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

SUIT NO: FCT/HC/CV/4323/12

BETWEEN

1. MRS. HELEN UMOSEN OLIH **2. MR. KEHINDE OGEDENGBE**	**CLAIMANTS**

AND

1. HONOURABLE MINISTER OF THE FEDERAL CAPITAL TERRITORY **2. FEDERAL CAPITAL TERRITORY DEVELOPMENT AUTHORITY**	**1ST AND 2ND DEFENDANTS**
3. MR. CYRIL EZEAMAKA	**3RD DEFENDANT**

- **SEUN OLOKEOGUN ESQ WITH TOPE AYUBA BULUS (MRS) FOR THE CLAIMANTS**
- **YUSUF BOLAJI ABDULRAHMAN ESQ FOR THE 1ST AND 2ND DEFENDANTS**
- **SAMUEL OGALA ESQ FOR THE 3RD DEFENDANT**

JUDGMENT

By way of an Amended Writ of Summons dated the 22nd of May 2013 but filed on the 27th of May 2013, the Claimants are claiming against the 1st, 2nd and 3rd Defendants the following, namely: -

1. **A Declaration of Court that the Claimants are the bona fide Owners and Occupiers of Plot A79 and 80 now subdivided into Plots 363 and 366 Apo Layout now known as Apo Resettlement and its appurtenance or any other Plot carved from it.**
2. **A Declaration of Court that the Claimants are entitled to be issued and should be issued with a Regularized Certificate of Occupancy and all other Title Documents in respect of Former Plots A79 and 80 now known as Plot 363 and 366 Apo Resettlement Layout and any other Plot carved from it.**
3. **An Order mandating the Minister of the FCT/Agents to issue and grant to the Claimants the Regularized Title of the Certificate of Occupancy and all other Title Documents over the remaining part of the Land covered by the Initial Certificate of Occupancy formerly Plots A79 and 80 Apo Layout of which has been subdivided and relabelled into Plots 363 and 366 Apo Resettlement Layout.**
4. **An Order of Perpetual Injunction restraining the Defendants or their Agents from further demolishing the Claimants' Property or disturbing the Claimants' quiet and peaceable occupation of their Property.**
5. **An Order of Injunction restraining the 1st Defendant from allocating the Claimants' Land or any part or portion thereof to any Third Party other than the Claimants, having first applied for same and said Land forming part of their Existing Title and Property.**
6. **An Order of Court declaring as null, void and of no effect any purported allocation of the Claimants' Land or any part thereof forming part of Former Plots A79 and 80 now known as Plots 363 and 366 Apo Resettlement Layout, Abuja made by the 1st Defendant to the 3rd Defendant or any other Third Party other than the Claimants.**
7. **An Order of Court declaring the demolition of part of the Claimants' Property by the 2nd Defendant as unlawful, null, void and a Trespass on the Property of the Claimants.**

8. **An Order of Perpetual Injunction restraining the Defendants, their Agents, Privies and/or those claiming through them from trespassing or continuing the trespass on the Claimants' Property formerly known as Plot A79 and 80 but now relabelled as Plots 363 and 366 Apo Resettlement Layout, Abuja.**
9. **The Sum of N25Million being General Damages for the Unlawful Demolition of the Claimants' Property consisting of Perimeter Fence, Gate- Housing, Gate, Boys Quarters and Foundation (up to German Floor) for the 2nd Building.**
10. **The Sum of N15Million as General Damages for Trespass, Unlawful Acts and Arbitrariness of the Defendants committed against the Claimants' Property.**
11. **Cost of this Suit being 5Million only.**
12. **Interest on the Judgment Sum calculated at 21% p.a. against the Defendants jointly and severally from the Date of Judgment till the time of liquidation.**

The Defendants were duly served with the Amended Court Processes on the 31st of May 2013 whereupon they filed their Respective Statements of Defence and in response, the Claimants filed Separate Replies to the Statements of Defence of the 1st and 2nd Defendants and 3rd Defendant.

The case of the Claimants is that sometime in July 1995, one Mr. Isah Jiba applied for and was granted a Certificate of Occupancy with **FILE N0: FCT/MZTP/LA/5160** over a Double Plot of Land known as ***A79***and ***80*** within the Apo Resettlement Layout (hereinafter referred to as "**LAYOUT**").

Sometime in 1999, Mr. Isah Jiba transferred all his Interests, Rights, Power and Ownership through a Registered Irrevocable Power of Attorney and an Unregistered Deed of Assignment to the 2ndClaimant, a Chartered Accountant/Businessman.

The 2ndClaimant, in turn, transferred his own Rights, Interests and Privileges over **Plot A79** through a Registered Irrevocable Power of Attorney and a Deed of Assignment both dated the 1st of December 2000 to the 1stClaimant, a Pharmacist/Staff of the Nigerian National Petroleum Corporation and since the transfer, she has been in possession until this Present Litigation.

Together as Claimants, they submitted their Proposed Building/Drawing Plan to the 2nd Defendant through their Office at the Department of Development Control of the Abuja Municipal Area Council (referred to as "**AMAC**").
Subsequently, they were issued with a Letter of Conveyance of Approval for Development Plan dated the 6th of April 2001 and their Drawing Plan was signed and stamped on the 20th of April 2001.

According to the Claimants, the Layout at that time, was isolated and covered with thick bush and they took the risk of erecting their Approved Property in the Layout, as Pioneer Developers. They fenced **Plot A79 and 80**and secured the Plots with a Self-containedGatehouse and a Gate and by Year 2004, they had completed the first phase of the Approved Twin Duplexes, with one of the Duplexes having Five Bedroom, and aOne Room En-suite Boy's Quarters.

Further, on the 2nd of May 2005, they paid up their outstanding Ground Rents/Development Levy and were issued a Receipt.

Sometime in 2005, the then Minister of the Federal Capital Territory, Mallam Nasir El-Rufai, came up with a Policy to resettle the indigenes of the Federal Capital Territory in the Apo Resettlement Layout by building for them prototype houses. This Policy was also meant to integrate all Existing Houses and Developed Plots within the Redesigned Layout. The Claimants gave the Defendants Notice to Produce the Ministerial Directive or the Approval on Apo Resettlement.

In Year 2006, the 1st Defendant again directed all Title Holders of Plots within the Federal Capital Territory to recertify and regularize their Title Documents with the Abuja Geographic Information Systems (hereinafter referred to as "AGIS").

In compliance with this Directive, the Claimants submitted Certificate of Occupancy with File No. FCT/MZTP/LA/5160 on the 16th of January 2007, they paid the Mandatory Fees to AGIS and a New File Number AK 41755 was allocated to them and they made regular follow-ups.

Sometime in 2010, the Claimants discovered that some Unscrupulous Staff of the 2nd Defendants had Balkanized and Subdivided **Plots A79 and 80** into Two (2) New Plots contrary to the Directive and Recommendation of the 1st Defendant. They then lodged a complaint with the 1st Defendant's Director of Department of Resettlement and Compensation, who assured them that the anomaly would be rectified with the Unscrupulous Staff, sanctioned.

In April 2011, the Claimants were issued with a Statutory Right of Occupancy for **Plot 363**, which was a smaller fraction of their Initial Plots. According to the Claimants, from their Approved Building Plan, **Plot 363** had been earmarked, as an open space for recreation. They approached the Defendants, who assured them that their application for the remaining fraction would be ready upon the 1st Defendant appending his signature. They kept checking up with the Defendants for the remaining fraction of their Initial Plots but were told that the 1st Defendant was yet to sign it.

According to the Claimants, the Apo Resettlement Layout Map, which AGIS sold to the General Public, revealed that their Initial Plots, **A79 and 80** were later renumbered as **Plots 363 and 366**. They then procured from AGIS, the Satellite Imagery of the Layout, and got to discover that one of the Approved and Completely Erected Duplex fell in **Plot 366**.

According to the Claimants, the 1st Claimant together with her three children, an aged parent, sister and domestic staff presently inhabits this Completed Duplex in **Plot 366**, earmarked for demolition. Further, it was stated that the demolition would traumatize her family and expose them to danger, uncertainty and losses.

On the 25th of July 2012, the 2nd Defendant left unscathed this Completed Duplex but demolished the Fence, Gate House, and Culvert of the Partly Developed Second Duplex thereby cutting off the access road into their property.

On the 30th of July 2012, they channelled their enquiry to a Staff of the 1st Defendant, who informed them that their Remaining Plot (**Plot 366**) had been allocated to some unknown persons. The 1stClaimant later discovered that these unknown persons happened to be a Staff of the 2nd Defendant Department of Resettlement and Compensation, acting under the pseudonym of one Obed Shekodu and who had instructed that the Claimants' Property should be demolished.

