IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
HOLDEN AT ABUJA
ON MONDAY 8TH DAY OF JUNE 2020
BEFORE HIS LORDSHIP:HON. JUSTICE O. A. ADENIYI
SITTING AT COURT NO. 14 APO – ABUJA

SUIT NO: FCT/HC/CV/77/16

BETWEEN:

MRS. KATHERINE PHILIP ADAMU ... ... CLAIMANT

AND

1. ARC. PHILIP ADAMU EPHRAIM
2. FEDERAL MINISTRY OF POWER WORKS AND HOUSING } DEFENDANTS

JUDGMENT

The Claimant and the 1st Defendant were once legally married. However, the dispute in this action is not about their marriage, which had long been judicially dissolved; but about their rival claim over the property known as ***Block 1, Plot 2A, Federal Government Site and Services scheme, Gwarinpa,***

Abuja. The Claimant's contention was that sometime in January, 2008, she applied for and was granted the said property by the then Federal Ministry of Lands, Housing and Urban Development (now the Federal Ministry of Works and Housing); that she accepted the offer, conveyed to her in December, 2008; paid all the required fees; that it was in the course of processing of her application for development permit that she discovered, sometime in October, 2014, that the 1st Defendant petitioned the 2nd Defendant, claiming that she impersonated him to collect allocation of the said property. The Claimant further claimed that the 1st Defendant also submitted an application for development approval, which the 2nd Defendant is in the process of granting; that the 1st Defendant trespassed on the property and in fact had sold the same to an unknown third party.

Being aggrieved by the actions of the Defendants, the Claimant instituted the instant action, originally against the 1st Defendant alone, *vide* *Writ of Summons and Statement of Claim* filed in this Court on 02/11/2016; and subsequently, upon her application, the 2nd Defendant was joined as co-defendant in the suit. And by her *Amended Writ of Summons and Statement of Claim* filed on 09/03/2017, the Claimant claimed against the Defendants, jointly and severally, the reliefs set out as follows:

> ***1. A declaration that the Plaintiff is the sole beneficial owner of the landed property situate at and known as Block 1 Plot 2A, Federal Government Site and Services Scheme, Gwarinpa Abuja FCT measuring 700 square metres and covered by Statutory Right of Occupancy with Ref No: LUAC/FCT/GWR/1/5.1 and issued by Federal Ministry of Environment, Housing and Urban***

Development, Headquarters Mabushi Abuja FCT dated 17th December, 2008.

2. A Declaration that the unlawful and unauthorised entry by the Defendant, his agent, servants, proxies, assigns and/or representatives into the Plaintiff's property situate at and known as Block 1 Plot 2A, Federal Government Site and Services Scheme, Gwarinpa Abuja FCT measuring 700 square metres and covered by Statutory Right of Occupancy with Ref No: LUAC/FCT/GWR/1/5.1 and issued by Federal Ministry of Environment, Housing and Urban Development, Headquarters Mabushi Abuja FCT dated 17th December, 2008 and the erection, construction and/or development of same amounts to trespass and interference with the Plaintiff's statutory and possessory rights over the said property.

3. The sum of ₦20,000,000 (Twenty Million Naira) against the Defendant for trespass and interference with the Plaintiff's statutory and possessory rights of over Block 1 Plot 2A, Federal Government Site and Services Scheme, Gwarinpa Abuja FCT measuring 700 square metres and covered by Statutory Right of Occupancy with Ref No: LUAC/FCT/GWR/1/5.1 and issued by Federal Ministry of Environment, Housing and Urban Development, Headquarters Mabushi Abuja FCT dated 17th December, 2008.

4. A declaration that the 2nd Defendant's invitation dated 18th January, 2016 for site inspection and the site inspection report dated 19th February, 2016 based on the 1st Defendant's application for development plan approval for Block 1, Plot 2A Site and Services Scheme Gwarinpa, Abuja negates and violates the Plaintiff's interest, ownership and title

over Block 1, Plot 2A, Federal Government Site and Services Scheme, Gwarinpa Abuja FCT measuring 700 square metres and covered by Statutory Right of Occupancy with Ref No: LUAC/FCT/GWR/1/5.1 and issued by Federal Ministry of Environment, Housing and Urban Development, Headquarters Mabushi Abuja FCT dated 17th December, 2008.

5. An order of perpetual injunction to restrain the 2nd Defendant from continuing with (and/or giving further) consideration, attention or processing of the 1st Defendant's application for development plan approval over Block 1 Plot 2A, Federal Government Site and Services Scheme, Gwarinpa Abuja FCT measuring 700 square metres and covered by Statutory Right of Occupancy with Ref No: LUAC/FCT/GWR/1/5.1 and issued by Federal Ministry of Environment, Housing and Urban

Development, Headquarters Mabushi Abuja FCT dated 17th December, 2008.

6. An order of perpetual injunction restraining the Defendants, his servants, agents, privies, assigns, representatives howsoever connected to the Defendant from further carrying on any form of construction, development of any kind and in any manner whatsoever on Block 1 Plot 2A, Federal Government Site and Services Scheme, Gwarinpa Abuja FCT measuring 700 square metres and covered by Statutory Right of Occupancy with Ref No: LUAC/FCT/GWR/1/5.1 and issued by Federal Ministry of Environment, Housing and Urban Development, Headquarters Mabushi Abuja FCT dated 17th December, 2008.

7. The sum of ₦30,000,000.00 (Thirty Million Naira) against the Defendant as general damages.

8. The sum of ₦5,000,000.00 (Five Million Naira) being solicitors fees paid to the law firm of YAKUBU MAIKASUWA & CO to handle this matter.

9. A post judgment interest of 10% per annum on the judgment sum, until same is liquidated by the Defendant.

The 1st Defendant joined issues with the Claimant on her claim. The summary of his contention is that he was in fact the one that applied to the 2nd Defendant for the grant of the land in dispute in January, 2008; and that shortly thereafter he was afflicted with a strange illness which got him hospitalized for a long period of time; that it was during this period that the Claimant collected the allocation document to the property without his knowledge or consent; that it was after recovering from the illness that he found out that the allocation for the property was granted and that the

Claimant had deceived officers of the 2nd Defendant to assume that she was acting for him in processing payments and other papers with respect to the plot; and that it was when the 2nd Defendant discovered that the Claimant was not acting for him that her application for development approval was terminated; that the 2nd Defendant recommended approval of his application for development approval upon discovering that he was the rightful owner of the property; and that he had not sold the property, as alleged by the Claimant, but that he had commenced development of the same for his personal use.

By the *Statement of Defence and Counter Claim* filed on 06/04/2017, the 1st Defendant Counter Claimed against the Claimant, praying for reliefs set out as follows:

> ***1. An order of the Court directing the 1st Defendant (Claimant) herein to return the original***

title of letter of allocation dated the 17th day of December, 2008 of Block 1, Plot 2A, Federal Government Site and Services Scheme, Gwarinpa, Abuja issued by Federal Ministry of Environment, Housing and Urban Development to the Counterclaimant.

2. An order of perpetual injunction against the 1st Defendant (Claimant), her agents and privies and or any person howsoever described from ever disturbing the quiet possession and enjoyment of Block 1, Plot 2A, Federal Government Site and Services, Gwarinpa, Abuja by the counterclaimant.

