the matter, no party has the right to take the matter into his own hands. It is a reprehensible conduct for any party to an action or appeal pending in court to proceed to take the law into his hands, without any specific order of the court and to do any act which would pre-empt the result of the action. The courts frown against such a conduct and would always invoke their disciplinary powers to restore the status quo. See **ABIODUN VS C. J. KWARA STATE (2007) 18 NWLR (PT.1065) 109 AT 139 PARAS C-F; 140-141. PARAS. A-B; REGISTERED TRUSTEES, APOSTOLIC CHURCH VS OLOWOLENI (1990) 6**

NWLR (PT.158) 514.

Despite the Pendency of the Action, the Defendants on the 14th of February 2012, the Officers of the Defendant demolished their houses.

Having said that, they can only be Restored if a Legal Right is established. Now, the Records of this Court will show that this Remedy was earlier sought by the then Ten Claimants in their Motion dated the 26th of February 2013, which was served with no response by the Defendants. Their Motion was **M/4508/13** which prayed for the following Orders, namely: -

1. ***An Order of this Honourable Court restoring the Status Quo ante bellum in this Suit by compelling the Defendants/Respondents to immediately restore by rebuilding the Plaintiffs/Applicants' houses that were demolished and destroyed by the Respondents on the 14/2/2012, when this Suit was pending to the Notice of the Defendants/Respondents.***
2. ***An Order of this Honourable Court that upon restoring and building the said Plaintiffs/Applicants' demolished houses, the Status Quo ante bellum shall be maintained by the Defendants.***
3. ***...***

The Application was heard and in a Considered Ruling delivered on the 27th of January 2014, it was held by this Court that ***the Claimants had an obligation to justify their Legal Right to the Premises before they could file this Application to Rebuild. Their Application was refused and dismissed*** and till date, that Ruling remained extant and to all intent, binding on the Claimants until set aside.

By the Hearing of Evidence and the consideration of Documentary Evidence, the presence/absence of any Legal Right accruing to the Claimants has now been determined. The Court has found that the Claimants failed to obtain the Necessary Allocation and Approval from the Minister of the Federal Capital Territory, they also failed to obtain the Necessary Building Approval from the 2nd Defendant and therefore, have no Legal Basis to be on the Land.

If there is no Right in the first place, there can be no Damages, whether General, Special or Exemplary.

Their disentitlement automatically answers the Grant of any Post Judgment Interest, as no finding is made the Claimants' favour.

In conclusion the Court finds as follows: -

1. **A Declaration of Court will not be made that the Demolition of the Claimants' Houses and Destruction of the Claimants Properties by the Defendants was illegal, unconstitutional and unconscionable for lack of Fair Hearing.**
2. **No Declaration will be made that the Demolition of the Claimants' houses and destruction of their properties by the Defendants unlawful and unconstitutional.**
3. **A Declaration of Court will also not be made that the Claimants were entitled to enjoy their right to own both moveable and immoveable properties at Jikwoyi, Phase 3, Abuja.**
4. **For Failure to justify the Claims, an Order of this Court will not be made compelling the Defendants to pay to the 1st Claimant the Sum of N13, 075, 500 (Thirteen Million, Seventy-Five Thousand, Five Hundred Naira) as Special Damages for the Unlawful Destruction of the 1st Claimant's Seven (7) Flats of One Bedroom that were situate at Jikwoyi, Phase 3, Abuja, Federal Capital Territory.**
5. **Further, for failure to justify the Claims, an Order of this Court will not be made compelling the Defendants to pay to the 2nd Claimant the Sum of N17, 926, 500 (Seventeen Million, Nine Hundred and Twenty-Six Thousand, Five Hundred Naira) only for the Unlawful Destruction of the 2nd Claimant's Four (4) Flats of One Bedroom each and another Three Bedroom Flat that were situate at Jikwoyi, Phase 3, Abuja, Federal Capital Territory.**

6. **The Court declines the Prayer seeking the grant the Sum of Fifty Million Naira (N50, 000, 000) to each of the Claimants as Exemplary Damages for the Unconstitutional and Unlawful Destruction of each of their houses and properties lying and situate at Jikwoyi, Phase 3, Abuja, Federal Capital Territory.**
7. **Also, refused is the Ten Percent (10%) Interest on the Judgment Sum being the Post Judgment Interest from the Date of Judgment until Judgment Sums to the Respective Claimants are finally liquidated.**
8. **No Cost of this Action is awarded to the Claimants.**

HON. JUSTICE A.A.I. BANJOKO

JUDGE