

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT MAITAMA

BEFORE HIS LORDSHIP : HON. JUSTICE Y. HALILU
COURT CLERKS : JANET O. ODAH & ORS
COURT NUMBER : HIGH COURT NO. 24
CASE NUMBER : SUIT NO: CV/1342/2015
DATE: : MONDAY 4TH MAY, 2020

BETWEEN:

ALHAJI USMAN DANBALKO } PLAINTIFFS
(Suing by his Attorney ALHAJI SALISU SAMBAJO) }
AND

1. HON. MINISTER OF FCT } DEFENDANTS
2. FED. CAP. DEV. AUTHORITY }
3. DEPARTMENT OF DEVELOPMENT }
CONTROL }
4. MOHAMMED ABUBAKAR }
5. AMANAMBU C. ANTHONY }

JUDGMENT

The Plaintiff commenced this action vide Writ of Summons and Statement of claim filed on 13th March, 2015 and dated 10th March, 2015 wherein he claims as follows:-

1. A Declaration that the grant in 1993 to Plaintiff by 1st Defendant (Hon. Minister FCT) of Statutory Right of Occupancy File No. MFCT/LA/SO. 732 over and in respect of 745.00m², Plot no. 23 Cadastral Zone B07, within Katampe District, Abuja, FCT, Nigeria for 99 (Ninety Nine) years is still existing, valid, legal, lawful, subsisting, regular and effective till date and at all times material to this suit.
2. A Declaration that Plaintiff not being in breach of the terms contained in the Statutory Right of Occupancy File No. MFCT/LA/CO.732 over and in respect of 745.00m², Plot No. 23 Cadastral Zone B07, within

Katampe District, Abuja, FCT, Nigeria for 99 (Ninety Nine) years and not having been issued with any notice of compulsory acquisition for public purpose (or for any legally recognizable interest at all) is entitled to enjoy and retain quiet possession/physical occupation of the plot until the expiration of the term of years granted by the 1st Defendant.

3. A Declaration that pursuant to the extant law, 1st and 2nd Defendants cannot in law, fact or circumstances of this suit lawfully, legally, regularly not validly Re-grant the subsisting/existing Statutory Right of Occupancy already lawfully, legally/validly granted to Plaintiff in 1993 to 4th Defendant in 2007 (or at anytime material whatsoever) other than in accordance to law nor without due process of law in respect/over Plot no. 23 Cadastral Zone B07, within Katampe District, Abuja, FCT, Nigeria.

4. Order of this Honourable Court declaring as illegal, unlawful, irregular, invalid, null, void and of no effect whatsoever and consequently setting aside the purported Re-grant of Statutory Right of Occupancy (already granted Plaintiff in 1993) to 4th Defendant (purportedly in 2007) over/in respect of Plot no. 23 Cadastral Zone B07, within Katampe District, Abuja – FCT, Nigeria.

5. Order of this Honourable court declaring as illegal, unlawful, irregular, invalid, null, void and of no effect whatsoever and consequently setting aside the purported issuance of Federal Republic of Nigeria certificate of Occupancy No. 1784w-61e4z-59e3r-a44u-10, File No. KN20020 dated the 13th day of May, 2013 registered as No. 52274 at page 1 in Vol. 262 of the Certificate of Occupancy register in the land registry office at Abuja to 4th Defendant and delivered by 2nd Defendant in respect of Plot No. 23

Cadastral Zone B07, within Katampe District, Abjua – FCT, Nigeria.

6. Order of this Honourable Court to 1st and 2nd Defendants to cancel and withdraw Federal Republic of Nigeria Certificate of Occupancy No. 1784w-61e4z-59e3r-a44u-10, File No. KN 20020 dated the 13th day of May, 2013 registered as No. 52274 at page 1 in Vol. 262 purportedly issued to 4th Defendant and further that evidence of such withdrawal and/or cancellation be filed at the Registry of this Honourable court within 30 (thirty) days of judgment.
7. Order of this Honourable Court to 1st and 2nd Defendants to cancel and withdraw the registration of Power of Attorney dated 26th day of February, 2013 registered as No. 106 at page 106 in Vol. 68 (PA) in respect of the Statutory Right of Occupancy granted to Plaintiff in 1993 in respect of Plot No. 23

Cadastral Zone B07, within Katampe District, Abuja - FCT, Nigeria and further that evidence of such withdrawal and/or cancellation be filed at the Registry of this Honourable Court within 30 (thirty) days of Judgment.

8. Order of this Honourable Court to 1st and 2nd Defendants to issue Federal Republic of Nigeria Certificate of Occupancy over/and in respect of Plot No. 23 Cadastral Zone B07, within Katampe District, Abuja – FCT, Nigeria in favour of ALHAJI SALISU SAMBAJO consequent upon his Appointment as Attorney of Plaintiff pursuant to Power of Attorney dated 12th April, 2001 paid for and submitted for registration and Recertification by the said Attorney which preceded the purported re-grant to 4th Defendant in 2007 and the latter's purported donation to 5th Defendant in 2013.

