

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
HOLDEN AT ABUJA
ON MONDAY 1ST DAY OF JUNE 2020
BEFORE HIS LORDSHIP: HON. JUSTICE O. A. ADENIYI
SITTING AT COURT NO. 14 APO - ABUJA

SUIT NO. CV/1527/16

BETWEEN:

CITEC INTERNATIONAL ESTATES LTD. CLAIMANT

AND

1. THE INSPECTOR GENERAL OF POLICE } DEFENDANTS
2. THE NIGERIA POLICE FORCE }

JUDGMENT

The Claimant engages in the business of estate management, *inter alia*. Her case, briefly stated, is that as a pioneer Estate Developer under the Mass-Housing Development Programme within the Federal Capital Territory, the Minister of the Federal Capital Territory, sometime in 2015, granted her the parcel of land situate at ***Plot 4982, Cadastral Zone C06, along***

Jabi-Airport Road Bye-Pass, Mbora District, FCT, Abuja. She alleged that the Defendants trespassed on a portion of the plot by commencing building construction thereon sometime in December, 2015; and that after all efforts to cause the Defendants to abate the alleged trespass failed to yield positive outcomes, she commenced the instant action, *vide* Writ of Summons and Statement of Claim filed in this Court on 20/04/2018; and by the operative Further Amended Writ of Summons and Statement of Claim filed with the leave of Court on 11/01/2018, the Claimant claimed against the Defendants, reliefs set out as follows:

- 1. A declaration that the grant and allocation of part of the land within Plot 4982, in Cadastral Zone C06, measuring approximately 13320.66m² or about 1.332 hectares situate within CITEC Estate, along Jabi-Airport Road Bye-Pass, Mbora District, Abuja, via Letter of Intent issued to the Plaintiff by the***

Honourable Minister, Federal Capital Territory on the 22nd day of February, 2015, which portion is now being encroached upon by the 1st and 2nd Defendants herein, is valid and subsisting.

2. A declaration that the forceful encroachment and entry by the 1st and 2nd Defendants/or men and officers of the 1st and 2nd Defendants on the part of the land located within Plot 4982, in Cadastral Zone C06, measuring approximately 13320.66m² or about 1.332 hectares situate within CITEC Estate, along Jabi-Airport Road Bye-Pass, Mbora District, Abuja, is illegal, wrongful and unlawful, being an act of trespass.

3. An order of perpetual injunction restraining the 1st and 2nd Defendants, either acting by themselves, officers, agents, servants, assigns, privies, or howsoever called or known from further encroachment, entry, or taking any further steps calculated at disturbing the right, title or interest of the Plaintiff, over part of the Plaintiff's land located

within Plot 4982, in Cadastral Zone C06, measuring approximately 13320.66m² or about 1.332 hectares situate within CITEC Estate, along Jabi-Airport Road Bye-Pass, Mborra District, Abuja.

4. General damages in the sum of ₦1,000,000,000.00 (One Billion Naira) only against the 1st and 2nd Defendants, for trespass on the Plaintiff's part of the land located within Plot 4982, in Cadastral Zone C06, measuring approximately 13320.66m² or about 1.332 hectares situate within Citec Estate, along Jabi-Airport Road Bye-Pass, Mborra District, Abuja.

5. The cost of this action in the sum of ₦10,000,000.00 (Ten Million Naira) only, against the 1st and 2nd Defendants.

The Defendants joined issues with the Claimant. In their operative Amended Statement of Defence, filed with the leave of Court on 11/10/2017, they maintained that the allegedly trespassed portion of land does not form part of Plot 4982 purportedly

granted to the Claimant by the FCT Minister; that the land formed part of Plot 1849 which they had began to develop and already applied to the FCT Minister for its allocation to the 2nd Defendant; and that the said Plot 1849 is adjacent to Plot 1848 granted to the 1st Defendant as far back as July 2014, for the building of residential quarters for Police officers. The Defendants contended that the documents of title relied upon by the Claimant as basis of her title to Plot 4982 were fraudulently procured.

At the plenary trial, the Claimant fielded two witnesses. The **PW1 – John Ohunenesa**, testified as representative of the Director of Lands, Federal Capital Development Authority, who was summoned by *subpoena* upon the Claimant's application. He gave *viva voce* evidence and further tendered in evidence a total of six (6) documents as exhibits. The **PW2 – Mr. Odunayo Bello**, Executive Director,

Business Development of the Claimant, adopted his written depositions on oath and tendered a single document in evidence as exhibit. Both witnesses were duly cross-examined by the Defendants' learned counsel.