3. An order of Court directing the 1st Defendant herein to pay the counterclaimant the sum of ₦20,000,000.00 (Twenty Million Naira) only for trespass and interference of the counterclaimant's statutory and possessory right over Block 1, Plot

2A, Federal Government Site and Services Scheme, Gwarinpa, Abuja.

4. An order of Court directing the 1st Defendant herein to pay the counterclaimant the sum ₦50,000, 000.00 (Fifty Million Naira) only for general and exemplary damages arising from the unreasonable claim of ownership over Block 1, Plot 2A Federal Government Site and Services Scheme, Gwarinpa, Abuja by the 1st Defendant herein.

5. Post judgment interest of 10% on the judgment sum from the date of judgment until the judgment sum is fully liquidated.

The Claimant further filed a defence to the 1st Defendant's Counter Claim on 26/05/2017 which was later amended by the operative *Plaintiff's*

Amended Defence to the 1st Defendant's Counter Claim filed on 18/04/2018.

On its part, the 2nd Defendant did not defend the suit or participate in the proceedings howsoever, even though the records of the Court bear out that it was served with the originating and all other processes filed by the other parties in the suit, including hearing notices for the scheduled hearing dates.

At the plenary trial, the Claimant testified in person and called five (5) other witnesses; four of whom testified on *subpoena*. Between them, the Claimant and her witnesses tendered a total of twenty two (22) documents in evidence in further support of the Claimant's claim. The Claimant and her witnesses were duly cross-examined by the 1st Defendant's learned counsel.

For the 1st Defendant, he also testified in person but called no other witnesses. He tendered six (6)

documents in evidence in further defence of this suit and to support his Counter Claim. He was equally subjected to cross-examination by the Claimant's learned counsel.

At the conclusion of plenary trial, parties filed and exchanged their written final addresses as prescribed by the **Rules** of this Court. The 1st Defendant's final address was filed on 26/11/2019. His learned counsel, **Benson Ibezim, Esq.,** formulated two issues for determination, set forth as follows:

> ***1. Whether between the Claimant and the 1st Defendant/Counterclaimant, who made the application for land dated the 21st day of January, 2008, that resulted in the allocation of Block 1, Plot 2A, Federal Government Site and Services Scheme, Gwarinpa, Abuja.***
>
> ***2. Whether the Claimant has established her case to be entitled to her claims sought, or is it the 1st***

Defendant/Counterclaimant that has established his case to be entitled to his claims before this Court.

For the Claimant, her final address was filed on 28/01/2020. Her learned counsel, **G. A. Idiagbonya, Esq.,** formulated three issues for determination in this suit, namely:

1. Whether the 1st Defendant/Counterclaimant's Reply dated and filed on 27th April, 2019 and paragraphs 4, 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, 18, 19, 20 and 21 therein are competent.

2. Who is the rightful allottee of Block 1 Plot 2A, Federal Government Site and Services Scheme, Gwarinpa Abuja FCT covered by Statutory Right of Occupancy dated 17th December, 2008 with Ref No: LUAC/FCT/GWR/1/S.1 issuds by Federal Ministry of Environment, Housing and Urban Development, Headquarters Mabushi Abuja FCT.

3. Whether the Plaintiff and 1st Defendant/Counterclaimant are entitled to grant of the reliefs sought in their respective pleadings.

I have painstakingly examined the totality of the pleadings filed by both parties in contention; the reliefs they claimed respectively, the totality of the admissible and relevant evidence adduced at the trial; and the totality of the written addresses and oral summations of learned gentlemen for the two parties; and my view is that only one focal issue calls for determination in this suit. Without prejudice to the other issues formulated for determination by the respective learned counsel, I shall proceed to determine this suit on the basis of the issue set out as follows:

As between the Claimant and the 1st Defendant/Counter Claimant, who was the "Philip Adamu" to whom the 2nd Defendant allocated the land in dispute in this suit?

TREATMENT SOLE OF ISSUE

PRELIMINARY ISSUE:

The first issue formulated by Claimant's learned counsel as to the competence of the Counter Claimant's Reply to the Claimant's Defence to the Counter Claim, in my view, is a technical point of law, which I consider should be determined at first, as its outcome may impact on the overall substantive defence of the 1st Defendant at the end of the day.

In arguing that the said Rely filed by the Counter Claimant to the Claimant's Defence to the Counter Claim is incompetent and the same ought to be struck out, learned Claimant's counsel canvassed three grounds, namely (1) that there is no place for filing of any such Reply in the extant **Rules** of Court, referring to and relying on the provisions of **Order 17, Rules 6, 7 and 10; Order 18 Rules 1 and 2** of thereof; (2) secondly, that the said Reply, filed on 27/04/2018,

was filed out time permitted by the **Rules**; and (3) thirdly, that even if the Reply was competent and regularly filed, that certain paragraphs thereof raised and introduced new issues contrary to what a Reply should contain and thereby urged the Court to strike out *paragraphs 4 – 10; 13 – 22* thereof.

For his submission that a Reply ought not to introduce new issues, learned counsel relied on the authorities of Ogboru Vs. Okowa *[2016] NWLR (Pt. 1522) 84 @145;* A P C Vs. P D P *[2015] 15 NWLR (Pt. 1481) 1 @ 118.*

I had equally considered the arguments of the 1st Defendant's learned counsel in response. I agree with the submission that since it is well known that a Counter Claim is regarded in law as a distinct action from the main claim, every rule applicable to filing pleadings with respect to the main claim must necessarily apply equally to a Counter Claim. I agree

with the submissions of the 1st Defendant's learned counsel that the purport of the provision of **Order 18 Rule 1** which provides that where a Claimant desires to make a reply, he shall file it within 7 days from the service of the defence concomitantly applies to filing of a Reply to the Defence to a Counter Claim, as was done in the present case.

In his book, *Civil Procedure in Nigeria, 2nd Edition, 2000*, the learned author, **Fidelis Nwadialo, SAN** (of blessed memory), whilst treating the issue of Reply pleadings, opined at *pages 404-405* thereof, as follows:

> ***"It is not often that there is need for a reply and when one is filed the pleadings almost invariably close with it. However, other pleadings subsequent to a reply may be filed. Each of these may be filed for the same reasons for which a plaintiff may file a reply. Thus, a defendant may file a further pleading in order to deal with new matters that might have***

been raised in the plaintiff's reply. A defendant's pleadings which he files in answer to a reply is called a rejoinder. In the same way the plaintiff may answer to the rejoinder by a surrejoinder which, in turn, may still be followed by a rebuttal by the defendant and this is by way of surrebutter by the plaintiff...."

The point to be made therefore is that even if the Rules of Court make no specific provision for it, filing of pleadings are not restricted so long as they serve the purpose for which, by practice and procedure, they are permitted to be filed.

In the present case, therefore, it is not wrong procedure, in principle, for the 1st Defendant to have filed a Reply to the Defence to the Counter Claim filed by the Claimant; so long as it is consistent with the rules that guide the filing of a Claimant's Reply to the Statement of Defence. I so hold.

With respect to the contention that the said Reply was filed out of time, the 1st Defendant's learned counsel's submission that in the computation of the time within which to file Court processes, weekends, public holidays and Court vacation days are excluded misrepresented the provision of the **Rules** of this Court.