9. Order of this Honourable court to 2nd Defendant and particularly 3rd Defendant to grant Building Plan Approval to Plaintiff's Attorney ALHAJI SALISU SAMBAJO or his named/appointed nominee as may be submitted for approval over and in respect of Plot No. 23 Cadastral Zone B07, within Katampe District, Abuja – FCT, Nigeria.
10. Order of Perpetual Injunction restraining 2nd and particularly 3rd Defendant from granting Building Plan Approval to 4th or 5th Defendants or their nominee(s) nor any person/persons whatsoever relating to or connected with 4th and 5th Defendants in respect of Plot No. 23 Cadastral Zone B07, within Katampe District, Abuja – FCT, Nigeria.
11. Order of Perpetual Injunction restraining the 1st and 2nd Defendants either by themselves or through their staff, workers, officers or anybody acting on their behalf or instruction from unlawfully or illegally

invalidating, terminating, revoking, disentitling, depriving, infringing, and/or interfering with or howsoever encroaching on Plaintiff's Statutory right of Occupancy over Plot No. 23 Cadastral Zone B07, within Katampe District, Abuja – FCT, Nigeria.

12. Order of Perpetual Injunction restraining the 1st and 2nd and 3rd, 4th and 5th Defendants, any of their Agents, Servants, Privies, Workmen, Associates or anyone whatsoever connected/related to either of them from entering into, upon or carry out any form of trespass or development or disturb Plaintiff's Statutory, possessory, legal right, physical possession/occupation or quiet enjoyment and development of Plot No. 23 Cadastral Zone B07, within Katampe District, Abuja – FCT, Nigeria.
13. DAMAGES in the sum of N100,000,000.00 (One Hundred Million Naira) only, against all Defendants jointly and severally for infringing on and interfering

with the Plaintiff's Statutory and possessory rights over and in respect of Plot No. 23 Cadastral Zone B07, within Katampe District, Abuja – FCT, Nigeria.

14. Cost of the suit as may be assessed by the Honourable Court against all the Defendants.

Upon service of the writ on the Defendants and after pleadings were exchanged, the suit was set down for hearing. The case of the Plaintiff as distilled from the witness statement on oath of PW1 (Onyemachi Onuigbo) is that sometimes in 1990, he applied for allocation of a plot of land and also paid the necessary fees, after which a Statutory Right of Occupancy was granted to him over plot no. 23 Cadastral Zone B07, within Katampe District, Abuja, vide offer letter dated 17th September, 1993 with File No. MFCT/LA/90/SO.732.

The Plaintiff contends further that he accepted the offer of the plot and duly completed and submitted the Acceptance Form on 6th October, 1993.

The Plaintiff claims that after accepting the Offer, he got officials of the 2nd Defendant to show him the said plot, after which he established beacons on the plot, fenced same and took physical possession.

However, all efforts by the Plaintiff to have the 1st and 2nd Defendants issue a Certificate of Occupancy to the Plaintiff over the said plot was unsuccessful.

It is also the claim of the Plaintiff that sometime on 12th April, 2001 he appointed Alhaji Salisu Sambajo as his Attorney by a Power of Attorney duly executed by the parties, after which he handed over possession of the plot to the Attorney.

The Plaintiff also contends that during the Recertification exercise carried out by the 2nd Defendant, the Plaintiff paid the sum of N53,000.00 only to the Abuja Geographic Information Systems for registration of the Power of Attorney and also another N10,000.00 for Recertification, however, the 1st and 2nd Defendants have refused to

Recertify the said plot, neither did they issue a recertification acknowledgment to the Plaintiff till date.

The Plaintiff further claims that it wrote several letters to the 1st and 2nd Defendants for the purposes of issuing a Certificate of Occupancy in respect of the plot, to enable him apply for a Building Plan Approval to develop same. However in 2003, he was informed that the plot was involved in a case of Double allocation, consequent upon which the 1st and 2nd Defendants purportedly granted an alternative plot LD 182 Apo Tafyi District, Abuja as a replacement for the plot 23 Cadastral Zone B07, within Katampe District, Abuja. Consequent upon the above, the 1st and 2nd Defendant's issued a letter dated 8th April, 2003, which counsel to the Plaintiff collected on his behalf and also filled the acceptance form.

It is further the claim of the Plaintiff that on or about 17th February, 2015, he got information that the plot 23 Cadastral Zone B07, within Katampe District, Abuja has

been purportedly granted to one Mohammed Abubakar (4th Defendant) with file No. KN 20020, who they understand also granted a Power of Attorney to dated 26th February, 2013 to Amanambu C. Anthony (5th Defendant) and that same was registered as no. FC106/106 Vol. 68.