According to the Claimants, the allocation of **Plot 366**conducted by the Staff of the 1st and 2nd Defendants was orchestrated to rob them of their entitlements and right ownership of **Plots A79 and 80** now renumbered as **Plots 363 and 366**.

Presently, the 3rd Defendant had purchased **Plot 366**, which they challenge on the basis that the 3rd Defendant he was not an Allottee and had no Claim to Title whatsoever in relation to their land.

The Claimantsfinally contended that were never notified of this impending demolition nor were they served with any Notice. They were also unaware that their Title to the Initial Plots was revoked and stated that they were not given any reason on why their Initial Plots was subdivided.

According to the Claimants, the demolition carried out by the Defendants had caused damages valued at Twenty-Five Million Naira (N25, 000, 000.00).

In response, the 1st and 2nd Defendants agreed with the Claimants that the then Minister of the Federal Capital Territory had decided to resettle Garki Indigenes within the Apo Resettlement Area, which was then a thick bush that required clearing and redesigning in order to make it habitable for the Indigenes.

In Year 2005 to 2006, Approval was given by the then Minister to develop, design and provide basic infrastructural and social amenities/facility, but the Approval did not include matters pertaining to prototype housing, as they are unaware of any Ministerial Directive to that effect.

They denied having any Plots known as **A79 and 80**or issuing any Certificate of Occupancy to Mr. Isah Jiba. Further, the Claimants never registered with them or their Agencies, a Power of Attorney in respect of the **Plot A79 and 80** or any other land within the Federal Capital Territory.

The 1st and 2nd Defendants also denied having any Office in the Abuja Municipal Area Council, stating further that no payment of Ground Rent by the Claimants'was ever received by them or any of their Agencies in relation to the Plots in contention.

The 1st and 2nd Defendants maintained the point that they never allocated any land to the Claimants and therefore, theClaimants were never in possession of land with the Federal Capital Territory. Assuming the Claimants were in possession of any Property, they must have acquired it illegally and not through them or their Agencies.

Further, the Twin Duplexes were built without the 2nd Defendant's Approval, which is the only Establishment responsible for giving Approvals and therefore, the Claimants were Trespassers.

According to the 1st and 2nd Defendants, only the 1st Defendant, by the Law creating the Federal Capital Territory, could allocate land within the Federal Capital Territory. Therefore, it was untrue that the 1st Defendant allocated **Plots A79 and 80** to the Claimants. This is because prior to the alleged allocation of **Plots A79 and 80**, there had been no Satellite Imagery of the Layout, no infrastructure, social amenities and further, the area was inaccessible, without delineation and was unsuitable for allocation.

It was contended that issues of trespassers and illegal occupants became rampant within the Federal Capital Territory, necessitating the then Minister of the Federal Capital Territory to introduce Recertification and Regularization of Titles Exercise, in order to stem this rampant trend.

Through this Exercise,which had nothing to do with integrating Existing Built-up Properties, Landholders submitted their Title Documentsonly for verification of the genuineness of their documents.

When the Defendants' Agents were to work on the Layout, it was discovered that some trespassers had allocated and built up structures without valid papers to back-up their allocation. As a result of this discovery, they sought audience with the trespassers including the Claimants and informed them of the consequences of their actions, which included the pulling-down of the illegal structures.

According to the 1st and 2nd Defendants, these trespassers began to send emissaries to plead with them over their actions whereupon the Claimants' Building was not demolished.

To their stance, there was no validly assigned Plot that would warrant the Claimantsto allege that their land was Balkanized.

The 1st Claimant, a Civil Servant, advanced intense plea to them, stating that she had poured out her lifesavings into the Building and may not recover if her property got pulled down. For this reason, the Claimants' illegal Plot was legalized. They did so by issuing the Claimants a Statutory Right of Occupancy dated the 9th of September 2014 measuring **868.65 Square Meters**, which the Claimants accepted without complaining.

The Claimants later resurfaced, informing the 2nd Defendant through one of their Agencies that the Statutory Right of Occupancy issued to them had cut off part of their developed building and a further plea was made.

According to the 1st and 2nd Defendants, since the redesigning of the Layout was still ongoing, it made it easier for them to consider the Claimants' plea by increasing the **Plot Size from 868.65 to 1030.02 Square Meters**. They, however, contended as untrue the allegation made that the Present Plot was a fraction of the Claimants' Initial Plot.

Assuming the Claimant's Initial Plot was genuineand larger in Size than that subsequently allocated, the point is that through the process of Proper Design, Layout, Road Network, Infrastructural Facility and Walkways, there would have been a possibility of the Plot becoming smaller in size.

Further, the 1st and 2nd Defendants maintained that the Plot granted to the 1st Claimant was different from that issued to Obed Shekodu and all the assertions rendered by the Claimants in connection with Obed Shekodu were bare lies that cannot be substantiated.

Finally, the 1st and 2nd Defendants stated that the Claimants Suit was frivolous, meant to embarrass them and prayed the Court to dismiss the

Suit by awarding the Sum of Twenty Million Naira (N20, 000, 000.00) as General Damages.

The Claimants, in their Reply to the 1st and 2nd Defendants Statement of Defence, vehemently denied being trespassers and further denied meeting or advancing any plea to the 1st and 2nd Defendants that led to subsequent concession of **Plot 363** through a Statutory of Right of Occupancy dated the 9th of March 2010 and not 9th of September 2014.

According to the Claimants, the Directive of the 1st Defendant on the submission of Title Documents for Recertification was a condition precedent towards the ratification of the Certificate of Occupancy (Customary) granted the Abuja Municipal Area Council. The 1st Defendant ratified the **Certificate of Occupancy (Customary)** registered as **No. 226 at Page 226 Volume 1 at the Land Registry Office of the Abuja Municipal Area Council** by reissuing to them **a Statutory Right of Occupancy bearing File No. AK 60048.**

This act of ratification by the 1st Defendant through the 2ndDefendant cured Defective Titles, Building Approvals and Plans for their Plots in the Layout through the issuance of a Fresh Statutory Rights of Occupancy. Therefore, the redesigning of the Layout took cognizance of the initial design that included the initial titles and properties within the Layout.

According to the Claimants, it was the acts deployed by Unscrupulous Staff of the 2nd Defendant that led to the balkanization and fragmentation of their Plots through the tampering of data and the shifting of beacons. These unscrupulous acts then led to the subsequent allocation of the remaining fraction of their Plot to one alias, Obed Shekodu, which was later then sold off to the 3rd Defendant.

The Claimants reaffirmed their Claims and prayed the Court to grant their Reliefs.

As regards the 3rd Defendant, he counterclaimed against the Claimants seeking the following Reliefs namely: -

1. **A Declaration that Plot 366 Apo Resettlement Layout was duly allocated to Obed Shekodu by the Defendants by virtue of the Letter of Provisional Allocation of Resettlement Plot at Apo with REF NO: FCDA/DRC/GEN/05/30 dated the 16th of February 2009.**
2. **An Order of this Honourable Court directing the Claimants to pay the 3rd Defendant the Sum of Twenty Million Naira (N20, 000, 000.00) as Damages.**
3. **An Order directing the Claimants to pay to the 3rd Defendant the Sum of Two Million, Five Hundred Thousand Naira(N2, 500, 000.00) as Cost of Legal Fees.**

As regards the 3rd Defendant/Counterclaimant's Pleadings, his renditions were similar to those rendered by the 1st and 2nd Defendants.

The 3rd Defendant contended that all Lands in the Federal Capital Territory were vested in the 1st and 2nd Defendants, who had absolute power to allocate lands to any Nigeria Citizen, to register a Power of Attorney and Deed of Assignment for lands, to approve Building Plansas well as statutorily empowered to collect Ground Rents within the Territory, which included the Apo Resettlement Layout.

The Apo Resettlement Layout was part of the Federal Capital Territory Master Plan and both the Layout and the Plan existed even before Mallam Nasir El-Rufai, the then Minister, kick started the Resettlement Process. The aim of the Resettlement Process was to resettle displaced inhabitants of Abuja, who had given up their land for the development of the Territory.

Therefore, from the above facts, the Rural Land Adjudication Committee of the Abuja Municipal Area Council did not have the powers over this

Layout located within the Federal Capital Territory.This Committee also did not have the powers to issue a Certificate of Occupancy (Customary) to Mr. Isah Jiba or to approve his Building Plan or to register the Claimants' Power of Attorney and Deed of Assignment.

Consequently, Mr. Isah Jiba did not have the right or interest of over the Plots conveyed to him by AMAC and the subsequent transfer of thoserights or interests to the 2ndClaimant, rendered the 2ndClaimant a Trespasser.Further, the 1st Claimant was equally a Trespasser on the Plot known as **Plot 366**, a Plot belonging to Mr. Obed Shekodu.