By the clear provision of **Order 49 Rules 1, 2** and **3** of the **Rules** of this Court, only the day in which a process is filed, a Sunday or a public holiday are exempted from time computation. In the present case, the 1st Defendant/Counter Claimant, by virtue of the provision of **Order 18 Rule 1** of the **Rules** of this Court, is entitled to file the Reply in question, within 7 days of being served with the Claimant's Amended Defence to the Counter Claim. By the records of the Court, the said Amended Defence was filed and served on 18/04/2018 and effectively time began

to run from 19/04/2018. It is reckoned that between 19/04/2018 and 27/04/2018 that the 1st Defendant filed the Reply, there was only one Sunday and there is no evidence of a public holiday within those days. As such, the 7 days limited by the Court **Rules** effectively lapsed on 26/04/2018. Effectively, therefore, the said Reply was filed 1 day out of time. I so hold.

The question however is whether the Reply would be rendered incompetent on the basis of its late filing? The 1st Defendant's learned counsel had correctly argued that such a slip was a mere irregularity which will not necessarily render the Reply incompetent, citing in aid the provision of **Order 5 Rule 1(2)** of the **Rules** of this Court, which gives the Court the discretion to treat failure to comply with the requirements as to time, place, manner or form in which a step ought to be taken, as an irregularity. This

is more so in that the Claimant did not object to the late filing of the Reply timeously as required by the provision of **Order 5 Rule 2(1)** of the **Rules** of Court; and had also cross-examined the 1st Defendant with respect to the evidence adduced in support thereof.

As such the Court hereby invokes its powers as provided by the provision of **Order 5 Rule 1(2)** of the **Rules** of this **Court,** to treat the said lapse of the 1st Defendant in filing his Reply to the Claimant's Amended Reply to Statement of Defence and Defence to Counter Claim as a mere irregularity. The Reply, filed on 27/04/2018, is hereby deemed as if the same was properly filed and served.

Now, as to the contention of the Claimant's learned counsel that certain paragraphs of the Reply did not only raise and introduce new issues but were intended to merely deny and re-emphasise the averments the 1st Defendant had already canvassed in his Counter

Claim, I refer to the authority of *Unity Bank Plc. Vs. Bouari [2008] LPELR-3411*, where the Supreme Court, *per* **Nikki Tobi, JSC** (of blessed memory), succinctly encapsulated the essence of a Reply and held:

> ***"A Reply is necessary where a statement of defence raises a fresh issue which was not anticipated by the statement of claim. Where a statement of defence raises an issue which is already averred to in the statement of claim, a Reply is otiose."***

I have carefully examined the Counter Claimant's Counter Claim, the Claimant's Defence thereto and the said contentious Reply to the Defence to the Counter Claim. In my view, the averments in *paragraphs 4, 6, 7, 9, 13, 14, 17, 18, 19, 21 and 22* were clearly in response to matters not pleaded in the Counter Claim but which the Claimant raised for the first time in the Defence to the Counter Claim. As such, those

paragraphs could not be said to be incompetent and I so hold.

However, the averments in *paragraphs 5, 8, 10, 15, 16 and 20* were a mere rehash of matters already contended in the Counter Claim. They ought not to form part of the Reply. Accordingly, I hereby strike out the said paragraphs from the 1st Defendant's Reply to the Defence to the Counter Claim.

The determination here therefore substantially resolved issue (1) as set out by the Claimant's learned counsel, against the Claimant.

Now, proceeding to the substantive claims, I should state from the outset that, after a painstaking examination of the totality of the evidence adduced and documents tendered by parties on both sides, the Court, in this judgement, has devoted attention only to issues considered materially in dispute between the parties in this suit and ignored matters considered not

crucially relevant to the determination of the main dispute in the suit. This is in line with the position of the law that in the determination of a suit before it, a Court is duty bound to consider material evidence adduced on real issues in controversy between the parties and is entitled to ignore irrelevant evidence adduced on issues not joined by parties. See *Ajao Vs. Alao [1986] NWLR (Pt. 45) 802; Adebanjo Vs. Brown [1990] 3 NWLR (Pt. 141) 661; Spasco Vs. Alrine [1995] 8 NWLR (Pt. 416) 667; Ajomiwe Vs. Nwakanma & Ors. [2019] LPELR-3219(CA).*

I should also add that since the focal issue in controversy between the parties in the main claim and the Counter Claim are interwoven, a resolution of the sole issue formulated would have apparently determined both actions at once. This line of action is in consonance with the position of the Court of Appeal in *Jeje Vs. Enterprise Bank Limited [2015] LPELR-*

24829(CA), where it was held, *per* **Lokulo-Sodipe, JCA**, as follows:

> ***"Indeed, in realisation of the fact that the two independent actions are tried together is the fact that two judgments or decisions are always entered by the court; the first in relation to the main action and the second in relation to the counter-claim. And the position of the law is to the effect that where common questions determinative of a claim and counter-claim arise in a case, the trial court in the circumstance is not expected to consider the said question separately in relation to the counter-claim."***

The *res* of this action is the property described in **Exhibit P2**, tendered by the Claimant, being the original offer of statutory right of occupancy dated 17 December, 2008, signed by **A. E. Oniemola**, Secretary, Land Use and Allocation Committee of the Federal Ministry of Environment, Housing and Urban

Development, issued to **"PHILLIP ADAMU,"** with respect to ***Block 1 Plot 2A, Federal Government Site and Services Scheme, Gwarinpa, Abuja, FCT***, measuring approximately **700 Square Metres**. Attached to **Exhibit P2** and marked as **Exhibit P2A**, is the certified true copy of the Survey Plan, prepared and signed by the office of the Surveyor General of the Federation, showing and delineating the said plot of land.

Now, the case of the Claimant is that sometime in 2008, whilst still married to and living with the 1st Defendant, she applied to the Hon. Minister, Federal Ministry of Environment, Housing and Urban Development, Abuja, (the 2nd Defendant as it was then known), for allocation of a parcel of land within Gwarinpa III Estate, Abuja. She tendered in evidence as **Exhibit P1**, a purported acknowledged copy of her said application letter dated 21st January, 2008.

According to the Claimant, the result of her application was the grant of the statutory right of occupancy with respect to the plot indicated on **Exhibit P2,** aforementioned.

The Claimant's case is further that she signified acceptance of the said offer by the document she tendered in evidence as **Exhibit P3,** being purported acknowledged copy of Acceptance of Offer of Grant dated 06/01/2012, signed by **Philip Adamu Katherine.**

The Claimant further testified that pursuant to the offer contained in **Exhibit P2** and her acceptance contained in **Exhibit P3,** she proceeded to make all required payments in fulfilment of the conditions set out in the offer letter. She tendered in evidence as **Exhibits P3A – P3H** respectively, photocopies of various cheques with which she made the said payments and photocopies of Revenue Collector's

Receipts issued on 30/01/2012, for the payments she mentioned in *paragraph 9* of her written depositions.