The Plaintiff further contends that since the grant of the subject plot to him in 1993, the 1st Defendant has never revoked same nor compulsorily acquired same for public purpose in compliance with the provisions of the Land Use Act, neither has the Plaintiff ever been served with a notice of revocation. The Plaintiff further claims that what was withdrawn was plot 30 and not plot 23 Cadastral Zone B07, Katampe District, Abuja.

PW1 tendered the following documents in evidence.

1. Daily Trust newspaper publication as Exhibit “A”
2. AGIS Deposit slip as Exhibit “B.”

PW1 was then cross – examined and subsequently discharged.

PW2 (Adebayo Adebajo) adopted his witness statement on oath and tendered digital photograph pictures in evidence as Exhibit “D”.

PW2 was cross – examined and accordingly discharged.

PW3 (David Mdeligelya) a subpoenaed witness a staff of land office tendered a file in the name of Sambajo as Exhibit “C”.

2. The subpoena as Exhibit “E”
3. Receipt as Exhibit “F”
4. Rectification form as Exhibit “G”.
5. Letter dated 8th April, 2003 as Exhibit “I”
6. Certified True Copies of letter as Exhibit “J”
7. Acceptance letter as Exhibit “K”

8. Letter dated 29th November, 2002 as Exhibit “L”

9. Letter dated 30th September, 2013 as Exhibit “M”

PW3 was accordingly cross – examined and then discharged.

Plaintiff closed it case to paved way for defence. 1st – 3rd Defendant upon their defence and called DW1 (David SarkiMsheliza). The case of the 1st – 3rd Defendant as distilled from the witness statement on oath of DW1 is as thus;

1st – 3rd Defendants contended that the Plaintiff has no existing right over the Plot 23 Katampe District, Abuja, after having accepted the Plot LD 182 Apo Tafyi District, Abuja as an alternative for the Plot 23 Katampe which was withdrawn from the Plaintiff due to problem of double allocation.

The 1st – 3rd Defendants further claim that the Plaintiff in furtherance of his acceptance of the alternative plot, took

steps to recertify same by applying, and making the necessary payments and submission of relevant documents for the recertification of the said plot LD 182 Apo Tafyi District, Abuja. The Plaintiff never took any steps nor submitted any documents for recertification of plot 23 Katampe District, Abuja.

The 1st – 3rd Defendants also contend that the allocation of the plot 23 Katampe District, Abuja to the 4th Defendant is valid and subsisting, as the said plot was unencumbered when it was granted to the 4th Defendant, due to the fact that the allocation of plot LD 182 Apo Tafyi to the Plaintiff as an alternative plot and the Plaintiff's acceptance of same had extinguished any right whatsoever that the Plaintiff had in plot 23 Katampe District, Abuja.

The 1st – 3rd Defendants further contended that the Lands Administration and Resettlement Department inadvertently wrote plot “30” instead of plot “23” (which

is a typographical error) on the letter of reallocation of alternative plot, which was issued to the Plaintiff.

The 1st – 3rd Defendants also contended that Power of Attorney donated by the 4th Defendant to the 5th Defendant is valid and regular as same has been duly registered with the 1st – 3rd Defendants. They further contended that the 4th Defendant is the only known title holder with respect to plot 23 Katampe District, Abuja and not the Plaintiff.

DW1 tendered the following documents in evidence.

- a. Offer of Statutory Right of Occupancy.
- b. Acceptance letter.
- c. Certificate of occupancy
- d. Power of Attorney.

They were admitted in evidence as Exhibit “D1”, “D2”, “D3” and “D4” respectively.

DW1 was cross – examined and accordingly discharged. 4th and 5th Defendant entered their defence and called DW2 (Anthony C.A).

The case of 4th and 5th Defendant as distilled from the witness statement on oath of DW2 is as thus;

The 4th and 5th Defendants on their part contented that the 4th Defendant has been at all time material to this suit the only allottee with subsisting rights over the plot in dispute by virtue of the Statutory Right of Occupancy dated 14th April, 2007 and Certificate of Occupancy with file no. KN 20020, which was validly granted to him by the 1st Defendant.

The 4th and 5th Defendants further contend that as at 2007 when the plot was allocated to the 4th Defendant, there was no structure whatsoever on it. That it was after the 5th Defendant was given a Power of Attorney by the 4th Defendant that he built the perimeter fence on the plot and have been in quiet possession of the plot.

That the moment the Plaintiff accepted the Plot LD 182 Apo Tafyi District, which was allocated as an alternative plot, he has relinquished his interest/title in plot 23 Katampe District, Abuja.

The 4th and 5th Defendants further contended that the 1st Defendant acted within the spirit of the Land Use Act and his Constitutional powers when he allocated plot 23 Katampe, Abuja to the 4th Defendant in 2007 as the Plaintiff's purported title had already been withdrawn since 2003. Also that the Plaintiff having alluded to withdrawal of his title over plot 23 in his letter dated 30th September, 2013 through his counsel, is estopped from claiming that his already extinguished title over the same plot still subsists.