The Defendants in turn also fielded two witnesses. The **DW1** is **Prince Andy Okeador Chime**, an Estate Developer; whilst the **DW2** is **Gerald Ene (DSP)**, Officer of the 2nd Defendant in charge of Police Lands and Building Registry, Force Headquarters, Abuja.

Both witnesses adopted their respective *Statements on Oath* and tendered a single document in evidence as exhibit. They were both equally subjected to cross-examination by the Claimant's learned senior counsel.

Upon conclusion of plenary trial, only the Claimant filed her final address as prescribed by the **Rules** of this Court.

In the final address filed on 17/02/2020, the Claimant formulated two issues as having arisen for determination in this suit, viz:

1. Whether from the totality of the evidence, the Claimant has proved her case on the preponderance of evidence to entitle her to the reliefs sought per her Writ of Summons and Statement of Claim?

2. Whether the Court can act upon the uncontroverted and unchallenged testimony of the witnesses fielded by the Claimant?

I am satisfied that the issues formulated by the Claimant's learned senior counsel sufficiently covered the field of dispute in this suit and on that score I shall proceed to determine this suit on the basis of those issues.

In proceeding, I have also taken account and due benefits of the totality of the arguments canvassed in the Claimant's written submissions. I shall endeavour to make specific reference to learned senior counsel's arguments as I deem needful in the course of this judgment.

RESOLUTION OF ISSUES

I shall deal with the two issues together.

ON ALLOCATION OF PLOT 4982:

The Claimant's case appears to be clear and straightforward. The **PW1**, delegate of the Director of Lands, FCTA, (on *subpoena*), orally testified that the Claimant was granted allocation of Plot 4982 in issue. To support his testimony, he tendered in evidence as **Exhibits P5** and **P6** respectively, certified true copies of Letter of Intent dated 22/02/2015, issued by **Mainasara B. G.**, *Director of*

Land Administration, on behalf of the Minister of FCT, to the Claimant – **CITEC INTERNATIONAL ESTATES LIMITED** – for the grant of **Plot 4982 Cadastral Zone C06 Nbora, measuring approximately 320012.33m²**, for purpose of Mass Housing Development Programme of the FCT; and the Site Plan for Plot 4982, prepared by the *Abuja Geographic Information Systems (AGIS)*, on 16th February, 2018.

To corroborate the testimony of the **PW1** on the issue of allocation of Plot 4982, the **PW2** also testified that Statutory Right of Occupancy over the expanse of land known as **Plot 4982, in Cadastral Zone C06, measuring approximately 320012.33m², within CITEC Estate, along Jabi-Airport Road Bye-Pass, Mbora District, FCT, Abuja**, was granted to the Claimant *vide* Letter of Intent issued to her by the FCTA on behalf of the FCT Minister, on 22nd February, 2015, as a result of her participation in Mass-Housing Development Programme within the FCT. He testified further that

the said Plot 4982 is a large expanse of land allocated to the Claimant as a pioneer estate developer under the Mass Housing Scheme with the FCT, in which she had already built, developed and delivered over 1,000 houses of different types to Nigerians; and that the Claimant submitted a Site Plan showing the said Plot 4982 to the Abuja Geographic Information Systems (AGIS).

Giving further evidence under cross-examination by the Defendants' learned counsel as to the status of Plot 4982, the **PW2** testified as follows:

***“The area of Citec land is approximately 32 hectares. We have a Letter of Intent as title for the 32 hectares. ... I can see Exhibit P5 now shown to me. It is the Letter of Intent I referred to. Exhibit P5 is not the title document we used to develop the Estate. This particular document came as result of the re-design of Nbora Estate. Exhibit P5 supercedes the old title.*”**

The Claimant has a Site Plan of the new design. I can see Exhibit P6 now shown to me. It is the new design. The re-design was at the discretion of the FCDA. FCDA re-designed Nbora District. Nbora District was part of the whole Citec Estate. The Letter of Intent confers on us legal rights and authority to use that land for the purpose it was issued.”

The testimonies of both witnesses for the Claimant remain consistent as to how the Claimant acquired allocation of Plot 4982 from the Minister of the FCT. The Site Plan, **Exhibit P6**, also depicts the plot and its exact size, which correlates with the content of the Letter of Intent, **Exhibit P5**.

The two documents were tendered without objection by the Defendants’ learned counsel. Again, the integrity and veracity of the documents were not in any way impugned under cross-examination. The Defendants failed to tender any documents of title

whatsoever to rival the **Letter of Intent, Exhibit P5**, which stands as the Claimant's right of occupancy over Plot 4982. The Defendants claimed that the 2nd Defendant was granted the plot of land known as Plot 1848, Cadastral Zone C06, Nbora, Abuja. Even though no document of title was tendered by the Defendants to back up this claim; nevertheless, an examination of the Site Plan, **Exhibit P6** clearly shows that the said Plot 1848 merely formed a boundary with Plot 4982 granted to the Claimant.