The Claimant further testified that she took over and exercised acts of possession on the plot by fencing the same and that by letter dated 20th August, 2014, she applied to the 2nd Defendant for approvals and permits to enable her commence development of the plot; to which the 2nd Defendant responded by letter of 22nd September, 2014; informing her that her application was receiving attention and that she was invited to a joint site inspection. She tendered the two letters in evidence as **Exhibits P4** and **P5** respectively.

The Claimant further testified that she received another letter dated 30th October, 2014, from the 2nd Defendant, original of which she put in evidence as **Exhibit P6**, to inform her that the Ministry has stopped further action on the processing of her application for development approvals *"due to some unfolding*

development;" and that it was when she visited the Ministry as advised in **Exhibit P6** that she discovered that it was as a result of a Petition written by the 1st Defendant to the Ministry in which he claimed that she impersonated him to collect the allocation letter for the plot in dispute, that prompted the action of the 2nd Defendant to stop processing of her application; that she explained how she secured allocation of the plot to the Director of Lands and other officials of the Ministry who appeared to be satisfied with her explanations.

The Claimant further testified that, in the meantime, upon a visit to the plot in dispute, she discovered that the same had been encroached upon by certain persons who had commenced construction work thereon, even when the 2nd Defendant was yet to grant any approval for the development of the plot; and that she had to write another letter dated 27th

October, 2016, to the 2nd Defendant, acknowledged copy of which she tendered in evidence as **Exhibit P7**, to request the Director of Rural and Urban Development to expedite action on the approval of her development permits on the disputed plot.

The Claimant further testified that she reported the unlawful entry into the disputed plot to the 2nd Defendant as a result of which a **STOP WORK** notice was affixed on the wall fence thereof. She tendered in evidence as **Exhibits P8, 8A** and **8B** respectively, photographs of the construction work ongoing at the site of the plot in dispute to which the said **STOP WORK** notices were affixed; that she also caused her Solicitor, **Yakubu Maikasuwa, Esq.**, of **Yakubu Maikasuwa & Co.**, to write letter dated 17th August, 2016, copy of which she tendered in evidence as **Exhibit P12**, to the 1st Defendant, demanding that he abated further acts of trespass on the plot; but that

apparently, the 1st Defendant had used his influence as staff of the 2nd Defendant to access title document of the plot in dispute with which he sold the same to an unknown third party.

I have also noted the documents tendered by the Claimant as **Exhibits P7, P7A, P8, P9, P10** and **P11** respectively – her Change of Name publication; Data page of her International Passport; Staff Identity Card; and National Identity Card – all to establish the fact that her name, at the material time, was **Katherine Philip Adamu**.

It is important to note that under cross-examination by the 1st Defendant's learned counsel, the Claimant insisted that she signed the application letter for land allocation, **Exhibit P1** which she tendered; upon which she was shown a certified true copy of the application letter (pleaded by the 1st Defendant in *paragraph 4*

of his *Counter Claim*), and thereon tendered through her in evidence as **Exhibit P14.**

The Claimant denied that it was the 1st Defendant's signature that was on **Exhibit P14;** further confirming that her first name was "**Katherine**" as at the time the application was made but that she did not include her first name in the application letter.

The Claimant further confirmed, still under cross-examination, that she collected the letter of offer of the disputed plot and also submitted the acceptance letter, **Exhibit P3.**

Again, the Claimant caused to be summoned by *subpoena*, the **PW4 – Bala Ahmed –** an official of the Human Resources Department of the 2nd Defendant. The totality of his testimony is to establish that the 1st Defendant was employed in the Federal Civil Service of Nigeria as an *Architect Grade I* with the name **Mr. P. A. Ephraim;** and that he was severally officially

known and referred to as **Ephraim, P. A.; Arc. P. A. Ephraim; Arc. Ephraim Philip Adamu; Arc. Philip Adamu Ephraim; Philip Adamu Ephraim; Ephraim, Adamu Philip.** He tendered in support of these assertions, official documents admitted as **Exhibits P16, P16A, P17, P17A – P17C, P18, P18A, P19, P19A, P20, P20A, P21, P21A-P21E** and **P22** respectively, which were certified true copies of the 1st Defendant's letter of appointment; official gazettes; promotion letters; secondment letters; Employment Pay slips; Omnibus Nominal Roll of the Federal Ministry of Works and Housing (Housing Section) and other official correspondence between the 1st Defendant and the 2nd Defendant.

The witness further testified that as shown in the documents he tendered, particularly the *Omnibus Nominal Roll*, **Exhibit P22,** the 1st Defendant's surname is **"Ephraim."**

Of particular relevance to the resolution of the controversy as to the ownership of the disputed property is the testimony of the **PW2, Elvis Ayodele Oniemola,** who was also on *subpoena* to give evidence in the suit upon the Claimant's invitation. He was Director of Lands, Lands Department of the 2nd Defendant; but at the time material to the dispute in the suit, he was Secretary, Land Use and Allocation Committee of the 2nd Defendant. He knew both the Claimant and the 1st Defendant. He also knew the plot in dispute. The material portions of his testimony is to the effect that he was aware of the time the application for the land in dispute was received in his office in April, 2008. He confirmed that the name on the letter of application was **"Philip Adamu."** He also confirmed that the Claimant was always coming to his office about that period to follow up on the application. The witness identified **Exhibit P2,** the original offer letter and confirmed that he was the

one who signed it. He testified that even though the offer letter had been issued since December, 2008, the Claimant did not come until 2012 to collect it. The witness also confirmed that **Exhibit P3** series, shown to him, were receipts issued for payments made for the land.

The witness also testified that two letters of acceptance were written in respect of the plot. He stated that he noticed that the name **"Katherine"** appeared on the first letter of acceptance; that since the offer was issued in the name of **"Philip Adamu,"** he requested that another letter of acceptance be made to reflect the name of the allottee, after which a second letter of acceptance containing only the name **"Philip Adamu"** was redone and submitted.

The **PW2** further testified that the Claimant submitted application for building development permit and that

it was about that time that the 1st Defendant filed a petition that someone was claiming his property.

When questioned as to who, between the Claimant and the 1st Defendant, owned the property, the witness stated that the letter of offer spoke for itself.

Answering further questions under cross-examination by the 1st Defendant's learned counsel, the **PW2** stated that an applicant is expected to sign an application letter for land and that in the instant case it was the applicant that signed the application letter. He testified further, when shown **Exhibit P3,** that it was the first letter of acceptance that he rejected because the name **"Katherine"** was included in it. He confirmed that **Exhibit P3** was not the officially accepted letter of acceptance of the offer of the disputed plot; and that the Claimant accepted the offer on behalf of the applicant, **Philip Adamu**; and not for herself.

He further testified that an allottee could pay statutory fees through someone else and that payment of fees by **Katherine Philip Adamu** did not confer title on her; that title resided in the person whose name is on the allocation letter.

Now, with respect to the testimonies of the **PW3** and **PW5**, nothing of substance was added to the case of the Claimant. Indeed their respective testimonies were immaterial to the dispute between the parties in this case. The **PW3 – Alexander Gbiwen**, was the Deputy Director, Appointments, Promotion and Discipline, Human Resources Department, Housing Section of the 2nd Defendant. He was meant to tender some documents on *subpoena* but could not do so on 26/02/2018, the date he appeared in Court. Invariably, the **PW4** undertook the assignment on 17/01/2019, when he testified.