4th and 5th Defendant counter claim against the Plaintiff as follows:-

- i. A declaration that the Plaintiff/Defendant to Counter Claim's title over Plot 23, Katampe, Abuja having

been validly replaced with Plot LD 182, Apo Tafyi by the 1st Defendant to the main suit's offer dated 8th March, 2003 and Plaintiff/Defendant to Counter Claim's acceptance of same dated 8th June, 2004 has long become extinguished and no longer existent.

- ii. A declaration that the 4th Defendant/Counter Claimant is the bonafide allottee vested with title over Plot 23, Katampe, Abuja having been allocated same on 14th March, 2007 as a replacement for the 4th Defendant/Counter Claimant's Plot 1209, Durumi, Abuja which was withdrawn by the 1st Defendant to the main suit for change of Plot Number and Cadastral Zone.
- iii. A Declaration that the purported interest claimed by the Plaintiff/Defendant to Counter Claim is invalid and has been over taken by the Plaintiff/Defendant to Counter Claim's acceptance of Plot LD 182 Apo Tafyi since the 8th day of March, 2004.

- iv. A declaration that the Plaintiff/Defendant to the Counter Claims act of entering upon the Counter Claimant's Plot in the company of the Plaintiff/Defendant to Counter Claim's Attorney and Solicitor to take photographs without the consent of the Counter Claimants amounts to trespass on the Plot of the 4th Defendant/Counter Claimant.
- v. An Order of perpetual injunction restraining the Plaintiff/Defendant to Counter Claim, his Attorney, Counsel, Agents anyone purporting to act on his behalf from further trespassing on the Plot without the Counter Claimant's consent.
- vi. The sum of N5,000,000.00 (Five Million Naira) only as damages against the Plaintiff/Defendant to the counter claim for trespassing on the Counter Claimant's plot without consent.
- vii. The sum of N50,000,000.00 (Fifty Million Naira) only as general damages.

DW2 tendered the following document in evidence.

Six number receipt as Exhibit “D5”, “D6”, “D7”, “D8”, “D9” and “D10” respectively.

DW2 was cross – examined and accordingly discharged.

Parties closed their respective cases to pave way for filing and adoption of written addresses.

Learned counsel for the Plaintiff formulated a sole issue for determination in his written address to wit; whether upon the evidence place before this Honourable Court, the Plaintiff has proved his case to entitle him to the Judgment of this court in his favour.

It is the submission of the learned counsel that the burden of proof is on the person who if he fails to give proper evidence he will lose the case as judgment is going to be given against him. ***MAINSTREET BANK LTD VS CHAHINE (2015) 11 NWLR (Pt. 1471) page 479 at 824 – 520 11 -13.***

Counsel submit further that 1st – 5th Defendant have failed to established the ownership of the property to the Defendant and they have not denied the fact that the plot in issue was allocated to the Plaintiff. Counsel argued that the evidence of Plaintiff was not denied and therefore court must act on same. Counsel cited and relied on ***GAJI VS PAYE (2003) 8 NWLR (Pt. 823) 583.***

It is further the submission of the learned counsel that the law does not permit a person to mislead another to believe in a state of affairs and then renegeto the disadvantages of the other. Counsel cited section 169 of the Evidence Act 2011 to drive home point.

Learned counsel submit that the evidence before the court has shown that the Defendants made the Plaintiff believe in the existence of Plot 23, Cadastral Zone B07, within Katampe District, Abuja FCT, Nigeria of 745.00m² for 99 years. And that the Plaintiff has been allocated an alternative plot 182 Apo Tafyi.

Finally, court was urged to grant the Plaintiff reliefs sought.

On their part, 1st – 3rd Defendants formulated the following issues for determination to wit;

- a. Whether in view of Exhibit “I” and “M” tendered by the Plaintiff and admitted by this Honourable Court, the Plaintiff is not barred by the doctrine of estoppel from claiming a title over Plot No. 23 Cadastral Zone B07, within Katampe District, Abuja, Nigeria.
- b. Whether having regard to the facts contained in the Plaintiff’s statement of claim and reply to the 1st to 3rd Defendant’s statement of Defence and also evidence before this Honourable court, the Plaintiff has sufficiently made out a case to warrant this Honourable Court to grant him the reliefs sought.

c. Whether the 4th and 5th Defendant have made out a case to warrant this Honourable Court to grant the reliefs sought in their counter claim.