The position of the law as enunciated in the age long famous authority *Idundun Vs. Okumagba* [1976] 10 SC 227, cited by the Claimant's learned senior counsel, to the extent that there are five ways by which title to land may be proved, including production of title document, seems to me to be the general principle. I reckon that there is a clear distinction and departure from the general rule when the land in question is within the Federal Capital

Territory of Nigeria. This is because, in the Federal Capital Territory, the law seems to recognize just one way in proving right or title to land, which is by production of documents of title issued by or under the authority of or with the consent of the Minister of the Federal Capital Territory, acting for the President of the Federal Republic of Nigeria; or by the authority of any other person or authority the President may so delegate his executive powers to in that regard. I make particular reference to the provisions of Ss. **297(2)** and **304** of the **Constitution**, Ss. **1(3)** and **18** of the **Federal Capital Territory Act**; and s. **51(2)** of the **Land Use Act**.

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

“See also section 297(1) & (2) of the Constitution of the Federal Republic of Nigeria, section 236 of the Constitution of the Federal Republic of Nigeria,

1979 and section 1(3) Federal Capital Territory, Act 1976. Section 18 of the Federal Capital Territory Act, Cap. 503 Laws of the Federation of Nigeria, 1990 vests power in the Minister for the FCT to grant statutory rights of occupancy over lands situate in the Federal Capital Territory to any person. By this law, ownership of land within the FCT vests in the Federal Government of Nigeria who through the Minister of FCT vest same to every citizen individually upon application. Thus without an allocation or grant by the Hon. Minister of the FCT there is no way any person including the respondent could acquire land in the FCT.”

See also the recent authority of *Eboreime Vs. Olagbegi* [2018] LPELR 63412(CA), where the Court of Appeal further made the point that the President of the Federal Republic of Nigeria, who is invested with powers to exercise authority of the Federal Government of Nigeria over all land within the Federal Capital Territory, could exercise such powers

not only through the Minister of the Federal Capital Territory, notwithstanding the provision of s. 18 of the **FCT Act**; but also through any of the Ministers of Government, by virtue of the provisions of **Ss. 5(1)(a), 147, 148** and **302** of the **Constitution**, to which the **FCT Act** is subject.

ON THE DEFENDANT'S ALLEGATION THAT EXHIBITS P5 AND P6 WERE FRAUDULENTLY PROCURED BY THE CLAIMANT:

Before concluding on the issue of the Claimant's acclaimed title over Plot 4982, I consider it very pertinent to examine the substance of the weighty allegation made by the Defendants that the Claimant fraudulently procured the title document, **Exhibit P5** and the Site Plan, **Exhibit P6** she relied on to establish the purported allocation of Plot 4982 to her.

I make reference to and reproduce the averments in paragraphs 8, 9, 17 and 19 of the Amended Statement of Defence, in which the allegations are made, as follows:

“8. Further to paragraph 6 and 7, the 1st & 2nd Defendants state that the letter of intent dated 22nd February 2015 and the site plan dated 15th October 2014 were documents fraudulently obtained from the Federal Capital Territory Administration and Abuja Geographic Information System purposely to make it look as if the plot of land being developed by the defendants form part of Plot 4982 measuring approximately 320012.33 square meters which the plaintiff was issued with letter of intent.

9. Further to 8 above the 1st & 2nd Defendants avers (sic) that they will prove beyond reasonable doubt during the course of the trial that these documents were fraudulent (sic) obtained and back dated to over reach them. The plaintiff is put on

notice to produce the letter of intent and the site plan issued to him (sic) in respect of Plot 4982 measuring 320012.33 square meters by the Federal Capital Administration which he (sic) used to develop over 1000 housing units in the last ten years.

17. Further to paragraph 14 above, the 1st & 2nd Defendants avers (sic) that they checked at AGIS and Department of Land Administration Abuja and found out that the Plaintiff has no valid title to the plot of land being developed and that the letter of intent over plot 4982 measuring approximately 320012 square meters being paraded by the plaintiff does not represent right of occupancy over plot 1849 being developed by the 1st and 2nd Defendants.

19. The land being developed by the 1st & 2nd Defendants does not form part of Plot 4982. The letter of intent dated 22nd February 2015 and the site plan dated 15th October 2014 were

fraudulently prepared to redesign the original site plan and make Plot 1849 which the 1st & 2nd Defendants have started developing look as if it is part of 4982.”