According to the 3rd Defendant, the Claimants' Building Plans and the Five Bedroom Duplex erected thereon were without the Approval or Consent of the 1st and 2nd Defendants and therefore, it was an illegal structure.He was unaware of any Ministerial Policy or Directive integrating this structure into the Layout and put the Claimants to the strictest proof.

He was only aware of the Regularization Exercise conducted by the 1st Defendant, which was to verify and ascertain as genuine, land ownership in order to forestalllarge-scale fraud and racketeering that was taking place within the Territory. Therefore, the submission of documents for Recertification and Regularization did not in any way validate their authenticity.

Apart from that, each Plot within the Territory was distinct, having a Plot Number that differentiated it from other Plots. **Plot 363 measuring 1030.02 square meters** was distinct from the adjoining plot even though it was situated in the same location.

Further, **Plots 363 and 366** could not be one and the same with **Plots A79 and 80**, as these latter Plots were never part of the Abuja Master Plan and he challenged the Claimants to produce any Map that evidenced their similarity.

According to the 3rd Defendant, Obed Shekodu, was a Resettled Inhabitant in the Layout with whom he executed a Deed of Assignment and Power of Attorney thereby making him the beneficial owner over **Plot 366**.

He then mobilized to Site to commence development but his efforts were truncated due to a Restraining Court Order, which led to losses accruing to him, arising from inflation in the price of building materials obtainable in Year 2013, as well as Cost of Payment for Legal Fees in the Sum of Two Million, Five Hundred Thousand Naira (N2, 500, 000.00), for which he had a Receipt of Payment as evidence.

The Claimants, in their Reply to the 3rd Defendant's Statement of Defence and Defence to Counterclaim, denied the losses alleged and put the 3rd Defendant to the strictest proofof same.
They rehashed their Pleadings in both their Amended Statement of Claim and that in their responses to the 1st and 2nd Defendants' Statement of Defence, as their collective answer to the 3rd Defendant and therefore, it would be needless to rehash them.

The Claimants opened their case by calling as PW1, Mrs. Helen Umosen, who adopted her Witness Statements on Oath dated the 27th of May 2013 and 24th of February 2016. Paragraph-by-Paragraph, she identified documents she had pleaded, which were admitted into evidence, without objection and they are as follows: -

1. The 1st Certificate of Occupancy as **Exhibit A**
2. An Irrevocable Power of Attorney donated by the 2ndClaimant as **Exhibit B**
3. Duly Stamped Deed of Assignment as **Exhibit C**
4. Letter of Approval and Approved Buildings Plan by the FCDA as **Exhibits D and E** respectively
5. Acknowledgement of Re-Certification of the 1st Certificate of Occupancy as **Exhibit F**

6. Statutory Right of Occupancy as **Exhibit G**
7. An Apo Resettlement Layout Map showing Plots 363 and 366 together with a Receipt as **Exhibit H**
8. Application for Grant/Re-Grant of a Statutory Right of Occupancy dated the 7th of April 2008 as **Exhibit I**.

Under Cross-Examination by Learned Counsel representing the 1st and 2nd Defendants, PW1 stated that the Abuja Municipal Area Council conveyed to Mr. Isa Jiba the Plots in controversy vide a Certificate of Occupancy, which the 2nd Defendant, the FCDA, registered.

Further, the Honourable Minister had issued a Policy integrating all existing properties into the New Layout and by his Policy,Plots were integrated. When asked to produce the Policy, PW1 stated that she did not have this Policy in Court.

According to PW1, **Plots 79 and 80** were submitted to the FCDA, which formed the basis for the issuance of a Statutory Right of Occupancy in respect of **Plot 363**. She disputedthe contention that there was no nexus between **Plots 79 and 80**and **Plots 363 and 366**or that **Plot 363** was granted to her based on an Application for Grant. She explained that the Application for Grant was a pay prerequisite for the issuance of the Statutory Right of Occupancy for **Plots 79 and 80**. These Plots were submitted for ratification and it was her belief that Re-Certification and Ratification were synonymous.

Shown **Exhibit I**, the Application for Grant/Re-Grant of a Statutory Right of Occupancy, PW1 identified the Old and New File Numbers as well as the Disclaimer contained therein. When asked, she could not say how Files were opened but knew that Title was given to her following the initial submission of their Title Documents.

According to PW1, the File Numbers in **Exhibit I** and **Exhibit F-** theAcknowledgement of Re-Certification of the 1st Certificate of

Occupancy, were the same and she explained that **Exhibit F** was made in furtherance of the submission of **Exhibit I**, the 1st Certificate of Occupancy. Shown the File Number in **Exhibit G,** Statutory Right of Occupancy and **Exhibit I**, PW1 stated that both File Numbers were the same explaining that the Application in **Exhibit I,** flowed from the Acknowledgement of **Exhibit F.**

When confronted with both **Exhibits F and G,** PW1 then flipped by stating that the File Numbers were different but pointed out that she made only one application.

As regards the Plots sizes in **Exhibits I and G,** when told **Exhibit G** actually measured 1030 square meters as opposed to 868.65 square meters as stated in it, PW1 stated that no document evidenced this fact.

Shown **Exhibit H,** Apo Resettlement Layout Map, where **Plot 363** was verged Red; PW1 stated that Plot 363 was given to her and her building traversed into **Plot 366**. According to PW1, she did not know that **Plot 363** measured 1030 square meters and when shown a Site Plan for **Plot 363**, she stated seeing this Site Plan for the first time, which Site Plan was admitted through her as **Exhibit J**.

Under Cross-Examination by Learned Counsel representing the 3rd Defendant, she rehashed the point that **Plots 79 and 80** was issued by AMAC, which was an Agent of the 1st Defendant and she was the beneficial owner of **Plot 79**.

Referred to Paragraph 1 of **Exhibit B**, the Irrevocable Power of Attorney and Paragraph 2 in **Exhibit C**, the Deed of Assignment, PW1 stated that **Plot 80** was not mentioned in **Exhibit B** nor was it assigned to her. According to her, her Lawyer had in his custody a document evidencing the assignment of **Plot 80** to her.

PW1 confirmed her application in **Exhibit F,** the Acknowledgement of Re-Certification of the 1st Certificate of Occupancy and even though her name was not contained therein, her signature was present and one Mr. Nwodo, did the submission.
According to her, in consonance with the Policy for Regularization of Title Documents, she submitted **Plots 79 and 80** for which a Statutory Right of Occupancy over **Plot 363** was issued to her with a promise by the FCDA that the remaining in **Plot 366** would be granted to her.

PW1 disagreed that **Plots 79 and 80** were radically different from **Plots 363 and 366** because her Building Plan earmarked both Plots. When confronted with her Building Plan in **Exhibit H** and told to point out where her name was mentioned, PW1 stated that her was not stated therein but a structure was on the Land.

PW1 acknowledged that she applied to the Area Council for the Building of the Five Bedroom Duplex and was a pioneer developer within the Apo Resettlement Layout.Further, the 2nd Claimant had given her the mandate to apply for Recertification as well as to carry out the necessary Applications.

Through a mathematical analysis of the Plot size for **Plots 79 and 80**, which measured1080 square meters, Learned Counsel demonstrated to PW1 that when **Plots 79 and 80** were divided into two equal halves, each Plot would be 540square meters.
When told to subtract 1080 square meters from 1030 square metersin **Exhibit J**, PW1 stated that 50 square meters would be remaining and unaccounted for.

Learned Counsel again demonstrated to this witness that when 1030 square meters was subtracted from **Plot 79**, measuring 540square meters, there would be 490 square meters remaining in excess and PW1 had no reply. PW1 also had no reply when told that **Plot 363** issued to

her by the Minister was larger in size than **Plot 79** she claimed was assigned to her.

According to PW1, she accepted**Plot 363** that was issued to her and had orally complained for the remaining outstanding Plot of Land, only to later discover that the outstanding Plot of Land was issued to the 3rd Defendant.

Shown the Apo Resettlement Layout Map in **Exhibit H,** PW1 identified other Plots surrounding **Plots 363 and 366** and she stated that **Plots 363 and 366** were the same with **Plots 79 and 80**. When asked how she came to that conclusion, she stated that her Building Document and Survey Plan evidenced this point.

Under Re-Examination, PW1 stated that her land sits on both **Plots 363 and 366.**

The Claimants called their last witness, Mr. Kehinde Ogedengbe, as **PW2**, who adopted his Witness Statement on Oath and he identified all the Earlier Documents tendered by PW1.

Under Cross-Examination by Learned Counsel representing the 1st and 2nd Defendants, he stated that AMAC granted the allocation and not AGIS or the FCDA but added that there was a Recertification and a Letter was also forwarded and acknowledged.

When asked, PW2 stated that his Legal Adviser registered the Power of Attorney and Deed of Assignment at the Federal High Court.