On issue 1, *whether in view of Exhibit “I” and “M” tendered by the Plaintiff and admitted by this Honourable Court, the Plaintiff is not barred by the doctrine of estoppel from claiming a title over Plot No. 23 Cadastral Zone B07, within Katampe District, Abuja, Nigeria.*

Learned counsel submit that by virtue of paragraph 25 of the Plaintiff’s statement of claim. The suit has caught up with the Estoppel by conduct, the Plaintiff having accepted another plot as replacement of the plot given to him 1st – 3rd Defendant cited the case of *ABE VS SKYE BNAK PLC. (2015) 4 NWLR (P.t 1450) 511 at 539 – 542.*

On issue 2, *Whether have regard to the facts contained in the Plaintiff’s statement of claim and reply to the 1st*

to 3rd Defendant's statement of Defence and also evidence before this Honourable court, the Plaintiff has sufficiently made out a case to warrant this Honourable Court to grant him the reliefs sought.

Learned counsel contended that whoever desire any court to give judgment as to any legal right or liability depend on the existence of facts which he asserts must prove that those facts exists.

And that the Plaintiff has woefully failed to discharge his duty of proving his case as such has not made out a case to warrant this Honourable Court to grant him the relief sought.

On issue 3, whether the 4th and 5th Defendant have made out a case to warrant this Honourable Court to grant the reliefs sought in their counter claim.

Learned counsel submit that the 4th – 5th Defendants have led credible and reliable evidence in support of their counter claim and therefore court should grant same.

Learned Counsel for the 4th& 5th Defendants and formulated the following issues for determination to wit;

1. Whether in the light of evidence led, the Plaintiff has established his case to be entitled to the relief sought.
2. Whether by virtue of the Plaintiff's acceptance of Exhibit 'I' and 'M' the Plaintiff is not estopped from claiming title of Plot 23, Katampe.
3. Whether the 4th and 5th Defendants/Counter Claimants have not proved their counter-claim to be entitled to the reliefs sought therein.

The argument of Learned Counsel for the 4th and 5th Defendants is the same with that of the Counsel for the 1st – 3rd Defendants therefore no need of repeating same here.

Court:- It is instructive to state from the onset that the principal reliefs sought by the Plaintiff against the Defendants are declaratory in nature. The law is founded in this area of jurisprudence. A party such as in this case, who seek declaration of right, must win on the strength of his case and not on the weakness or absence of the defence.

Indeed, declaratory reliefs is one that seeks the pronouncement of the court as to the status of a named matter, things or situation, ***NWAGU VS FADIPE (2012) LPELR 7966 COURT OF APPEAL.***

By the endorsement and claim of Plaintiff he seeks declaration that the grant in 1993 to Plaintiff by 1st Defendant (Hon. Minister FCT) of Statutory Right of Occupancy File No. MFCT/LA/SO. 732 over and in respect of 745.00m², Plot no. 23 Cadastral Zone B07, within Katampe District, Abuja, FCT, Nigeria for 99 (Ninety Nine) years is still existing, valid, legal, lawful,

subsisting, regular and effective till date and at all times material to this suit and other reliefs as clearly captured in the preceding part of this Judgment.

Judicial pronouncement are ad-idem that declaratory reliefs are never granted based on admission or on default of filing defence *MOTUNWASE VS SOURUNGBLE (1998) NWLR (Pt. 92) 90.*

Where the court is called upon to make a declaration of a right, it is incumbent on the party claiming to be entitled to the said declaration to satisfy the court by evidence and not the admission in pleading that he is entitled.

The imperativeness of this arises from the facts that the court has discretion to grant or refuse to grant such declaration. *SAMESI VS IGBE & ORS (2011) LPELR 4412.*

The forgone authority remains good law and binds this court as well.

The Plaintiff in an effort to satisfy this Honourable court to enter judgment in his favour called a total number of 3 witnesses and tendered some documents to establish that indeed, the land in question was duly allocated to him and to convince the court to enter judgment in his favour.

Whereas 1st and 3rd Defendant filed their statement of defence with a sole witness statement on oath of one David Mbazyalial who adopted the said witness statement on oath and tendered some documents in urging the court to dismiss the action.

On their part, 4th and 5th Defendant equally called a sole witness in the person of *Anthony Amanambu C.* who adopted his witness statement on oath and tendered some documents and urge the court to dismiss the action and grant their counter claim.

From the totality of parties case, i.e both oral and documentary before the Honourable court, the issue

whether the Plaintiff has proof his case on balance of probability has been formulated for determination.

On whether the Plaintiff in the case in view is entitled to the reliefs claimed or not, it become most expedient to ascertain the root of title of the Plaintiff first and foremost.