Now, I reckon that the Defendants, being mindful of the position of the law, as provided in s. 135(2) of the **Evidence Act**, that if the commission of crime by a party to any proceedings is directly in issue in any proceeding, civil or criminal, such allegation must be proved beyond reasonable doubt; and being further mindful that allegation of fraudulently procuring title documents made against the Claimant is an allegation of crime; the Defendants pleaded upfront in *paragraph 9* of their *Amended Statement of Defence*, reproduced in the foregoing, that they shall prove beyond reasonable doubt in the course of trial that the Claimant fraudulently obtained the Letter of Intent (**Exhibit P5**) and the Site Plan (**Exhibit P6**) and

backdated the documents to overreach the Defendants.

Allegations of fraud, falsification of documents and forgery, by all intents and purposes, attract penal consequences under the applicable criminal laws of Nigeria; as such, it is not such that must be glossed over. It is for this reason that the law places a heavy and onerous burden on the party that alleges crime to prove same beyond reasonable doubt.

In another sense, in order for the Defendants to dislodge the Claimant's claim of title to Plot 4982, as constituted, they must prove beyond reasonable doubt that the documents of title relied upon by her to establish the claim are forged or falsified or unlawfully procured as alleged.

The point was more clearly underscored by the Supreme Court in Tewogbade Vs. Obadina [1994] 4

NWLR (Pt. 338) 326, where **Onu, JSC** (now retired) held, @ page 349 thereof, as follows:

“The law is clear and this Court has stated times without number that where forgery of a document, as in the instant case, is alleged, there is no initial burden on the plaintiff to prove due execution but the primary burden is on the defendant who alleged forgery to prove the forgery alleged by him.”

It is however strange to note that what represented the Defendants’ evidence of proof “beyond reasonable doubt” of the weighty allegations in the paragraphs of their Amended Statement of Defence reproduced in the foregoing is no more than a repetition of these same averments in paragraphs 9, 10, 18 and 20 of the *Statement on Oath* deposed to by the **DW1**. Apart from these depositions, the Defendants adduced no further evidence as to how the fraud was perpetrated and how the documents

were fraudulently procured and who were involved in the commission of these crimes.

It is to be noted that the said documents, alleged to have been fraudulently procured, backdated, etc, were tendered by the representative of the Director of Lands of the FCTA, who reasonably presumably had custody of its authentic originals.

Whilst being questioned by the Claimant's learned senior counsel, the **PW1** further stressed that the documents were authentic. He stated as follows:

“I am not aware that Exhibits P5 and P6 were fraudulently issued. To the best of my knowledge, the documents are authentic.”

Under further cross-examination by the Defendants' learned counsel, the witness further maintained his testimony in his evidence in chief when he stated as follows:

“I confirm that Exhibits P5 and P6 originated from the Dept. of Lands.”

I again find it rather absurd that the Defendants’ learned counsel failed to cross-examine the **PW1** with respect to the purportedly fraudulently procured **Exhibits P5** and **P6** respectively, in order to challenge or impugn their genuineness or validity. It was held by the Supreme Court in Gaji Vs. Paye [2003] 8 NWLR (Pt. 823) 583, that the effect of failure to cross-examine a witness on a material fact in controversy in a suit is a tacit acceptance of the truth of the evidence of the witness. See also Oforlete Vs. State [2000] 12 NWLR (Pt. 681) 415 @ 436.

The Defendants, having therefore failed to lead any evidence whatsoever in support of the allegation of fraudulent procurement of the title documents, **Exhibits P5** and **P6** against the Claimant in their Amended Statement of Defence, I must and I hereby hold that the Defendants had abandoned the

allegation. The trite position of the law is that any pleading upon which no evidence is led would go to issue.

On this score therefore, I hold that the Claimant has satisfactorily established that the documents relied upon to prove that the Minister of the FCT granted her Plot 4982 were lawfully and validly issued.

DOES PLOT 1849 EXIST? IF SO, IS IT PART AND PARCEL OF PLOT 4982 AND IF NOT WAS IT GRANTED TO THE 2ND DEFENDANT?

The case of the Claimant, according to the **PW2**, is further that the Defendants encroached on a portion of Plot 4982 sometime on 9th December, 2015 and began to develop the same; that the portion encroached upon measured approximately 13320.66m². The **PW2** testified further that the Claimant, upon discovering the encroachment, wrote series of letters to the Defendants, the Director of

Land Administration, FCTA, the Director of Development Control, FCTA, the Abuja Geographic Information Systems (AGIS); as well as the Police Service Commission, to explain that the land annexed by the 2nd Defendant formed part of the larger parcel of land, that is Plot 4982, granted to her by the FCT Minister in February, 2015. He tendered in evidence as **Exhibit P7**, one of such letters dated March 11, 2016, written by the Claimant to the Chairman, Police Service Commission.