When questioned that the Claimants were told make a fresh application with respect to **Plots 79 and 80**, PW2 stated that a fresh application was not made but a Recertification was what occurred, which resulted in the approval of a Plot with the other Plot still being processed. When confronted with different File Numbers in **Exhibits A, G and I,** PW2

stated that the 1st and 2nd Defendants had the power to effect changes on the File Numbers.

Under Cross-Examination by Learned Counsel representing the 3rd Defendant, PW2 that he personally did not have any developed plot within the Apo Resettlement Layout and he did not personally apply for Recertification but had given the 1st Claimant mandate to do so. Shown **Exhibit F,** Letter of Recertification, PW2 testified that the name of only one Mr. Bernad Nwodo featured therein.

PW2 agreed that the Statutory Right of Occupancy issued to the 1st Claimant was partly developed and it had a gatehouse. When asked, how he came to the conclusion that **Plots 79 and 80** morphed into **Plots 363 and 366**, he answered that they arrived to this conclusion on the basis of the Statutory of Occupancy issued to them by the FCDA after submitting their Title Documents for Recertification. Further, the 1st Claimant was given assurance that the Second Plot would be issued.

Finally under Cross-Examination, PW2 stated that when the 1st Claimant was testifying under cross-examination, he was seated in the Courtroom and did know he was to go out of Court Hearing.

Under Re-Examination, PW2 stated that the present Duplex sat on **Plot 366** whilst the Right of Occupancy was in respect of **Plot 363**.

No further questions and the Claimants applied to close their case.

The 1st and 2nd Defendants opened their Defence by calling their Sole Witness as DW1, Mr. Chimaoge Madu, a Site Officer/Principal Town Planning Officer working with the Resettlement and Compensation Department of the FCDA, whose area of concern was principally, the Apo Resettlement Site.

Concerning the relationship between the Resettlement Department and AGIS, DW1 stated that these Establishments worked hand in hand and from the symbiotic relationships, he was familiar with some Exhibits.

Shown **Exhibits A, B, C, F and G,** he only acknowledged **Exhibit G**, as emanating from their Office and stated that the other Documents emanated from AMAC.
Shown **Exhibit G,** the Statutory Right of Occupancy and **Exhibit I,** the Application for Grant/Re-Grant of a Statutory Right of Occupancy, DW1 identified the File Numbers on both Exhibits were the same adding that **Exhibit I,** was an Acknowledgement Letter that emanated from AGIS and the Applicant was the 1st Claimant.

On the Mode of obtaining a Plot in the Resettlement Layout for the FCT Indigenes, DW1 stated that prior to the resettlement of indigenes by the Resettlement Department, the indigenes were to forward their applications to AGIS, who is saddled with the responsibility of acknowledging receipt of their application and who would then process and issue Allocation Papers of Plots to the Indigenes.

Concerning the relationship between the 1st Claimant and **Plot 363** measuring 868.65 square meters, DW1 narrated that when they were charting the Layout, a Virgin Land, in order to resettle the indigenes of the Federal Capital Territory, they discovered Illegal Structures, including that of Mrs. Helen Umosen, the 1st Claimant.

The 1st Claimant, Mrs. Helen Umosen, pleaded with his Office to retain her already developed Structure. Other Owners of illegal structures made similar pleas and complaints to his Office whereupon a decision was made to issue Allocation Papers to them.

Mrs. Helen was issuedwith an Allocation Paper but she later approached his Office complaining that what was allocated to her was smaller in size than her previous Plot, and further, that the gate house had extended

beyond the size of the Plot allocated to her. They then measured her Plot and discovered that her Structure sat on a Plot measuring about 1000 square meters whereupon his Office decided to issue her with **Exhibit J**, evidencing the increase of the Plot Size to 1030 square meters and till date, that Plot has not been revoked.

Finally, DW1 in his testimony in-chief, stated that the 1st Claimant's Structure was illegal on the basis that it lacked Approval from the FCT Development Control and when she pleaded that her Structure be incorporated into the Layout Design, she was told to apply, which application was contained in **Exhibit I**.

Under Cross-Examination by Learned Counsel representing the 3rd Defendant, DW1 stated he was unaware of any allocation of Customary Land, as only the Minister had the right to allocate.

When asked, he only dealt with the 1st Claimant and did not know the 2nd Claimant adding that only the 1st Claimant forwarded an Application. According to him, had the 2nd Claimant forwarded his own Application, it was probable that Double Allocation would have been made. However, only one Application was received, which formed the basis as to why only one Acknowledgement Letter was issued, for which a Grant of an Occupancy Letter was also issued.

According to DW1, **Plot 366**, that is, a Plot within the Apo Resettlement Area, was provisionally allocated to a Resettled Gwari Man, whose Allocation was different and distinct from that granted to the 1st Claimant. With an overruled Objection, the Provisional Allocation for **Plot 366** allocated to Mr. Obed Shekodu was admitted into evidence as **Exhibit K** and no further questions were put to this witness.

Under Cross-Examination by Learned Counsel representing the Claimants, when asked, whether his Office did a "Redesign" on the Prototype of the

Layout, DW1 denied they carried out any "Redesign", as the Minister only decided to reintegrate existing properties within the Layout. According to him, his Office carried out a "Design" of the Layout to resettle FCT Indigenes. Confronted with Paragraph 4(f) of his Witness Statement on Oath, he expiated "Redesign" in that context to mean that when a Fresh Layout is to be carried out, that would called a "Design". The provision of infrastructural facilities into the Layout would then be referred to as "Redesign" for the purposes of making the Layout comfortable and habitable for indigenes to live therein.

Shown the Apo Resettlement Layout Map and its Receipt in **Exhibit H,** DW1 could not say whether this Exhibit emanated from AGIS but could only say that 90% of the 1st Claimant's Property fell into **Plot 366** and this Property predated both the Design and Redesign of the Layout.

According to him, Indigenes were required to fill-in Forms and in the instance of the 1st Claimant, she also submitted Deed Documents before she was integrated. Further, **Exhibit I,** emanated from AGIS and this Exhibit formed the basis for the issuance of a Statutory Right of Occupancy to the 1st Claimant.

When asked to list out Submitted Documents in **Exhibit I**, DW1 identified the Submission of a Certificate of Occupancy but stated that he did not recognize AMAC Documents and that the Exhibit did not emanate from his Office.

When confronted with Paragraphs 4(l) to (m) of his Witness Statement on Oath, DW1maintained those averments by rehashing his earlier evidence, bothering on the complaints made by the 1st Claimant to his Office concerning the size of her Plot and the concession that was subsequently offered to her.

Finally, DW1 denied the existence of an Overhead Public Water Tank for the Indigenes in **Plot 363** and stated that **Plot 366** was not allocated to the 1st Claimant.

Under Re-Examination, DW1 stated that they never received any document with regard to the 2nd Claimant.

No further questions were asked and this witness was discharged.

As regards the case of the 3rd Defendant, Learned Counsel representing him elected to Rest his Case on the evidence already adduced before the Court and on that note, the Case was adjourned for Adoption of Final Written Addresses.

Learned Counsel representing the 1st and 2nd Defendants filed on the 20th of October 2017 their Written Address dated the 13th of October 2017, wherein he formulated a Sole Issue for determination, namely: -

"**Whether the Claimants has been able to successfully proved their Case to be entitle to Claims as contained in the Statement of Claim**"(Sic).

Learned Counsel representing the 3rd Defendant on his own part, filed on the 24th of January 2017 a Final Written Address dated the 23rd of January 2017 wherein he formulated Four Issues for determination, namely: -

1. **"Whether the Customary Right of Occupancy N0: FCT/MZTP/LA/5160 issued by Abuja Municipal Area Council in favour of Mr. Isa Jiba over Plots A79 & 80 Apo Resettlement Area confers any Legal Right and Interest on the Claimants to entitle the Claimants to claim Ownership of Plots 363 and 366 Apo Resettlement Area, Abuja.**

2. **Whether the Claimants have proved by evidence that Plots A79& 80 as demarcated by Abuja Municipal Area Council is one and the same as Plots 363 and 366 as demarcated by the 1st and 2nd Defendants.**
3. **Whether the Claimants have established, have shown that they have a Cause of Action to sue the Defendants herein.**
4. **Whether the Allocation of Plot 366 Apo Resettlement Layout by the 1st Defendant to Obed Shekodu is valid and subsisting."**

Finally, Learned Counsel representing the Claimants on his own part formulated Two Issues for determination, namely: -

1. **"Whether the Claimants are entitled to the Legal Interest and Title in and over Plot 366 Apo Resettlement Layout or have Equitable Interest in and over Plot 366 Apo Resettlement that should be protected by this Court and are therefore entitled to the Reliefs claimed in this Suit.**
2. **Whether the Claimants' Claim for Damages for Trespass can be sustained given the circumstances of this Case."**

After a careful consideration of all the Submissions and Arguments of Learned Counsel across the divide, which are all on Record, the Issues for determination are as follows: -

1. **Whether a Criminal Allegation made in a Civil Case needs to be proved Beyond Reasonable Doubt or upon a Balance of Probability.**

2. **Whether within the Federal Capital Territory, the Abuja Municipal Area Council or any other Authority aside of the Minister,has the Power and Authority to Issue, Assign or**

Execute Matters relating to Land, including the Approval of Building Plans and the Collection of Ground Rents.