There are five ways of proving ownership to land that are recognized by judicial decision. One or more of the mode are usually used in proof. They are:-

- a. Traditional evidence
- b. Production of documents of title
- c. By proving acts of ownership numerous and positive enough to warrant an inference that the person is the owner.
- d. Act of long possession and

- e. By proof of possession of connected or adjacent land.
*AKAOSE VS NWOSU (1997) 1 NWLR (Pt. 482)
478 at 492 paragraphs B – D.*

As aptly stated by learned counsel for the Plaintiff in his final written address and the ensuring evidence and title documents' particularly Plaintiff stated in paragraph 9 of his statement of claim and paragraph 9 of the witness statement on oath of PW1 that;

Consequent upon allocation, Plaintiff's said he completed form FCDA/LA/1st Defendant granted Statutory Right of Occupancy over Plot No. 23, Cadastral Zone B07, within Katampe District, Abuja FCT, Nigeria of 745.00m² for 99 years and conveyed this grant of statutory Right of Occupancy to Plaintiff through Minister of the Federal Capital Territory letter reference No. MFCT/LA/90/SO-732 dated 17th September, 1993.

The said Conveyance of Provisional Approval was tendered and admitted in evidence as Exhibit "J".

I pause here to state the law as regards the importance of a documentary evidence. It has been held by a number of court decision that documentary evidence is the yardstick or a hanger by which to assess the veracity of oral testimony or its credibility. ***OGBEIDE & ANOR VS OSIFO (2006) LPELR 627 (CA).***

I must state here that, the court is under obligation to interpret every document accurately not to add or subtract from the content of the document.

The implication of tendering Exhibit, including documentary evidence before a court of law was captured by MUKHTAR JCA (as he then was) in ***JOHN M. BUBA VS THE STATE (1992) NWLR (Pt. 215) 1 at 168 as thus;***

“Exhibits are not tendered and admitted in court for the fun of it. They are for the purpose albeit to assist in determining the relevance of the Exhibits to the case. Secondly, once this form part of the record

they must be examined, scrutinised and assess for the just determination of the case, if they are not scrutinised as they apply to the facts of the case, then of what use are they admitted admittance in evidence.”

Similarly in *FAGUNWA VS ADIBI (2004) 17 NWLR (Pt. 903) 544 at 567 paragraph D-E the Supreme Court per Tobi JSC held as follows:-*

“A trial judge must consider relevant exhibits tendered along with oral evidence, he cannot take oral evidence and throw away documentary evidence which the primary evidence under section 94(1) of the Act.”

I shall therefore, take a look and peruse through the documents tendered in evidence.

In proofing his case, Plaintiff tendered the following document in evidence;

1. Daily Trust newspaper publication as Exhibit “A”
2. AGIS Deposit slip as Exhibit “B.”
3. The subpoena as Exhibit “E”
4. Receipt as Exhibit “F”
5. Rectification form as Exhibit “G”.
6. Letter dated 8th April, 2003 as Exhibit “I”
7. Certified True Copies of letter as Exhibit “J”
8. Acceptance letter as Exhibit “K”
9. Letter dated 29th November, 2002 as Exhibit “L”
10. Letter dated 30th September, 2013 as Exhibit “M”

Whereas all the Defendants tendered the following;

- a. Offer of Statutory Right of Occupancy.
- b. Acceptance letter.
- c. Certificate of occupancy

d. Power of Attorney.

It is instructive to state here that, Exhibit “J” tendered by the Plaintiff is the offer of terms of grant/conveyance of Approval dated the 11th October, 1990 with ref. MFCT/LA/90/SO – 722 addressed to Alhaji Usman Danbalko in respect of Plot 745.00m² (Plot No. 23) within Katampe District.

The said offer letter was accepted by the Plaintiff vide Exhibit “K” dated 6th October, 1993.

It is the case of the Plaintiff after accepting the offer, he took physical possession, established beacons on the Plot, fenced same. Plaintiff tendered Exhibit “D” i.e copies of pictures to show how he took possession but same was rejected in evidence.

Plaintiff stated that all effort to have the 1st and 2nd Defendants issue a certificate of occupancy over the said plot was unsuccessful. And that he paid the sum of

N53,000.00 and N10,000.00 for recertification but 1st and 2nd Defendant have refused to recertify the documents.

However, Plaintiff tendered Exhibit “L” titled ***“Case of Double allocation and Request for Resolution Re: FCT/ABU/SO/722 plot No. 23 within Katampe District, Abuja. Alhaji Usma Danbalko.”***

The said letter was written by Biodun Akin-Aina & Co. addressed to the Director land, Ministry of Federal Capital Territory Area 11, Garki, Abuja, Nigeria.

For clarity purposes, Exhibit “L” is hereby reproduced;

“We act for Alhaji Usman Danbalko of No. 30 Mulugu Road. Sokoto, Sokoto State, Nigeria (hereinafter called “Our Client”) and write in connection with the above headline.