The **PW2** testified further that upon receiving the Claimant's letters of complaint, the Department of Development Control served a "**STOP WORK**" Notice on the Defendants at the site; but that despite the said Notice, the Defendants continued to intensify work on the land; that at some point, the Defendants invited the Claimant for negotiation; that the meeting was held at the *Nigeria Police Force Property Development and Construction Company Limited*,

Police Cooperative Building, Garki Police Barracks, Garki, Abuja; but that the meeting yielded no fruitful outcome as the Defendants persisted in developing the trespassed land.

The **PW2** further testified that when the Defendants failed to abate the trespass, she further made enquiries at the Dept. of Land Administration and the AGIS as to the status of Plot 4982 and was assured that the land belonged to the Claimant and that the Defendants have already been informed by a letter dated 8th December, 2015, that the land belonged to the Claimant.

In their defence, the Defendants claimed that the portion of land they were alleged by the Claimant to have trespassed upon did not form part of Plot 4982 with respect to which the Claimant was issued with **Exhibit P5**, the Letter of Intent. According to the **DW2**, the 2nd Defendant was granted statutory right

of occupancy over parcel of land known as Plot 1848, measuring approximately 2.13 hectares, as far back as 23rd July, 2014, for purposes of building Police residential quarters. The witness further testified that in the process of developing Plot 1848, the Defendants got information that the adjacent Plot 1849 was earmarked for recreational activities, which, according to him, would pose security threat to the Police Barracks and Station; and that for this reason, the Defendants applied to the Permanent Secretary, FCDA, by letter dated 1st September, 2015, to grant the adjacent Plot 1849 to the 2nd Defendant for the extension of its Staff Quarters and Police Station. The witness stated further that similar formal applications were made to the Minister of FCT as reminders to the earlier letter written to the Permanent Secretary, FCDA, for the release of Plot 1849 to the 2nd Defendant; and that the 2nd

Defendant had already commenced development of the plot.

The witness further testified that Plot 4982 laid claim to by the Claimant does not extend to Plot 1849, which the Defendants have started to develop.

The witness admitted that the Defendants invited the Claimant for negotiation and to resolve the issues relating to the land amicably and he also admitted that the Claimant wrote several letters to the 2nd Defendant with respect to the alleged encroachment.

Whilst answering further questions under cross-examination by the Claimant's learned senior counsel, the **DW2** had this to say, with respect to the application made to the FCT Minister for allocation of Plot 1849:

"It is correct that we applied for approval for the extended portion of the plot in question; but as of

now, it is still being processed. ... I agree that the plot allotted to the 2nd Defendant is Plot 1848.”

(Underlined portion for emphasis)

I had examined the testimony of the **DW1** who was engaged by the 2nd Defendant in 2011 to develop and construct residential quarters for the Police. He confirmed that he moved his construction equipment into Plot 1849, which, according to him, was vacant at that time, and was earmarked for public recreational activities, according to information he gathered from FCDA officers who showed him the Master Plan of the area.

The remaining portions of his testimonies were either a repetition of the evidence of the **DW2**, hearsay evidence or evidence on facts not pleaded in the Amended Statement of Defence.

I make specific reference to the depositions in paragraphs 13, 18 and 24 of the *Statement on Oath*

deposed to by the **DW1**. They constitute hearsay evidence within the meaning of s. **37** of the **Evidence Act** and thus inadmissible, as prescribed by s. **38** of the **Evidence Act**.

To further establish that the **DW1** gave hearsay evidence in this case, when cross-examined by the Claimant's learned senior counsel, he had this much to say:

“It is correct that the 1st and 2nd Defendants’ officials told me that they had oral approval that Plot 1849 would be given to them. It is correct that I was not privy to the discussion where the oral approval was said to have been given. I now agree that some depositions in my Statement on Oath were what I was told by my clients; whilst some were within my personal knowledge.

The Defendants did not show me any approval before I commenced development of Plot 1849. I believe all approvals go to the Police....”

On the basis of the foregoing analysis, I hereby expunge the depositions in *paragraphs 13, 18 and 24* of the *Statement on Oath* deposed to by the **DW1** from the record of proceedings in this suit.

Furthermore, I again make specific reference to the depositions in *paragraphs 9, 10, 11, 12, 14, 15, 22 and 23* of the *Statement on Oath* of the **DW1**, which bordered on evidence adduced with respect to facts not pleaded by the Defendants and on which parties did not join issues. The trite position of the law is that evidence adduced with respect to unpleaded facts will go to no issue and will account to no benefit for the party that adduced it. Accordingly, the Court places no reliance whatsoever on the said paragraphs of the **DW1**'s testimony.