The **PW5** is **Mrs. Grace James**. She claimed to be the Claimant's cousin's sister, who stayed with the Claimant and the 1st Defendant, sometime in 2008, whilst they were still married. The totality of her testimony bears no relevance to the issues in dispute in this suit.

Now, the case of the 1st Defendant/Counter Claimant is that sometime in 2004 before he got married to the Claimant, he noticed a large parcel of land somewhere near his house in Gwarinpa, Abuja; that upon investigation, he discovered that the land was yet to be allocated to anyone and that he applied for the allocation of the land in 2008. He denied that it was the Claimant that applied to the 2nd Defendant for the plot; and maintained that he personally signed the application letter; that it was a result of the application he made that the allocation was granted. He tendered in evidence as **Exhibit D1** certified true

copy of the offer letter, original of which the Claimant already tendered as **Exhibit P2.**

The 1st Defendant further testified that after he made the application for the plot, he informed the Claimant, since, as his wife, he did not hide anything from her.

The 1st Defendant testified further that soon after he applied for the land he had an argument with the Claimant as a result of which she threatened to "*deal decisively*" with him; that shortly after the Claimant's threat, he took ill with a strange illness, was hospitalized to the point of near death; that during this period, the Claimant abandoned him and the children of his late wife, moved out of the matrimonial home and took with her some of his personal belongings, including land documents; that it was when he was ill and bedridden that the Claimant went to collect allocation paper for the land in dispute; that when he recovered from the illness in 2012, he

inquired from the 2nd Defendant about the allocation and was informed that the same had been granted.

The 1st Defendant further testified that the Claimant surreptitiously signed the acceptance letter for the allocation. He tendered in evidence as **Exhibit D2,** certified true copy of the Acceptance of Offer of Grant letter dated 06/01/2012, purportedly signed surreptitiously by the Claimant.

The 1st Defendant admitted that it was true that the Claimant effected the required payments for the plot in his name whilst he was still sick; and that it was true that he petitioned the 2nd Defendant when he discovered that the Claimant had attempted to obtain development approval for the disputed plot; and because she refused to return the original offer letter and other documents of the plot to him. He tendered in evidence as **Exhibit D3,** certified true copy of petition he wrote to the Permanent Secretary of the

2nd Defendant, on 8th October, 2014, regarding the unlawful dealing with the plot by one **"Philip Adamu Katherine (Mrs.)."**

The 1st Defendant further testified that a meeting was called between the two of them by officers of the 2nd Defendant who informed the Claimant that her application for development permit would not be granted and advised her to return the original offer letter to him since she had no right over the plot but that she refused to heed the advice; that the 2nd Defendant called him for a meeting which held with its officers on 13th November, 2016, after which he articulated his position on the issue of the disputed land as requested, which he submitted to the Ministry. He tendered in evidence as **Exhibit D4,** acknowledged copy of the said position paper dated 14th November, 2014.

The 1st Defendant admitted that he indeed went on the plot and had commenced building of a 5 bedroom duplex thereon and denied selling or planning to sell the plot; that the Claimant dragged him to the Police Station in Gwarinpa, as a result of the construction he was undertaking on the disputed plot; that two of his workmen were arrested; that when he explained his position to the Police officers, that the Divisional Police Officer (DPO) advised the Claimant to desist from going on the land; and unconditionally released his workers.

The 1st Defendant further testified that it was proper for the 2nd Defendant to process the application he made for development plan approval since he was the rightful owner of the property; that the 2nd Defendant discarded the Claimant's application for development plan permit when it was discovered that she was acting without his authorization. He tendered

in evidence as **Exhibit D5**, acknowledged copy of the said application he made on 17th November, 2015, for development plan approval for the disputed plot.

The 1st Defendant further stressed that all the activities carried out by the Claimant in respect of the plot, including obtaining the offer letter, delivering the acceptance letter, making payments and so on were done on his behalf, since he was the rightful allottee of the disputed plot.

The 1st Defendant testified further that he prevailed on the Legal Department of the 2nd Defendant to issue a statement as to the true owner of the disputed plot as a result of which the letter dated 5th May, 2016, was written by the Principal Land Officer to the Director/HOD, Urban & Regional Development Dept. of the 2nd Defendant to confirm that according to the records in Lands and Housing Department and Land Use and Allocation Committee Secretariat, the allottee

of the disputed plot is **Phillip Adamu**. He tendered certified true copy of the letter as **Exhibit D6**.

The 1st Defendant answered further questions under extensive cross-examination by the Claimant's learned counsel, during which he stated that he agreed that after the Claimant got married to him, she became entitled to bear his name **"Philip Adamu."** He further testified that the offer of the disputed plot was accepted on his behalf by the Claimant; and that she also made all the statutory payments on his behalf. He stated that he took ill sometime in 2009 and recovered fully sometime in 2012. He further admitted that all the names as shown in **Exhibits P18** to **P22** belonged to him; that his surname as shown on **Exhibit P22** is **"Ephraim;"** that officially he was known and referred to as **"Ephraim Philip Adamu."**

The 1st Defendant further testified categorically, still under cross-examination by the Claimant's learned

counsel, that the name **"Philip Adamu,"** to whom the offer letter of the disputed plot was addressed was him and no one else; that **"Philip Adamu"** on the offer letter and **"Ephraim Philip Adamu"** were the same person.

Now, from the totality of the material evidence adduced by both the Claimant and the 1st Defendant, as well as the other witnesses on record, one fact emerged resonant in this case, which is that the plot in dispute was applied for by and offered to one **"Philip Adamu."** This is firmly confirmed by the documents, **Exhibits P14, P2, D2, D6** respectively and indeed the illuminating testimony of the **PW2**, who authored **Exhibit P2**.

As I had stated earlier on, the singular question to be resolved by the Court, on the basis of the evidence led by both sides, is as to who, between the Claimant and the 1st Defendant, the said **"Philip Adamu"** was?

By my understanding of the evidence on record, the case put forward by both the Claimant and the 1st Defendant were built on the foundation of the Application Letter for land allocation of the disputed plot. This is more so since it was the application that resulted in the allocation or offer of the land in dispute. Once the Court resolves the issue as to who, as between the Claimant and the 1st Defendant, applied for the plot, the rest of the case will logically fall in place.

However two versions of the application letter were tendered in evidence. The Claimant tendered **Exhibit P1** and claimed she was the one that signed and submitted same to the 2nd Defendant. On the other hand learned counsel for the 1st Defendant tendered the other version, **Exhibit P14**, through the Claimant under cross-examination. The 1st Defendant claimed

that he was the one that signed and submitted, **Exhibit P14.**

Upon examination of the two documents, the Court finds that there are two fundamental differences between **Exhibit P1** and **Exhibit P14.** Whilst **Exhibit P1** is a mere acknowledged copy of the application submitted to the 2nd Defendant; **Exhibit P14** is a certified true copy produced from the custody of the 2nd Defendant.