3. **Based on the above Questions, Whether the Claimants are entitled to the Legal or Equitable Interest and Title in and over Plot 366 Apo Resettlement Layout that should be protected by this Court;**

4. **Whether the Claims in respect of Damages for Trespass can be sustained given the circumstances of this Case.**

5. **Whether the Reliefs sought for in the Counter-Claim for Declaration of Title, Damages and Legal Costs, are meritorious.**

As regards **First Issue**raised, it is trite that a Civil Court, when considering a Criminal Allegation, will naturally require for itself a higher degree of probability than that which it would require in the instances of a Civil Cause or Action.
Section 135 (1)of theEvidence Act 2011 (As Amended) provides "If the Commission of a Crime by a Party to any Proceeding is directly in issue in any Proceeding Civil or Criminal, it must be proved Beyond Reasonable Doubt."

The Standard of Proof of the Commission of Crime in Civil Cases is the same as in a Criminal Trial, which is Proof Beyond Reasonable Doubt, see the Cases of **FAMUROTI VS AGBEKE (1991) 5 NWLR PART 189 PAGE 1 AT PAGE 13 PARAS F-G; EDOKPOLO & CO. LTD VS OHENHEN (1994) 7 NWLR PART 358 PAGE 511 AT PAGE 531 PARA D (SC); OYEBADEJO VS OLANIYI (2000) FWLR PART 5 PAGE 829 AT PAGE 854 PARAS B-C; ANAMBRA STATE ENVIRONMENTAL SANITATION AUTHORITY &ANOR VS RAYMOND EKWENEM (2009) 13 NWLR PART 1158 PAGE 410 (SC); AND OTUKPO VS JOHN (2012) 7 NWLR PART 1299 PAGE 357 (SC).**

The Claimants had alleged that the Allocation due to them was Balkanized by Unscrupulous Staff of the 1st and 2nd Defendants, who sub-divided their **Plots 79 and 80** and allocated the Residue of their Plot in **Plot 366**to a 3rd Party. It was claimed thatthe Allocation of **Plot 366** conducted by the Staff of the 1st and 2nd Defendants was orchestrated to rob them of their entitlements and right ownership of **Plots A79 and 80** now renumbered as **Plots 363 and 366**.
According to them, one of the Staff of the 2nd Defendant's Department of Resettlement and Compensation, acting under the pseudonym of one Obed Shekodu was responsible and it was he, who gave instructions for the demolition of their Property.

Now, these are grievous allegations that cannot be made lightly. In the first place, the Individual acting under this Pseudonym ought to have been named and the Instructions he issued out, more concisely set out together with the identities of the people he instructed.

Also, the Balkanization of, the Robbing and Unscrupulousness by Staff have Criminal Connotations and the burden of establishing these facts are Beyond a Reasonable Doubt with the Claimants bearing the Duty of adducing evidence to substantiate their allegations. These they failed to do and therefore, the Court cannot rely on their mere assertions.

The **Second Issue** deals with the Question of, **"Whether within the Federal Capital Territory, the Abuja Municipal Area Council or any other Authority aside of the Minister, has the Power and Authority to Issue, Assign or Execute Matters relating to Land, including the Approval of Building Plans and the Collection of Ground Rents."**

At the get go, it is Crucial to examine the various Enabling Laws and Statutes that govern the Grant, Conveyance and Acquisition of Land, whether Statutory or Otherwise in the Federal Capital Territory.

Section 299 of the Constitution of the Federal Republic of Nigeria 1999(As Amended),conferred on the Federal Capital Territory the Status of a State and by **Section 297(2),** "***the Ownership of all Lands within the Federal Capital Territory is vested in the Government of the Federal Republic of Nigeria***".

Consistent with the above Constitutional Provisions is **Section 1(3) of the Federal Capital Territory Act CAP F6 Law of the Federation 2004,** which provides**: -**

"*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 302of 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.***"

Also, consistent with this Particular Constitutional Provision is **Section 51(2) of the Land Use Act 1978**, which reiterates the aforesaid by stating that: -
"***The Powers of a Governor under this Act shall, in respect of Land comprised in the Federal Capital Territory, Abuja, or any Land held or vested in the Federal Government in any State, be exercisable by the President or any Minister designated by him in that behalf and references in this Act to Governor shall be construed accordingly***."

There is also the fact that both the Federal Capital Territory and the Area Councils are Creation of the Constitution with distinct Functions. They are not the same and the extent of their Functions are Constitutionally Provided for, as Distinct Legal Entities, who can sue and be sued in their own Right. There is no Confluence of Functions and Powers.
Moreover, no Provision in this Act that empowers Area Councils to exercise the Powers of Local Governments in respect of Lands in the Federal Capital Territory.

Section 18 of the **Federal Capital Territory Act CAP F6 Law of the Federation 2004**conveys the Delegation of the Presidential Powers under the Constitution in respect of the Federal Capital Territory to the Person of the Minister of the Federal Capital Territory.

To Complement the Minister's Delegated Executive Functions and Powers, **Section 3(1) and (2)** the aforesaid Act, established the 2ndDefendant, that is, the **Federal Capital Development Authority** (hereinafter referred to as "**THE AUTHORITY**") whose Membership consists of a Chairman and Eight (8) other Members appointed by the President of the Federal Republic.

Section 4(1) of the Act makes provision for the Functions and Power of the Authority, which includes the following, namely: -
"Subject to and in accordance with this Act, the Authority shall be charged with the responsibility for-

a. **The Choice of Site for the Location of the Capital City within the Capital Territory;**
b. **The Preparation of a Master Plan for the Capital City and of Land Use with respect to Town and Country Planning within the rest of the Capital Territory;**
c. **The Provision of Municipal Services within the Federal Capital Territory;**

d. **The Establishment of Infrastructural Services in accordance with the Master Plan referred to above;**
e. **The Co-ordination of the Activities of all Ministries, Departments and Agencies of the Government of the Federation within the Federal Capital Territory."**

Under **Section 6 of the Land Use Act 1978,** Local Governments, such as in this Case, the Abuja Municipal Area Council (AMAC), were empowered to Grant Customary Right of Occupancy for Lands **not** in an Urban Area.

However, as earlier stated, it is clear that Ownership of All Lands in the Federal Capital Territory vests exclusively in the Federal Government and it does not accommodate any Customary Rights for Divestitureof Title and Ownership of Land within the Territory. Further, there is also no Dichotomy between Land in Urban and Rural Areas within the Territory, as All Land are classified as Urban and are vested in the Federal Government. It is clear therefore that the Area Councils cannot exercise any Power to Grant Customary Rights of Occupancy over any Land in the Federal Capital Territory.

As held in the Supreme Court Decision of **GRACE MADU VS DR. BETRAM MADU (2008) 6 NWLR PART 1083 PAGE 296 AT PAGES 324, 325 PARAS H-C**, inter alia, No Person can Acquire any Land in the Federal Capital Territory without an Allocation or Grant by the Minister. Reference is also made to the Case of **ONA VS ATANDA (2000) 5 NWLR (PART 656) PAGE 244 AT PAGE 267 PARAGRAPHS E-B, C – D,** where His Lordship **AKINTAN JCA**held thus: -*"What is to be answered in Question No.3 is, what is the Status of Occupiers or Holders of such Lands in the Federal Capital Territory by virtue of* ***Section 36(1) of the Land Use Act****.* ***Section 36*** *of the Act makes Transitional Provisions in respect of Land not in Urban Area. Subsection (1) of the Section provides as follows: "****Section 36(1)*** *The following provisions of this Section shall have effect in respect of Land not in an Urban Area, which was immediately before the*

*commencement of this Act, held or occupied by any Person." Again as I have said earlier above, the Provisions of the Land Use Act requiring that Portions of Land in a State should be designated, as Urban Areas is not applicable in the Federal Capital Territory. It follows therefore that, the Provisions of **Section 36** relating to Transitional Provisions in respect to Lands not in Urban Areas are also inapplicable in the Federal Capital Territory."*

To determine the Legitimacy of a Claim as to Title or Ownership of Land, the Principles of the following Casesserve as a Veritable Guide and they are as illustrated in the Case of: -
PASTOR AKINOLU AKINDURO VS ALHAJI IDRIS ALAYA 30 NSCQR PART 1 PAGE 601 AT PAGES 617, 618, wherein His Lordship **ADEREMI JSC** held that, the Guiding Principles on Proof of Title by Document of Title are well adumbrated in the Case of **ROMAINE VS ROMAINE (1992) 4 NWLR PART 238 PAGE 650 AT PAGE 662,** to the effect that Production and Reliance as an Instrument of Grant of Title inevitably carries with it the need for the Court to inquire into some or all of a Number of Questions including: -

1) Whether the Document is Genuine and Valid?
2) Whether it has been Duly Executed, Stamped and Registered?
3) Whether the Grantor had the Authority and Capacity to make the Grant?
4) Whether in fact the Grantor had in fact what he purported to Grant? And
5) Whether it has the effect claimed by the Holder of the Instrument?