It is to be noted that the Defendants cleverly omitted to specifically plead in their *Amended Statement of Defence*, the outcome of the said application they

made to the FCT for the grant of Plot 1849, which land both **DW1** and **DW2** confirmed they already took possession of. As a matter of fact, neither of the Defendants' witnesses tendered in evidence any of the letters purportedly written to the Permanent Secretary, FCDA; and the Hon. Minister of FCT, to apply to be granted Plot 1849, which is said to be adjacent to Plot 1848 originally granted to the 1st Defendant.

However, the **PW1**, the *subpoenaed* official from the Land Administration Dept., threw more light on the issue in his evidence at the trial. The **PW1** tendered in evidence as **Exhibit P3**, letter dated 1st September, 2015, written on behalf of the 1st Defendant to the Permanent Secretary, FCDA. The letter, which was the application made by the Defendants for the allocation of Plot 1849, purporting to adjoin their Plot 1848; is pleaded in *paragraph 13* of the Defendants' *Amended Statement of Defence*.

Although the **DW2** testified under cross-examination that the Defendants were still awaiting the response of the Minister of FCT to their application to be granted Plot 1849; as of 10/12/2019 when he testified in this Court; the Claimant had pleaded in *paragraph 8* of the Reply to the Statement of Defence that the Minister of FCT did not at any time extend the Defendants' land to cover Plot 1849.

The Claimant further pleaded in *paragraph 9* of the Reply to the Statement of Defence that by its Internal Memo dated 26th October, 2015, the Dept. of Land Administration of the FCTA, refused the Defendant's request for extension. Reference is equally made to the response to the application for land extension made by the Defendants.

In proof of the facts pleaded in *paragraphs 8 and 9* of the Reply to the Statement of Defence, the **PW1** testified in his evidence in chief as follows:

“I confirm that the original plot allocated to the Defendants, the Nigeria Police, is Plot 1848. The Defendants applied for Plot 1849 to be annexed to Plot 1848.

The application for extension by the Defendants was refused because Plot 1849 was a unit of the plot already granted to the Plaintiff; therefore cannot be granted to the Nigeria Police. We duly communicated the refusal to the Defendants vide Exhibit P2 now shown to me.”

(Underlined portion for emphasis).

The **PW1** did not just testify from his head. He tendered in evidence as **Exhibit P4**, certified true copy of a Memo dated 26th October, 2015, written by the Director, Land Administration to the Permanent Secretary, FCT, which contains the outcome of the consideration of the application made by the Defendants for the grant of Plot 1849.

In view of the crucial relevance of the letter, **Exhibit P4** to the issue at hand, I take liberty to reproduce portions thereof, as follows:

“Subject: Application for Extension/Issuance of title document for the Nigeria Police Station/Staff Housing Project Plot No. 1848 Cadastral Zone C06, Nbora District, FCT – Abuja.

At page 1 – 2 is an application by the Nigeria Police for extension of their current Plot No. 1848 Nbora District to incorporate the adjoining Plot 1849.

2.....

3. The piece of land sought for extension by the Police is the portion adjoining Plot No. 1848 which from records has already been committed to Citec International Estates Limited. The said portion has since been granted to Citec International Estates Limited as an extension to its original plot and the entire Citec land now

renumbered as Plot No. 4982 Nbora District and title issued....

4. The land parcel requested by the Nigeria Police Force as extension is therefore not available for grant to the Police as extension to their original plot.

5. In view of the foregoing, the Permanent Secretary may wish to consider the above and approve that we inform the Inspector General of Police accordingly, please. ...”

(Underlined portions for emphasis)

It is on the strength of the content of **Exhibit P4**, according to the **PW1**, that the letter dated 8th December, 2015, certified true copy of which he tendered as **Exhibit P2**, written by the Deeds Registrar, on behalf of the Minister of FCT, was sent to the 1st Defendant, in response to the letter, **Exhibit P3**.

I again take liberty to reproduce the relevant portions of the said letter, **Exhibit P2**, as follows:

“RE: APPLICATION FOR EXTENSION/ISSUANCE OF TITLE DOCUMENT FOR THE NIGERIA POLICE STATION/STAFF HOUSING PLOT NO. 1848 CADASTRAL ZONE C06 NBORA DISTRICT, FCT – ABUJA

I have been directed to refer to your letter ... in respect of the above subject matter and inform you that the parcel of land requested is not available as it has been allocated to another interest on the 18/02/2015. Accordingly, your request cannot be granted.”