The instruction of Our Client which we are asked to convey to you and which we through this medium so do, are in the following terms:-

1. *Ministry of Federal Capital Territory conveyed Approval of Grant in reference no. MFCT/LA/90/SO – 732 to our Client which photocopy is herewith attached as Annexure 1.*
2. *Our Client joyfully accepted the Offer and went ahead to locate the Plot No. 23 within Katampe District, Abuja and arranged for the establishment of the Property Beacons.*
3. *Our Client has since then been in possession of the Plot.*
4. *Efforts to process the Certificate of Occupancy has not been successful as each time enquiry is made concerning the file with which the processing of the Certificate of Occupancy is to be done, it was always said at the Lands Registry that the file could not be traced at the Land Registry to enable the exercise to be completed.*

5. *That of recent it is said at the Lands Registry that it is a case of double allocation and that the Plot No. is contained in the list compiled for Double Allocation of Plots.*

The plea of Our Client which we hereby convey is that this issue of Double Allocation as it involves this Grant to Our Client's offer of Plot No. 23 within Katampe District over which he has taken some steps be resolved so that the file be made available for him to pay the necessary Processing Fees for the Certificate of Occupancy to be processed for the Honourable Minister's signature."

After Exhibit "L" as reproduced above, Plaintiff also caused to be written on his behalf Exhibit "M".

The said Exhibit "M" is titled "*Application To grant alternative plot. RE:MFCT/LA/90/SO – 732 plot LD 182 Apo Tafyi – measuring 1080m2. AlhjaiUsmaDanbalko.*"

For avoidance of doubt relevance paragraph of the Exhibit “M” is hereby reproduced;

“The kind attention of the Hon. Minister, FCT is hereby humbly drawn to the Offer of Terms of Grant/Conveyance of Approval Reference No. MFCT/LA/90/SO-732 dated 17th September, 1993 and the Acceptance of Offer of Grant of Right of Occupancy within the Federal Capital Territory dated 6th October, 1993 through which Plot No. 23 within Katampe District measuring 745.00m² was granted to Alh. Usman Danbalko. Photocopy of the Offer of Terms of Grant and the Acceptance are hereby enclosed as Annexure 1 and 2 respectively.

When it was impossible to process the Certificate of Occupancy in respect of the Plot in favour of Alh. Usman Danbalko, we as his Lawyers had to write letter Reference No. BAAC/ABJ/2001/055/001 dated

the 29th November, 2002 (a copy of which is hereto enclose as Annexure 3)

The Hon. Minister consequent re-granted Plot No. LD 182 Apo Tafyi measuring 1050m² through Application for Statutory Right of Occupancy within the Federal Capital Territory, Abuja Reference No. MFCT/LA/90/SO-732 dated 8th January, 2003 which was accepted through Acceptance of Offer of Grant of Right of Occupancy within the Federal Capital Territory, Abuja dated 8th June, 2004 photocopy of both are hereto enclose as Annexure 4 and 5 respectively.

Consequently, the said Plot No. LD182 Apo Tayfi is now been Recertified since 2005 in favour of Alh. SalisuSambajo as New File No. KN 12431 although the Recertification Acknowledgement is yet to be delivered to us for onward transmission to the said

Alh. SalisuSambajo in respect of New File No. KN 12431.

The humble plea of Alh. SalisuSambajo our Client and the current grantee of Plot No. LD 182 Apo Tayfi New File No. KN 12431 which we hereby convey is for the Hon. Minister to restore Plot No. 23 within Katampe District or any Plot within Katampe District or the grant of any alternative Plot consequent upon which a Certificate be issued in favour of Alh. SalisuSambajo New File No. KN 12431.”

In compliance with Exhibit “M” herein, the 1st and 2nd Defendant issued Plaintiff with Exhibit “I” which is an application for statutory Right of Occupancy within the Federal Capital Territory dated 8th April, 2003.

Paragraphs 1, 2 and 3 of Exhibit “I” is hereby reproduce;

“I am directed to refer to the subject matter and to inform you that the Hon. Administrator of the Federal Capital Territory has given approval to the allocation of Plot No. LD 182 Apo Tafyi to you for Residential purpose.”

Paragraph 2 *“The plot measuring 1050 square metres is a replacement of previous allocation of Plot No. 30 (745m²) Katampe District, which has been withdrawn as result of double allocation.”*

Paragraph 3 *“I am therefore, obliged to forward herewith, relevant documents pertaining to the new allocation. You are kindly requested to complete the acceptance form and return along with the old letter of grant which has now been cancelled.”*

The said Exhibit “I” was accepted vide Exhibit “C” series tendered by PW2.

From the above, could it be said that the Plaintiff's suit has caught up with the principle of "estoppel by conduct" which in law bars a party who has taken steps by his conduct to do an act which another party holds as the true position of affairs and to later change and renege from his initial position?

I answer in the affirmative....

Estoppel was defined in the case of *ABE VS SKYE BANK PLC. (2015) 4 NWLR (Pt. 1450) 512 at 539 – 542 paragraph "D" "as a bar that prevents one from asserting a claim or right that contradicts what one has said or done before or what has been legally established as true."*

The principle upon which estoppel by representation is founded is that the law should not permit an unjust departure from an assumption of fact which he has caused another party to adopt for the purpose of their legal relations.