In other words, Mere Production of even a Valid Document of Title of Grant does not necessarily carry with it an automatic relief for Grant of Declaration relating to such Grant without taking into consideration the factors adumbration above."

Now, an Examination of the Facts Adduced and Documents Produced will show that the Claimants in backing up their Land Allocation over **Plots**

79 and 80 as well as the Validity of the Structure Developed thereon, tendered the following Documentary Evidence namely: -

1. The 1st Certificate of Occupancy as **Exhibit A**
2. An Irrevocable Power of Attorney donated by the 2nd Claimant as **Exhibit B**
3. Duly Stamped Deed of Assignment as **Exhibit C**
4. Letter of Approval and Approved Buildings Plan by the FCDA as **Exhibits D and E** respectively
5. Acknowledgement of Re-Certification of the 1st Certificate of Occupancy as **Exhibit F**
6. Statutory Right of Occupancy as **Exhibit G**
7. An Apo Resettlement Layout Map showing **Plots 363 and 366** together with a Receipt as **Exhibit H**
8. Application for Grant/Re-Grant of a Statutory Right of Occupancy dated the 7th of April 2008 as **Exhibit I**.

The Originator of Title to **Plots A79 and 80**was one Mr. Isah Jiba, who possessed a Certificate of Occupancy (Customary) dated the 19th of January 1995, which had incorporated a Survey Map with a Total Area of 1080 Square Meters and was registered in the Land Administration, Registry Office at Garki Municipal Area Council, Abuja. This informed **Exhibit A** before the Court.

Exhibits D and E, were the Conveyance of Approval for Development Plan as well as the Settlement of Building Plans Approval Fees in respect of **ONLYPlot 79** and the Actual Building Plan for **Plot 79.** Strangely, the Proposed Residential Development at **Plot No. 80** did not appear to tally with the Supporting Conveyance of Approval for Development Plan and the Fees paid, as they only referred to **Plot No. 79,** Apo.

The above named Originator transferred his Title to Mr. Kehinde Ogedengbe, the 2nd Claimant, who in turn, through **Exhibits B and C, the Irrevocable Power of Attorney** and **the Deed of Assignment**

respectively**,** transferred in **PART**, all his Rights and Powers over **PLOT 79 APO LAYOUT, FCT, ABUJA** to the 1st Claimant.

There is no Documentation indicating that **Plot No. 80** was also transferred to the 1st Claimant. Had this Plot been included in the Assignment to her, she might have had a justification for constructing a building within Two Plots of Land even before the issue of Recertification Policy of the Minister arose. She had relied on the Building Plan issued to Mr. Isah Jiba, which showed no sign of being updated.

Technically, she had no right to do so because her Interests only lay in **Plot 79**. Mr. Ogedengbe was very specific in **Paragraph 2 of the Deed of Assignment** and **Paragraph 1 of the Irrevocable Power of Attorney** that he was **ONLY**divesting **PART**of his Plot of Land.
He had, however, during his Oral Testimony stated that he gave her the Mandate to do the Necessary Documentation in respect of both Plots but there was no evidence of any Formal Authorization produced before the Court.

Further, according to the 1st Claimant, her Lawyer had in his custody a Document indicating the Assignment of **Plot 80** to her but this was not tendered into evidence.

She had also stated that she applied for the Recertification and Ratification of both **Plots 79 and 80**and it is clear in **Exhibit F** with File Number **MZTP 5160**that it was the Photocopy of the Original Certificate of Occupancy for **Isah Jiba** in respect of **Plot Numbers 79 and 80** that was tendered to the Federal Capital Territory Administration for Regularization of Land Titles and Documents of FCT Area Councils.

At this stage, the Document acknowledged on the 17th of April 2007 only referred to Mr. Isah Jiba and **NOT**the names of either of the Claimants. PW1 had mentioned that she signed the Document submitted by Mr.

Bernad Nwobod but there is nowhere the name of either Claimant featured therein in **Exhibit F**.

A logical presumption is that if the Subsequent Statutory Right of Occupancy in **Exhibit G,** was granted based on the tendering of Documents for consideration by the Authorities as acknowledged in **Exhibit F**, it should have been issued out in the name of Mr. Isah Jiba and **NOT** Mrs. Helen Umosen Olih. The ONLY Tallying Documentation with **Exhibit F** is **Exhibit A,** which bears the Same File Number of **AK 41755**. It is also important to state at this stage, that the fact of Submission for Recertification and Regularization is not a fact of Automatic Approval and Ratification. Each Applicant still needed to justify the Grant by Documentation before the Minister can condone the Initial Grant of Customary Title and the Minister, has full discretion in this regard.

There is no Evidence of any Correction or Condonation by the Minister for this Grant.

This could only mean that there had to be another Application for Regularization, which is not before the Court. The 1st Claimant herself would have made this Subsequent Application for Regularization because **Exhibit G**, the Statutory Right of Occupancy was issued in her name.

It is important to note at this stage that the 2nd Claimant, Mr. Kehinde Ogedengbe, never applied for a Recognition and Grant of Title to **Plot 80**. There is also no Documentation evidencing the fact of Agency or a Representative acting on his behalf before the Court. It would have been easy at this stage, for the 1st Claimant to show proof of the mandate given to her by the 2nd Claimant but no evidence was adduced in this regard except to say that the Relevant Documents submitted in respect of **Plot 80** was with her Lawyer.

The 1st and 2nd Defendants, on their own part, maintained that it was **ONLY** based on the 1st Claimant's Application that the Statutory Right of Occupancy for **Plot 363** was granted.

Further, from the testimony of the 1st and 2nd Defendants, it can be seen that upon charting a Resettlement Layout for the Indigenes, they discovered Illegal Structures on the Virgin Land but later decided to incorporate these Illegal Structures into their Design upon a Fresh Application. Their Decision came after several pleas from the Owners of those Structures.

Vindicating this stance of the 1st and 2nd Defendants, a close look at the Introductory Paragraph in **Exhibit I, the Application for Grant/Re-Grant of a Statutory Right of Occupancy dated 07/04/2008,** poignantly states: -
"***THIS IS TO ACKNOWLEDGE THE RECEIPT OF ORIGINAL APPLICATION FOR GRANT/RE-GRANT OF STATUTORY RIGHT OF OCCUPANCY WITH THE FOLLOWING PARTICULARS:***
DATE OF APPLICATION: 24/01/2008
NAME OF APPLICANT: HELEN UMOSEN OLIH"

The Submission of this Application was made sometime in 2008, approximately One Year after the Initial Submission of the 1st Certificate of Occupancy in **Exhibits A and F,** the Acknowledgement of the Regularization of Land Titles and Documents of FCT Area Councils.

A New File Number **AK 60048** was given and the Number of the Old File Number was listed as blank. Therefore, there has to be a Presumption of Regularity on the part of the 1st and 2nd Defendants, as if this Particular Allocation referred to or was synonymous with File Number **AK 41755**, it would have been so indicated in **Exhibit G**.
Based on the 1st Claimant's Application as acknowledged on the 07/04/2008 in **Exhibit I,** the Offer of Statutory Right of Occupancy was

granted in **Exhibit G**. The File Numbers were the same that is **AK 60048**showing an irresistible tie.

Another major point is that there was NO Reference whatsoever to **Plots 79 and 80** in **Exhibits G, I**and **even in Exhibit J, the Site Plan.**

It was undisputed the fact that the Minister issued a Policy to Resettle indigenes in that Layout and to Re-Integrate existing properties into the Resettlement Layout and to that end, there was a need to Regularize Title Deeds by Application to the Minister.

From the 1st Claimant's Application, the 1st Defendant issued a Statutory Right of Occupancy to the 1st Claimant in her own name and with **Plot No. 363**, having an Area of approximately 868.65 Square Meters. There is nowhere in this Body of Document in **Exhibit G**, that states this Allocation was in consideration of any other Plot and neither did it say that it was a PART ALLOCATION. It appears to be a FULL ALLOCATION.