One other fundamental difference between the two documents is that in **Exhibit P1** the title **"(Mrs)"** is inserted in long hand in front of the name of the applicant **"Philip Adamu"**; whereas the said title is missing in **Exhibit P14.**

The first question to ask is whether **Exhibit P1,** is admissible in law *ab initio*. The document is an application purportedly written by the Claimant to the 2nd Defendant, a public office, for land allocation. The

document is addressed to the 2nd Defendant and it is expected to be kept in the 2nd Defendant's custody as the addressee. By my understanding therefore, **Exhibit P1** ought to fall within the category of private documents of which public record is kept, within the meaning of **s. 102(b)** of the **Evidence Act**. On that score, the only admissible evidence of the letter is either the original itself, kept in the records of the 2nd Defendant or secondary evidence thereof, which must be a certified true copy of the original, obtained from the 2nd Defendant's office, as required by the provisions of **s. 89(e)** and **s. 90(1)(c)** of the **Evidence Act**.

In the instant case, **Exhibit P1**, being a public document, was not certified in accordance with the provision of **s. 104** of the **Evidence Act** and as such failed the admissibility test. I so hold.

I should go further to state that it would not matter that **Exhibit P1** was admitted without objection in the course of trial. The law is settled that a Court can only act upon evidence that is legally admissible. The Court cannot and indeed has no discretion to admit and act upon evidence which is legally inadmissible, even with the consent of the parties. See *Kale Vs. Coker [1982] 12 SC 252; Omega Bank Nigeria Plc. Vs. O. B. C Ltd. [2005] 8 NWLR (Pt. 928) 247 @ 577.*

Having come to the conclusion that **Exhibit P1** was inadmissible *ab initio* and was wrongfully or inadvertently admitted by the Court, the position of the law is further that in the course of writing judgment the Court is empowered to, or not foreclosed from, disregarding or placing no reliance on the wrongfully admitted legally inadmissible evidence. See *Okafor Vs. Okpala [1995] 1 NWLR (Pt. 374) 749 at 758; Ojoh Vs. Kamalu [2000] 11 NWLR (Pt. 679) 512.*

Even if it is accepted that **Exhibit P1** was admissible in evidence, for academic adventure only, evidence on record has further shown that it is lacking in credibility.

Whilst answering questions under cross-examination by the 1st Defendant's learned counsel with respect to **Exhibit P1,** the Claimant had this to say:

> ***"I can see Exhibit P1 now shown to me. That is the copy of the application. I was the one that appended the signature on the document. In the original application I submitted, I did not include "(Mrs.)." It was on my own copy that I added the "(Mrs.)." I can see the document now shown to me (Exhibit P14). It is the one I submitted to the Hon. Minister."***

Also testifying in his *viva voce* evidence in chief, the **PW2** confirmed that **Exhibit P14** was the authentic application letter received in the Ministry. He said as follows:

"The name on the application letter is Philip Adamu as written on Exhibit P14 now shown to me."

The implication and effect of the testimony of the Claimant reproduced in the foregoing is that **Exhibit P1** is a doctored version of the authentic **Exhibit P14**. By inserting the title **"(Mrs.)"** on **Exhibit P1**, the Claimant deliberately altered the character of the document materially to make it appear as if she authored it as **"Mrs. Philip Adamu,"** thereby purporting to give the document a totally different legal character and effect.

It was held in *Badan-Lungu Vs. Zarewa [2013] LPELR-20726(CA)*, that:

"...a doctored, altered or mutilated document is not credible and is not worthy of any probative value;"

as such, I have no difficulty in holding that the document, **Exhibit P1**, which the Claimant admitted to have doctored, has lost credibility and veracity and in

such a circumstance, the Court cannot accord the document any weight whatsoever.

Whichever way **Exhibit P1** is viewed, in the circumstances, it donates no probative benefit whatsoever to the case of the Claimant. I so hold.

Now, with respect to **Exhibit P14**, the authentic application letter for land allocation, written by **Philip Adamu**, I make further reference to the evidence of the Claimant under cross-examination by the 1st Defendant's learned counsel. She had this to say:

> ***"I signed the application. I did not sign the document with my regular signature. It was because my husband (the 1st Defendant) refused to sign the document because he was afraid of his boss in the office that I took it upon myself to sign the application. The signature I signed on the letter is not my regular signature. I just appended it, but I cannot sign it all over again."***

The question that assails the mind from this revelation is this – if truly it was the Claimant that originated the application and the application was for herself, why would she testify that her husband (the 1st Defendant) refused to sign it because he was afraid of his boss in the office? Why should there be need to involve her husband in the first place to sign the letter if the story she tried to project to the Court by her case is that she applied for the land by herself and for herself, using just her surname **Philip Adamu**?

The Claimant testified and tendered several documents, all referred to in the foregoing to establish that her full name at the material time was **Katherine Philip Adamu;** that she was and is still **Mrs. Katherine Philip Adamu** up till date. She also admitted under cross-examination by the 1st Defendant's learned counsel that her first name was

"Katherine" but that she did not include **"Katherine"** in the application.

The necessary inference to be drawn from the Claimant's testimony here is that if the name **"Katherine"** belonged to her; it follows obviously that **"Philip Adamu"** which she adopted as her surname after she got married to the 1st Defendant is the 1st Defendant's name. The name could not have belonged to anyone else. I so hold.

Again, it is curious to note that the Claimant claimed she made an application for land allocation but failed to include her first name that is personal to her thereon. My conclusion is that if indeed it was the Claimant that made the application for land allocation, contained in **Exhibit P14,** she would not have omitted to include her fist name – **"Katherine"** which is her first name on the application. I so hold.

The Claimant also went to far-reaching but seemingly futile extent to show that since the name by which the 1st Defendant is known in the office were those stated on the official documents already referred to in the foregoing, which names include **Ephraim, P. A.; Arc. P. A. Ephraim; Arc. Ephraim Philip Adamu; Arc. Philip Adamu Ephraim; Philip Adamu Ephraim; Ephraim, Adamu Philip,** he could not have been the **"Philip Adamu"** who applied for land allocation *vide* **Exhibit P14** and who was offered the property in dispute, *vide* **Exhibit P2.**

The 1st Defendant had testified that he made the application in **Exhibit P14** and that he personally signed the letter. In *paragraph 3* of his additional *Statement on Oath* of 27th April, 2018, he stated categorically as follows:

"....I expressly state that in the application for the land to the 2nd Defendant I used my name "Philip Adamu" and signed the application."

When questioned under cross-examination by the Claimant's learned counsel on the issue of the name, he testified further as follows:

"I was known and referred to as Architect Ephraim Philip Adamu officially. I can see Exhibits P18, P18A, P19, P19A, P20 and P21 series now shown to me, all the documents made reference to Architect Ephraim Philip Adamu, which is my name....

I state that the name Philip Adamu to whom the offer letter is addressed is me and no one else. The Philip Adamu in the offer letter is not Katherine Philip Adamu. The Philip Adamu on the offer letter and Ephraim Philip Adamu are the same person."

My finding is that all that the Claimant had succeeded in establishing in this case is that the 1st Defendant is

known by the name **P. A. Ephraim;** but she has not succeeded in establishing, firstly, that he is not **Philip Adamu;** or that he did not sign **Exhibit P14**. The Claimant also failed to establish that **Katherine Philip Adamu**, appearing on her documents, **Exhibits P7A, P9, P10** and **P11,** is the same as **Philip Adamu**, who applied for and was granted the disputed land. I so hold.