(Underlined portion for emphasis)

Now, on the basis of the evidence adduced on both sides as set out in the foregoing, the Court finds as firmly established, the facts set out as follows:

1. That the parcel of land referred to as Plot 1849 is adjacent to Plot 1848, originally

granted to the 2nd Defendant by the Minister of FCT.

2. That the Defendants applied to the Minister of FCT to be granted the said purported Plot 1849 in view of its proximity to their Plot 1848, for the extension of their Police Staff Housing Project.
3. That the request of the Defendants was turned down by the Minister of FCT on the ground that the said Plot 1849 formed part of the larger parcel of land already committed to and granted to the Claimant; and renumbered as Plot 4982.
4. That the testimony of the **DW1** that he was informed by the Defendants that they were granted oral approval to develop Plot 1849, even though hearsay evidence, is nevertheless inconsistent with the content of

the documents **Exhibits P2** and **P4**, relied upon by the Claimant.

5. That the testimony of the **DW2** whilst being cross-examined on 10/12/2019, that the Defendants were still awaiting the response of the Minister of FCT to their letter of request for grant of Plot 1849, **Exhibit P3**, flew in the face of the letter, **Exhibit P2**, written as far back as 08/12/2015, by the Minister of FCT to convey the unavailability of the said parcel of land for use by the Defendants.
6. That the Defendants did not deny receiving the letter, **Exhibit P2**.
7. That by virtue of the clarification made in the Memo, **Exhibit P4**; and confirmed by the Site Plan, **Exhibit P6**, the parcel of land referred to by the Defendants as Plot 1849 was no

longer in existence as of the time the Defendants applied to be granted the same; and as such was incapable of being granted to the 2nd Defendant.

On the basis of these findings, the conclusion that the Court must come to is that, by virtue of the overwhelming and unassailable documentary evidence tendered by the Claimant, particularly **Exhibits P5, P6 and P4** respectively, the Claimant has succeeded in firmly establishing her title to Plot 4982, which includes the portion thereof referred to as Plot 1849 by the Defendants, granted to her by the Minister of the FCT on 22/02/2015.

The totality of the testimony mustered by the Defendants is clearly too weak to dislodge the Claimant's well articulated evidence as demonstrated by the undisputed documentary

evidence to establish her claim for declaration of title. As such, the Court hereby holds that the Claimant is entitled to the grant of relief (1) of her claim.

ON THE CLAIMANT'S CLAIM FOR TRESPASS, INJUNCTION AND DAMAGES AGAINST THE DEFENDANTS:

The **PW2** testified that the Claimant noticed forceful encroachment into part of her Plot 4982; that the portion encroached upon by the Defendants measured about 1.332 hectares. The witness further narrated all the steps taken by the Claimant, upon becoming aware of the trespass, to get the Defendants to abate the same, including writing letters to the Defendants and the FCDA; but that the Defendants remained recalcitrant and continued to develop the trespassed land.

The Defendants did not deny the allegation of trespass laid against them by the Claimant. The sum total of the testimonies of the Defendants' two witnesses is that the Defendants indeed continued to build on the said portion of land they were alleged to have trespassed upon because the vacant land was adjacent to Plot 1848 granted to the 2nd Defendant by the Minister of the FCT; and in anticipation of a favourable response to the application made, *vide* **Exhibit P3**, to the Minister to grant them that portion of the vacant land.

The evidence on record is further that despite that the Minister turned down the Defendants' request to annex the said parcel of land for the reason that the same formed part of a larger parcel of land previously granted to the Claimant (see **Exhibits P4** and **P2** respectively); the Defendants continued to develop the land.

The **DW1** clearly admitted the Claimant's claim for trespass when he testified in paragraphs 19, 21, 23 and 26 of his Statement on Oath as follows:

“19. That based on the assurance of the 1st and 2nd Defendants, I decided to fence Plot 1849 and build a site store for the storage of my equipment which I have earlier moved into the site. I also moved other building materials into Plot 1849.

21. That in 2015 after I have fenced the plot and based on assurance from the 1st and 2nd Defendants that the R of O will be issued later, I submitted building plans to the FCDA for approval for the construction of thirty one (31) Duplexes.

23. That it was after I have started the construction of these nineteen (19) Terrace

Houses that I heard that the plaintiff is claiming ownership of Plot 1849.

26. That I have personally visited FCDA to enquire about this anomaly and I was assured that the R of O for the plot will be issued to the Police since they have started developing the Plot.”