The Contention of the 1st Claimant is that this Allocation was based on the consideration of the combined **Plots 79 and 80** and was in effect a Ratification of the Earlier Grant made to Mr. Isah Jiba. According to her, upon her complaint to the Authorities for the shortfall in the Size of the Plot, she received assurances from one Director that her request was still being processed.

The name of this Assuring Director and the Evidence that **Plots 79 and 80** informed the basis of this New Grant are missing. However, her assertion was somewhat confirmed when the 1st and 2nd Defendants acknowledged that she approached them on the Deficit and a Fresh Survey was redone, where it was discovered that On Ground, the Size for **Plot 363** was actually 1030 Square Meters as opposed to 868 Square Meters and a Survey Plan as seen in **Exhibit J** was issued to her evidencing the Correct Size measuring 1030 Square Meters.

When referred to **Exhibit J**, the Site Plan, 1st Claimant stated that 90% of her Developed Property was on the balance of her Plot, wrongly allocated to a 3rd Party, which informed **Plot 366**. She believes that this **Plot 366**is Part of **Plots 79 and 80**.

To sustain this belief, the Claimants need to demonstrate with precision that **Plots A79 and 80**are one and the same with **Plots 363 and 366.** They needed to produce a Legitimate and Accurate Survey Plan prepared by Licensed Surveyor or by the Director of Surveys at the 1st and 2nd Defendants' Land Registry, which clearly show the Coordinates, Dimensions and Boundaries as well as Salient Features of the stated Plots.

All that is before the Court is the Layout Map in **Exhibit H**, which highlighted **Plot 363 Verged Red** and even though, it can be seen that **Plot 366** was adjacent to it, the Claimants needed to demonstrate how this Plot was part of **Plot A79 or A80**. Mere Production does not validate the Claims. Reference is made to the Cases of **ELIAS VS OMO-BARE (1982) 5 SC PAGE 13 AND NWOKE VS OKERE (1994) 5 NWLR PART 343 PAGE 159 OR SCNJ PAGE 102.**

In stating that the Plots are one and the same, the Claimants wants the Court to hold that the Minister of the Federal Capital Territory delegated his Authority to AMAC and the Law is clear, that a Delegate cannot Sub-Delegate. It is Trite Law that based on the Principle of *Delegates Non Potest Delegare*; an Agent cannot delegate his Authority without the Express or Implied Authority of his Principal. Therefore, a Person to whom an Office or Duty has beenstatutorily delegated cannot lawfully devolve that Duty to another, unless he is expressly authorized to doso.Reference is made to the Cases of **HUTH VS CLARKE (1890) 25 QBD J91; BARNARD VS NATIONAL DOCK LABOUR BOARD (1983) 1ALL E.R. 1113 AND BAMGBOYE VS UNIVERSITY OF ILORIN & ANOR (1999) LPELR-737 (SC) PER ONU JSC PAGE 36 PARAS C-E.**

Now, from the Statutes above referred to, it is clear that it is ONLY the Minister of the Federal Capital Territory that has the Power to Allocate Land in the Territory and to that extent, any other Organ or Authority, who attempts to do so, would have embarked upon a futile exercise. The basis of the Claimants' Claim to **Plots 363 and 366** is **Plots A79 and 80**, which were derivative from the Customary Certificate of Occupancy issued by AMAC. This Certificate of Occupancy issued by AMAC to all intents and purposes remains null and void, as AMAC cannot bestow upon any Persons what it does not have to give. Even if AMAC needed Land, it would still need to approach the Minister for an Allocation and Grant.

As Lord Denning, aptly stated in **MACFOY VS UAC (1962) A.C. PAGE 152,** "***If an act is void, then it is in Law, a nullity. It is not only bad, but also incurably bad. There is no need for an Order to set it aside. It is automatically null and void without much ado, though it is sometimes convenient to have declared to be so and every proceeding, which is founded on it, it is also bad and incurably bad. You cannot put something on nothing and expect it to stay there, it will collapse.***"

See also the Cases of **SALEH VS MONGUNO (2006) 15 NWLR PART 1001 PAGE 26 AT 74; RT. HON. ROTIMI CHUBUIKE AMAECHI VS INEC & 2ORS (2007) PAGE 1; ADERIGBIGBE & ANOR VS ABIDOYE (2009) NSCQR VOL 38 PAGE 806; OKPE VS FAN MILK PLC & ANOR(2016) LPELR-42562(SC); RE: APEH & ORS VS PDP & ORS (2017) LPELR-42035(SC).**

To obtain a Declaratory Title in respect of Land, the Court must examine whether the Document is Genuine and Valid. **Exhibit A,** the Certificate of Occupancy (Customary) is clearly a Genuine Document, it was Executed, Stamped and **Registered as No. 226 at Page 226 in Volume 1 (Customary Certificates of Occupancy) in the Land Administration Land Registry Office at Garki Municipal Area Council, Abuja** but is not Valid in Law having been issued out by an Improper Authority. The

Execution seen on this Document was not Duly Executed, as AMAC did not have the Authority and Capacity to carry out any Survey, Chart the Area by Layout Plans and certainly, did not have the authority and mandate of the Minister to Grant **Plots A79 and 80**.

The Designation of the Plots as **Plots A79 and 80**does not exist in Law and **Exhibit A,** is ineffective to Convey any Title whatsoever to whosoever in Law.

Furthermore, **Exhibit B**, the Irrevocable Power of Attorney as well as **Exhibit C**, the Deed of Assignment, were not properly registered before the Appropriate Registry.

By **Section 3(1)** of the **LAND REGISTRATION ACT CAPS 515 (ABUJA) 1990,** itstates that: -
"*There shall be in the Federal Capital Territory, Abuja, a Land Registry with an Office or Offices at such place or places as the Minister may, from time to time, direct*."

Subsection (2) provides: -
"***The Registry shall be the Proper Office for the Registration of <u>All</u> Instruments including Powers of Attorney affecting Land*."**

Section 2 of the Act states: -
"**Subject to the Provisions of this Act, every Instrument executed after the commencement of this Act shall be Registered**."

Section 2 of this Act defines an "**Instrument**" to mean
"***A Document affecting Land whereby one Party (hereinafter called the Grantor) confers, transfers, limits, charges or extinguishes in favour of another Party (hereinafter called the Grantee) any Right or Title to, or Interest in Land, and includes a Certificate of Purchase and a Power of Attorney under which an Instrument may be executed, but does not include a Will***."

The indication on the Various Stamps for Registration show that they were registered at the Lands Registry of AMAC and not by the Minister's Land Registry Department and to that extent, these Exhibits, cannot convey any Recognizable Legal Rights and Interests from Mr. Isah Jiba all the way through to the 1st Claimant.

Therefore, the Registration of the Instruments for Transfer in **Exhibits B and C**did not satisfy the Provisions of the **LAND REGISTRATION ACT CAPS 515 (ABUJA) 1990.**

Furthermore, the Value of the Building Plan in **Exhibit E** and the Approval itself in **Exhibit D** suffers the same fate, as baseless and unfounded, as **Section 7 (1)**of the **FEDERAL CAPITAL TERRITORY ACT**provides 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*****"**

Subsection (2) provides that: -
*"The Authority shall have the 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***."**

Therefore, the Foundation of the Claimants' Root of Title as well as the Foundation of the 1st Claimant's Approval for Building Plan and the

Building itself is faulty. It was built on shaky grounds. The Length of Stay on the Plots indicating Acts of Long Possession will not work in this particular instance because she had No Inferior or Superior Title, Equitable or Legal, to the Land on which she built upon in the first place. She had no Valid Right over **Plot 366** that the Minister could extinguish.

The Saving Grace for the 1st Claimant is that she a secured a Government Statutory Allocation in **Exhibit G**and she is only entitled to confine her Building within that Space and none other. This Grant was not inconsistent with any other Previous Recognizable Grant and stands alone.

Therefore, the **Third Issue**is answered in the Analysis of the Second Issue, as the Court finds that the Claimants did not prove and are therefore not entitled to any Legal or Equitable Interest and Title in and over **Plot 366** Apo Resettlement Layout,needing protection from the Court.

The **Fourth Issue** relates to the Claimants Claim in Damages for Trespass. Trespass is the unjustified intrusion by one Person upon Land in Possession of another andthe essence is Injury to Possession.See **OGUNBIYI VS ADEWUNMI (1985) 5 NWLR (PT. 59) 144 SCNJ AT 156; OKAGBUE VS ROMAINE (1982) 5 SC 133 AT 148**.