Conversely, the 1st Defendant has succeeded in establishing that the names – **Philip Adamu and Philip Adamu Ephraim** or **P. A. Ephraim** belong to him. I so hold.

In my view, it is the name **"Katherine"** that gives the Claimant her identity, since it is her first name and all her documents – **Exhibits P7A, P9 – P11** that she tendered bore the name **Katherine** as her first name. As such, the name **"Philip Adamu"** without "**Katherine**" could not have referred to the Claimant.

Whereas, for the 1st Defendant, it is the name **Philip Adamu** that gives him his identity. The non-inclusion of his last name "**Ephraim"** in **Exhibit P14** could not have detracted from the fact that he was the **Philip Adamu** referred to in the document.

I must further draw the inference from the documentary evidence tendered by the Claimant that the reason she chose to adopt **"Philip Adamu"** rather than **"Ephraim"** as her surname when she got married to him and up to date, was because she was aware that the 1st Defendant was commonly known simply as **"Philip Adamu,"** the name by which he applied for the disputed plot. I so hold.

In simple terms, therefore, upon a proper appraisal of the totality of the evidence on record, I find it more plausible that the name **"Philip Adamu"** referred to in **Exhibit P14** and **P2** belong to the 1st Defendant and not the Claimant. I so hold.

I have noted the arguments canvassed by the Claimant's learned counsel to the extent that the offer of the land in dispute was incomplete and invalid without establishing who accepted same; and that the Claimant, who accepted the offer, owned the land. Learned counsel devoted extensive portions of his final submissions on this critical issue. However, an appraisal of the evidence on record with regards to the process of acceptance of the land in dispute further exposed the folly in the Claimant's case.

The Claimant tendered as **Exhibit P3,** acknowledged copy of the letter of acceptance of the offer of the disputed land by the 2nd Defendant. I should at first note that **Exhibit P3** must suffer the same fate as **Exhibit P1** since it is also a public document, record of which is kept with the 2nd Defendant. As such the only admissible secondary evidence of the acceptance letter is a certified true copy thereof. On that score

alone, the Court should place no reliance on the document. I so hold.

Again, if for the sake of academic discourse, it is accepted that **Exhibit P3** is admissible in evidence, it is again seen, just as **Exhibit P1,** that its integrity is seriously flawed, on the basis of the testimony of the **PW2** on record and **Exhibit D2** tendered in evidence by the 1st Defendant. The 1st Defendant pleaded the document, **Exhibit D2** in *paragraph 14* of his Reply to the Claimant's Defence to the Counter Claim.

What is again seen here is that **Exhibits P3** and **D2** are two versions of the same letter of acceptance. Whilst in **Exhibit P3,** the column for the name of the writer of the letter is handwritten as **"Philip Adamu Katherine."** In the same column of **Exhibit D2,** the name of the writer is handwritten as **"Philip Adamu."**

Again, whilst **Exhibit P3** is purported in its face to be signed by **"Philip Adamu Katherine;" Exhibit D2** is signed **"for: Philip Adamu."**

Shedding more light as to the discrepancies highlighted in these two documents, the **PW2,** Secretary of the Land Use Allocation Committee of the 2nd Defendant, who signed the offer letter, **Exhibit P2** at the material time and who had personal knowledge of the history of the property testified in his *viva voce* evidence in chief as follows:

> ***"Now shown to me is Exhibit P2. This is the offer we gave in respect of the land. I authored the offer letter. .... There were two acceptance of offer letters. The second one should override the first one. The reason is that the allottee's name is supposed to appear at the top and bottom. The offer was made in the name of Philip Adamu. When I saw the name of Katherine on the acceptance letter, I asked that a new acceptance of offer letter be done to reflect***

the name in which the offer was made, that is Philip Adamu."

Whilst answering further questions under cross-examination by the 1st Defendant's learned counsel, the **PW2** testified further as follows:

"I can see Exhibit P3 now shown to me. That was the first acceptance letter which had an additional name – Katherine, which I instructed should be removed. This letter is not the officially accepted acceptance letter in the file.

<u>The Plaintiff accepted the offer on behalf of the applicant, Philip Adamu; not for herself</u>."

(Underlined portion for emphasis)

The foregoing revelation further exposes the Claimant as dubious and someone whose testimony ought not to be believed. Apart from smuggling the title **"(Mrs.)"** into the application letter which she tendered and relied on as **Exhibit P1,** to make it look as if she was

the real applicant; she again attempted to smuggle her first name – **Katherine** – into the acceptance of offer letter *vide* **Exhibit P3**. Even after the **PW2** had rejected **Exhibit P3** because the Claimant's first name which was not on the offer letter had been included in it and made her to do a proper letter of acceptance in the actual name of the applicant, which she did and signed for the applicant; she omitted to tender the authentic and accepted copy of the acceptance letter, certified true copy of which the 1st Defendant tendered as **Exhibit D2,** and went on to tender the rejected copy, **Exhibit P3,** with the intention of deceiving the Court to believe that she indeed accepted the offer for herself. I so hold.

It is again curious to ponder how was it that the Claimant who claimed that she was the one who originated the application letter failed to include her all important first name of **Katherine;** but attempted

to surreptitiously include the name in the acceptance letter. This inconsistency further exposed that the Claimant could not have originated and signed the application letter, **Exhibit P14**. I so hold.

I therefore accept the testimony of the **PW2** that the Claimant did not sign **Exhibit D2,** the acceptance letter for herself but for **Philip Adamu**. This piece of evidence, in my view, seems to be the final nail on the Claimant's claim of ownership of the land in dispute. It follows also that the totality of the arguments canvassed by the Claimant's learned counsel on the issue of acceptance of the offer of the plot in dispute only supported the case of the 1st Defendant. I so hold.

Going further, the Claimant testified under cross-examination by the 1st Defendant's learned counsel that she signed the land application letter, but not with her usual signature. On the other hand, the 1st

Defendant testified categorically that he was the one that signed the application letter, **Exhibit P14**. He further testified under cross-examination by the Claimant's learned counsel that he signed the two *Statements on Oath* he deposed with respect to this case.

By the provision of **s. 101(1)** of the **Evidence Act**, a Court is empowered to, *suo motu*, take the initiative of making necessary comparisons of signatures in documentary exhibits before it before coming to a reasonable conclusion in the matter. See *Agu Vs. Duru [2017] LPELR-43184(CA)*.

I had undertaken a comparison of the signature on **Exhibit P14** with the signatures on the said *Statements on Oath* deposed to by the 1st Defendant in this case, as urged by the 1st Defendant's learned counsel and as I am entitled to by law. My finding is that the signatures on the three documents are similar and the

inference to be drawn therefrom is that it was the same person who signed the two *Statements on Oath* that also signed **Exhibit P14,** which is the 1st Defendant. I so hold.

I also noted that the 1st Defendant affirmed, under cross-examination by the Claimant's learned counsel, that he signed the documents, **Exhibits P18A** and **P19** respectively. It is also correct, as noted by the Claimant's learned counsel, that upon comparison, the signatures on the 1st Defendant's *Statements on Oath* are different from those he signed on **Exhibits P18A** and **P19**.