The **DW2** in turn admitted the Claimant’s claim for trespass when he testified in *paragraph 16* of his *Statement on Oath* as follows:

“16. The 1st and 2nd Defendants again...wrote to the Minister to remind him of the request to extend the Police Land to cover Plot 1849 and further inform him that the police has been on physical possession of the Plot 1849 and has started development on the land which were in various stages...”

The position of the law is trite that proof of title is about the best way to obtain relief in trespass cases.

In Carrena Vs. Akinlase [2008] 14 NWLR (Pt. 1107) 262, the Supreme Court held that a person who has title over a piece of land, though not in *defacto* physical possession, is deemed, in the eyes of the law, to be the person in possession; for the reason that the law attaches possession to title and ascribed it to the person who has title. See also Mogaji Vs. Cadbury Nig Ltd. [1985] 2 NWLR (Pt. 7) 393 SC.

In the instant case, the clear evidence on record, established by the Claimant and also admitted by the Defendants, is that the Defendants trespassed on the portion of the Claimant's land erroneously referred to as Plot 1849; whilst anticipating that the same shall be granted to them by the Minister of FCT.

Without any further ado, I hereby further hold that the Claimant has clearly established her claim of trespass against the Defendants in this suit and is

therefore entitled to be granted relief (2) of her claim.

The Claimant has also prayed for an order of perpetual injunction against the Defendants in this case. The law is trite that where a claimant successfully establishes right to title of a parcel of land, it is appropriate, even where it is not specifically prayed for, to grant perpetual injunction in order to prevent continuous or permanent infringement of the rights declared in his favour by the Court. See Oyedoke Vs. The Reg. Trustees of C.A.C. [2001] 3 NWLR (Pt. 701) 621; Rector, Kwara Poly. Vs. Adefila [2007] 15 NWLR (Pt. 1056) 42.

I am therefore in no difficulty to grant the Claimant's relief for perpetual injunction.

With respect to the Claimant's claim for the sum of **₦1,000,000,000.00 (One Billion Naira)** only as

damages against the Defendants for trespass, I bear in mind that a claimant for damages for trespass need not prove actual damage since trespass is actionable *per se*. See Akunyili Vs. Ejidike [1996] 5 NWLR (Pt. 449) 381.

At this stage, I consider that the Court must condemn, in no uncertain terms, the action and conduct of the Defendants, by continuing to willfully and flagrantly infringe on the Claimant's property rights, as demonstrated by evidence on record; even when their request to grab the land in issue was rejected outright by the Minister of the FCT. They continued to develop the land with impunity, in spite of the Claimant's several protests. As they say, the wheel of justice may grind slowly; but it grinds very surely.

In the circumstances, the Claimant's entitlement to general damages to compensate her for the

Defendants' persistent encroachment on her land is clearly well founded. I so hold.

On this note, I hereby resolve the two main issues formulated for determination in this suit in favour of the Claimant.

In the final analysis, the Claimant's claim hereby succeeds in its entirety. For the avoidance of doubt and abundance of clarity, I hereby enter judgment in favour of the Claimant upon the following terms:

- 1. It is hereby declared that the grant and allocation of part of the land within Plot 4982, in Cadastral Zone C06, measuring approximately 13320.66m² or about 1.332 hectares situate within CITEC Estate, along Jabi-Airport Road Bye-Pass, Mboru District, Abuja, via Letter of Intent issued to the Claimant by the Honourable Minister, Federal Capital Territory on the 22nd day of February, 2015, which portion the Defendants encroached upon, is valid and subsisting.***

- 2. It is hereby further declared that the forceful encroachment and entry by the Defendants on a portion of the Claimant's land aforementioned in (1) above is illegal, wrongful, unlawful and constitutes, acts of trespass.**

- 3. An order of perpetual injunction is hereby issued restraining the Defendants, either acting by themselves, officers, agents, servants, assigns, privies, or howsoever called or known from further encroachment, entry, or taking any further steps calculated at disturbing the right, title or interest of the Claimant over part of the Claimant's land referred to in (1) above.**

- 4. The sum of ₦50,000,000.00 (Fifty Million Naira) only is hereby awarded in favour of the Claimant against the Defendants, jointly and/or severally as damages for trespass on the Claimant's land aforementioned in (1) above.**

5. I award costs of this action, assessed in the sum of ~~N~~500,000.00 (Five Hundred Thousand Naira) only in favour of the Claimant against the Defendants, jointly and/or severally.

OLUKAYODE A. ADENIYI

(Presiding Judge)

01/06/2020

Legal representation:

Samuel O. Zibiri, Esq., SAN (with Olayinka Adedeji (Miss); C. G. Ike-Okafor, Esq. & Omotayo Ibrahim (Miss)) – for the Claimant

Seidu Jibrin, Esq. – for the Defendants