It is instructive to state here that when the 1st -3rd Defendants called for title holders to come forward with their title documents to have then recertified, the Plaintiff in the forms he filed and also the column in the deposit slip for recertification of the plot sought to be recertified is plot LD 182 Apo Tafyi District as the plot he is submitting for recertification. This can be seen from Exhibit “F” in evidence.

Indeed, whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.

The Plaintiff has stated clearly before this Honourable Court that the plot No. 23, cadastral Zone B07, within Katampe District, Abuja, Nigeria which he lays claim to was validly withdrawn from him and as a result an alternative plot LD 182 Apo Tafyi was issued to him which he accepted via Exhibit “M”.

I must say here that it is a long established principle of law that facts admitted need not be proved as provided under section 123 of the Evidence Acts 2010.

As stated in the preceeding part of this Judgment, a party who claims for declaratory relief must adduce evidence that he is entitled to that relief, thus, the court has a discretion to grant or refuse the declaration and the success of Claimant in such an action depends entirely on the strength of his case and not on the weakness of the defence.

***ADEMOLA VS SEVEN UP BOTTLING CO. PLC.
(2004) 8 NWLR (Pt. 874) 134 at 140 – 149 (a-d).***

From the evidence before the court, it is obvious that the Plaintiff has clearly failed to proof its case as required by law. The claim of Plaintiff shall fail. It fails and dismissed accordingly.

Next is the counter claim of the 4th and 5th Defendant. The Plaintiff in paragraph 32 of its statement of claims stated that *“upon the information of 17th February, 2015, Plaintiff attorney and counsel entered upon the plot and took digital photograph of the underdeveloped plot with dwarf fence erected in 1993 and that erected by owner of plot 1890 which said paragraph shall be relied on at the trial of this suit.”*

From the above, Plaintiff obviously admitted that the land belongs to the 4th and 5th Defendants.

On their part, the 4th and 5th Defendant in establishing ownership of the land tendered Exhibit “D3” which is Certificate of Occupancy No. 1784w – 61042 – 590fr. A44cu – 10 with file No. KN 20020 in the name of 4th Defendant.

Also in evidence is Exhibit “D1” titled change of offer of a Statutory Right of Occupancy in the name of 4th Defendant in respect of the subject matter of dispute.

It is worthy to note that the Exhibit “D1” and “D3” were duly signed by the Hon. Minister of FCT in compliance with section 297 (2) of the 1999 Constitution which vested absolute ownership of land within the Federal Capital Territory in the Federal Government of Nigeria.

The said provision is in agreement with section 1(3) of the Federal Capital Territory Act, 2004.

The section 1 (3) FCT, Act provides as thus;

“The area contained in the Capital Territory shall, as from the commencement of this Act, cease to be a portion of the state 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.”

From above therefore, it is obvious that the 4th and 5th Defendants have made out a case to be entitled to the reliefs as counter claimed. The counterclaim succeeds in part.

Accordingly, judgment is hereby entered in favour of the 4th and 5th Defendants/counterclaimants and the following declarations are made:-

- i. That the Plaintiff/Defendant to Counter Claim's title over Plot 23, Katampe, Abuja having been validly replaced with Plot LD 182, Apo Tafyi by the 1st Defendant to the main suit's offer dated 8th March, 2003 and Plaintiff/Defendant to Counter Claim's acceptance of same dated 8th June, 2004 has long become extinguished and no longer existent.
- ii. That the 4th Defendant/Counter Claimant is the bonafide allottee vested with title over Plot 23, Katampe, Abuja having been allocated same on 14th March, 2007 as a replacement for the 4th

Defendant/Counter Claimant's Plot 1209, Durumi, Abuja which was withdrawn by the 1st Defendant to the main suit for change of Plot Number and Cadastral Zone.

- iii. That the purported interest claimed by the Plaintiff/Defendant to Counter Claim is invalid and has been over taken by the Plaintiff/Defendant to Counter Claim's acceptance of Plot LD 182 Apo Tafyi since the 8th day of March, 2004.
- iv. That the Plaintiff/Defendant to the Counter Claim's act of entering upon the Counter Claimant's Plot in the company of the Plaintiff/Defendant to Counter Claim's Attorney and Solicitor to take photographs without the consent of the Counter Claimants amounts to trespass on the Plot of the 4th Defendant/Counter Claimant.
- v. An Order of Perpetual Injunction restraining the Plaintiff/Defendant to Counter Claim, his Attorney,

Counsel, Agents anyone purporting to act on his behalf from further trespassing on the Plot without the Counter Claimant's consent is **hereby granted**.

Reliefs vi and vii are hereby refused and dismissed.

Filing fees is assessed at N200,000.00.

Justice Y. Halilu
Hon. Judge
4th May, 2020

APPEARANCE

ABDULKARIM A. IBRAHIM – for the 4th and 5th
Defendants.

Plaintiff not in court and not represented.

Other Defendants not in court.