In my view, that is where the issue ends. As correctly noted by his learned counsel, the 1st Defendant never admitted to owning only one signature and no law precludes a man from having more than one signature. No such question was also posed at the 1st Defendant as to how many signatures he had; and in

any event, parties did not join issues as to whether or not he had more than one signature.

What remains unchallenged is that the fact that the 1st Defendant signed **Exhibit P18A** and **P19** did not remove the fact that he also signed **Exhibit P14**. I so hold.

From the evaluation of the evidence on record so far undertaken in the foregoing, it becomes clear that the twin pillars upon which the Claimant built her claim for the allocation of the land in dispute to her, that is the purported letter of application for land allocation, **Exhibit P1** and the purported letter of acceptance, **Exhibit P3**, have completely crumbled. As such, the Claimant's case no longer has any legs to stand. I so hold.

I must further hold that on the preponderance of the totality of evidence so far reviewed in the foregoing, it is firmly established that the 1st Defendant was the

"Philip Adamu" who applied to the 2nd Defendant for land allocation at the material time *vide* **Exhibit P14;** and to whom the disputed plot was granted *vide* **Exhibit P2/D1**.

I further hold that the fact that it was the Claimant that received the offer letter, **Exhibit P2** or submitted the letter of acceptance did not detract from the legality of the 1st Defendant's right of occupancy over the property. It is reckoned that she merely took those steps on behalf of the allottee, the 1st Defendant. I so hold.

I have also proceeded to consider the totality of the evidence of the Claimant with respect of payment of statutory fees and submitting application for building plan permit with respect to the disputed property. It is my view that the testimony of the **PW2** under cross-examination by the 1st Defendant's learned counsel

precisely represented the correct position of the law when he stated as follows:

> ***"Statutory fee is meant to be paid by the person to whom the offer is made but it can be paid through anyone else. Payment of statutory fees by Katherine Adamu does not confer title on her. Title resides in the person whose name is on the allocation letter."***

This piece of evidence accords with the position of the Supreme Court in *Ezeanah Vs. Atta [2004] 7 NWLR (Pt. 873) 468,* where the point was emphatically made clear that a person in whose name document of title is issued is the person to whom land is granted, regardless of who paid the application and all other fees.

I therefore further hold that mere evidence of payment of statutory fees charged on the plot in dispute by the Claimant as she did in the instant case

cannot in law confer title of the plot on her. At best, the option available to the Claimant is to demand for refund of the receipted statutory sums she paid to the 2nd Defendant in the 1st Defendant's name, in processing the acceptance of the plot, from the 1st Defendant.

I also noted the arguments of the Claimant's learned counsel as to how unreasonable, unexplainable and unlikely for the 1st Defendant who claimed to have applied for land in 2008 not to have taken any steps in respect of the application until 2014, some six (6) years after. This argument overlooked the testimony of the **PW2**, that since the offer letter was ready in December, 2008, the Claimant did not come to pick it up until January, 2012. This is to underscore the point that it is immaterial who followed up on the application, who received the same and the length of time it took to receive same. The significant point of

focus is the finding as to who the offer was made, which, in the present case, is the 1st Defendant.

On the basis of the foregoing analysis therefore, I must and I hereby resolve the sole issue for determination in this suit against the Claimant.

It is therefore the conclusion of the Court that the Claimant's claim lacked in merit, in substance and in probity. The Claimant's case, in totality, is no more than a grand contraption by the Claimant, taking advantage of the 1st Defendant's circumstances at the material time, to attempt to arm-twist the 2nd Defendant, as exemplified by the discredited **Exhibits P1** and **P3** respectively, in delivering to her a piece of land that does not belong to her. But then, the law, like streams of water, must take its course and find its level. That said, the suit shall be and is hereby accordingly dismissed.

1ST DEFENDANT'S COUNTER CLAIM

As I had noted earlier on in this judgment, a resolution of the sole issue for determination in this suit effectively determines the two suits at once. Having undertaken an extensive evaluation of the evidence adduced in support and against both the main suit and the Counter Claim together in the foregoing, I hereby permit myself to adopt the Court's findings and conclusions in the foregoing in holding that the 1st Defendant is entitled to the grant of relief (1) of his Counter Claim, the same having been found to be meritorious.

The 1st Defendant/Counter Claimant has also prayed for an order of perpetual injunction against the Claimant to restrain her from disturbing his possession and quiet enjoyment of the disputed property. 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 Counter Claimant's relief for perpetual injunction.

With respect to the Counter Claimant's reliefs for damages for trespass and general damages, his testimony is that he had invested about ₦100,000,000.00 (One Hundred Million Naira) only to build a Five Bedroom duplex which he had almost completed. He also alleged that most of his materials on the disputed plot were being damaged and stolen as a result of the Claimant's incessant interference with

the plot but failed to give any concrete evidence of the said interference.

On the other hand, the Claimant tendered in evidence **Exhibits P8, P8A** and **P8B,** photographs taken of the developments which were undertaken on the disputed land by the Counter Claimant, to establish his presence on the land. The Claimant further denied interfering with the development on the land. She testified that when she discovered the development being undertaken on the plot by the 1st Defendant/Counter Claimant, she caused her Solicitor to write to him to abate the trespass and that she also wrote to the 2nd Defendant to expedite action on her application for approval for development permit. She tendered the letters **Exhibits P12** and **P7** respectively to back up her testimony in that regard.

On the basis of the evidence on record therefore, I am not satisfied that the Counter Claimant has established

a case of trespass against the Claimant. As such his reliefs for damages for trespass; and general and exemplary damages are clearly unfounded and are accordingly dismissed.

In the final analysis, the 1st Defendant's Counter Claim succeeds in part. For the avoidance of doubt and abundance of clarity, judgment is hereby entered with respect to the Counter Claim on the following terms:

1. ***The Claimant/1st Defendant to the Counter Claim is hereby ordered to return the original letter of allocation dated 17th day of December, 2008, with respect to Block 1 Plot 2A, Federal Government Site and Services Scheme, Gwarinpa, Abuja, issued by the Federal Ministry of Environment, Housing and Urban Development to Philip Adamu, to the Counter Claimant.***

2. ***As a consequential relief to (1) above, since the Claimant tendered the said original title document referred to in (1) above in evidence as Exhibit P2 and the certified true copy of the plan of the land as Exhibit P2A, in the course of trial of this suit, the Snr. Registrar of this Court is hereby directed to hand over the same to the 1st Defendant/Counter Claimant forthwith.***

3. ***An order of perpetual injunction is hereby made restraining the Claimant/1st Defendant to the Counter Claim, whether by her agents and/or privies or any person howsoever described acting for her, from disturbing the 1st Defendant/Counter Claimant's possession and quiet enjoyment of Block 1 Plot 2A, Federal Government Site and Services Scheme, Gwarinpa, Abuja.***

4. ***Parties shall bear their respective costs.***

OLUKAYODE A. ADENIYI

(*Presiding Judge*)

08/06/2020

Legal representation:

G. A. Idiagbonya, Esq. (with **A. A. Ali (Mrs.); A. A. Danbeki, Esq.; N. P. Okaro & M. O. Omeiza (Miss)**) – *for the Claimant*

Benson Ibezim, Esq. (with **Ikechukwu Ogbonna, Esq.**) – *for the 1st Defendant/Counter Claimant*

2nd Defendant unrepresented by counsel