In the Case of **OMORHIRHI & ORS VS ENATEVWERE (1988) LPELR-2659(SC) WALI, JSC AT PAGE 14 PARAS C-G,** made Reference to **"WORDS AND PHRASES LEGALLY DEFINED (2nd Ed.) Vol. 5 at Page 222, the word "Trespass" is given the following definition". "Trespass is a wrongful act, done in disturbance of the possession of property of another, or against the person of another, against his will. To constitute a trespass the act must in general be unlawful at the time when it is committed.... Whoever is in possession, may maintain an action of trespass against a wrong doer to his possession."**.... **"Every unlawful entry by one person on the land in the possession of another is a trespass for which an action lies ...**

(and) a person trespasses upon land if he wrongfully set foot on, or rides or drives over it,.... Or pulls down or destroys anything permanently fixed to it or wrongfully takes minerals from it...."

From this Principle, it is easy to decipher that Valid Possession is a vital pedestal or prelude to a Claim in Trespass. Having examined the Claimants' Root of Title and finding out that it was null and of no effect, it is difficult to see how a Claim in Trespass can succeed against the Defendants.

Therefore, there can be no Damages for Trespass granted in favour of the Claimants and their Claim in this regard, fails accordingly.

As regards the **Fifth and Final Issue**, before the Court is **Exhibit K,** dated the 16th of February 2009 and is a **"PROVISIONAL ALLOCATION OF RESETTLEMENT PLOT AT APO",** issued out in favour of Obed Shekodu in respect of **Plot No. 366** at Apo Resettlement Town. It was issued by the 2nd Defendant and stamped by the Office of Director Resettlement and Compensation Department.

Now, this **Exhibit K**cannot without more, confer any Legal Title or Right to **Plot 366**. There was no Statutory Right of Occupancy before the Court and neither was there any Proof of Purchase by the 3rd Defendant, Mr. Cyril Ezeamaka from Mr. Obed Shekodu.

The 3rd Defendant in his Counterclaim sought for a Declaration of Title over **Plot 366**, Damages as well as Legal Costs but did not lead any Evidence to sustain his Rights to this Plot. Rather, he rested on the Case of the Claimants. The implication of this is Trite as stated in the Case of **THE ADMINISTRATORS AND EXECUTORS OF THE ESTATE OF ABACHA VS EKE-SPIFF & ORS (2009) LPELR-3152(SC)**.

It simply means that the 3rd Defendant in resting on the evidence led thus far made the evidence unchallenged and uncontroverted. The implications are: -

1. That the 3rd Defendant is stating that the Claimants, have not made out any case for him to respond to; or

(b) That the 3rd Defendant admits the facts of the Case as stated by the Claimants; or

(c) That the 3rd Defendant has a complete defence in answer to the Claimants' Case.

Further Reference is made to the Cases of **AKANBI VS ALAO (1989) 3 NWLR (PT 108) 118; (1989) 5 SCNJ 1 AND NEPA VS OLAGUNIU & ANOR (2005) 3 NWLR (PT 913) 603 AT 632 (CA); AGUOCHA VS AGUOCHA (2005) 1 NWLR (PT 906) 165 AT 184; NEWBREED ORG LTD VS ERHOMOSELE (2006) LPELR-1984(SC); BURAIMOH VS BAMGBOSE (1989) 3 NWLR (PT 109) PAGE 352; AND NWABUOKU VS OTTIH (1961) 2 SCNLR PAGE 232.**

Resting can be regarded as a Legal Strategy and not a Mistake. If he succeeds, then it enhances his case, but if he fails, that is the end of his case. Where a Defendant offers no evidence in support of his Pleadings, the evidence before the Court, obviously goes one way with no other set of facts or evidence weighing against it. There is nothing in such a situation, to put on the other side of the Proverbial or Imaginary Scale of Balance as against the evidence given by or on behalf of the Claimants. The Onus of Proof in such a situation is naturally discharged on Minimum Proof.

In this instant case of the Counterclaim, the Court cannot make any Declaration that Plot 366 Apo Resettlement Layout was duly allocated to Obed Shekodu by the Defendants by virtue of the Letter of Provisional Allocation of Resettlement Plot at Apo with REF NO: FCDA/DRC/GEN/05/30 dated the 16th of February 2009,because it was a

Provisional Allocation and there was no evidence of further processing by the Minister**.**

The Letter was a Photocopy and Uncertified and therefore, the Court cannot ascertain its Genuineness and Validity. Further, there is no evidence of Execution, Stamping or Registration and does not qualify in any shape, size or form as an Instrument conveying Title and is not Registrable as it currently stands. It is clear that the Grantor, that is, the 2nd Defendant had the Authority and Capacity to Grant Mr. Obed Shekodu **Plot 366**but the effect is that the Provisional Allocation in **Exhibit K**is inchoate and uncompleted and cannot serve as Proof of Title over **Plot 366**.
Flowing from this, the Prayer for Damages in the Sum of Twenty Million Naira (N20, 000, 000.00), is not sustainable and is accordingly denied.

In Conclusion, the Court finds as follows: -

1) **A Declaration of Court cannot be made stating that the Claimants are the bona fide Owners and Occupiers of Plot A79 and 80 now subdivided into Plots 363 and 366 Apo Layout now known as Apo Resettlement and its appurtenance or any other Plot carved from it.**
2) **The Court refuses to make a Declaration that the Claimants are entitled to be issued and should be issued with a Regularized Certificate of Occupancy and all other Title Documents in respect of Former Plots A79 and 80 now known as Plot 363 and 366 Apo Resettlement Layout and any other Plot carved from it.**

3) **An Order will not be made mandating the Minister of the FCT/Agents to issue and grant to the Claimants the Regularized Title of the Certificate of Occupancy and all other Title Documents over the remaining part of the Land covered by the Initial Certificate of Occupancy formerly Plots A79 and 80 Apo**

Layout of which has been subdivided and relabelled into Plots 363 and 366 Apo Resettlement Layout.

4) **The Prayer for Perpetual Injunction restraining the Defendants or their Agents from further demolishing the Claimants' Property or disturbing the Claimants' quiet and peaceable occupation of their Property is refused.**

5) **The Claimants have failed to satisfy the Court to Grant an Order of Injunction restraining the 1st Defendant from allocating the Claimants' Land or any part or portion thereof to any Third Party other than the Claimants, having first applied for same and said Land forming part of their Existing Title and Property and this Relief fails in its entirety.**

6) **The Court declines to declare as null, void and of no effect any purported allocation of the Claimants' Land or any part thereof forming part of Former Plots A79 and 80 now known as Plots 363 and 366 Apo Resettlement Layout, Abuja made by the 1st Defendant to the 3rd Defendant or any other Third Party other than the Claimants and this Prayer fails accordingly.**

7) **The Claimants failed to establish by Credible Evidence any Demolition of part of the Claimants' Property that was carried out by the 2nd Defendant. There was lack of pictorial evidence or any other Notice of Demolition and therefore, the Court will decline to declare any demolition to be unlawful, null and void,constituting Trespass on the Property of the Claimants.**

8) **Due to the fact that there was evidence of demolition or any justification as to Costs of the Property, the Court declines the Award for N25, 000, 000 (Twenty-Five Million Naira) as General Damages for the Unlawful Demolition of the Claimants' Property consisting of Perimeter Fence, Gate- Housing, Gate,**

Boys Quarters and Foundation (up to German Floor) for the 2nd Building

9) **The Prayer for Perpetual Injunction in respect of Trespass and Continued Trespass is also refused and fails in its entirety.**

10) **The Court declines the Award for the Sum of N15Million as General Damages for Trespass, Unlawful Acts and Arbitrariness of the Defendants committed against the Claimants' Property.**

11) **No Order is made as to Cost of this Suit in the Sum of N5, 000, 000 (Five Million Naira).**

12) **Logically, No Interest can be awarded on the Judgment Sum calculated at 21% p.a. against the Defendants jointly and severally from the Date of Judgment till the time of liquidation.**

In Conclusion, the Case for the Claimants fails in its entirety.

As regards the **Counterclaim** of the 3rd Defendant: -

1. **A Declaration of Court will not be made that Plot 366 Apo Resettlement Layout was duly allocated to Obed Shekodu by the Defendants by virtue of the Letter of Provisional Allocation of Resettlement Plot at Apo with REF NO: FCDA/DRC/GEN/05/30 dated the 16th of February 2009.**

2. **An Order of Court cannot be made directing the Claimants to pay the 3rd Defendant the Sum of Twenty Million Naira (N20, 000, 000.00) as Damages.**

3. **Since the 3rd Defendant brought himself into this Action, he is to bear his Legal Fees with No Order is made as to Costs.**

As regards the Reliefs sought by the 1st and 2nd Defendants that the Claimants Suit was frivolous, meant to embarrass them, the Court finds that with the Suit being unfounded, some Measure of Costs ought to be awarded and will Order the Claimants, jointly and severally, to pay the Sum of Fifty Thousand Naira (N50, 000) as General Damages to the 1st and 2nd Defendants.

This is the Judgment of the Court.

HON. JUSTICE A.A.I. BANJOKO
JUDGE