

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
HOLDEN AT ABUJA

ON MONDAY THE 11TH DAY OF MAY 2020
BEFORE HIS LORDSHIP: HON JUSTICE O. A. ADENIYI
SITTING AT COURT NO. 14 APO – ABUJA

SUIT NO: FCT/HC/CV/4048/13

BETWEEN

S. A. TANKO YAKASAI CLAIMANT

AND

1. UMARU TELA
2. THE MINISTER, FEDERAL CAPITAL TERRITORY
3. THE FEDERAL CAPITAL DEVELOPMENT AUTHORITY } DEFENDANT

JUDGMENT

The *res* of the instant action is the plot of land described as Plot No. 3322, Cadastral Zone A05, Maitama, Abuja. Right of Occupancy over the plot was originally granted to the Claimant by the 2nd Defendant in 2012. The summary of the Claimant's case is that he approached the 1st Defendant to

assist in securing financial assistance to pay the assessed statutory fee of ₱44,810,011.00, for processing Certificate of Occupancy over the plot. As it turned out, according to the Claimant, the 1st Defendant purportedly sold the plot to an unknown third party without his authority or consent; on the pretext that the Claimant gave him the plot in replacement for another plot of land which he purchased from the Claimant but which was later revoked.

Being aggrieved of the 1st Defendant's actions and bent on asserting his right of ownership over the plot, the Claimant commenced the present action, *vide Writ of Summons and Statement of Claim* filed in this Court on 08/07/2013, whereby he claimed against the Defendants the reliefs set out as follows:

- 1. A declaration that the Plaintiff is, and remains the valid owner/title holder over Plot No. 3322,***

Cadastral Zone A05, Maitama, Abuja, covered by a Right of Occupancy issued in his name by the 2nd Defendant dated 31/1/2012.

- 2. A declaration that the 1st Defendant has no consent and/or the authorization of the Plaintiff to, and thus is not entitled to hold, detain or otherwise sell, mortgage or transfer the interest of the Plaintiff in Plot 3322 Cadastral A05, Maitama, Abuja.***
- 3. A declaration that any transaction entered into by the 1st Defendant for the purported transfer of title in Plot No. 3322 is invalid, null and void and to no effect whatsoever.***
- 4. An order against the 2nd and 3rd Defendants to refuse and/or refrain from registering, approving or otherwise recognising any purported transaction for the sale, mortgage or lease of Plot 3322 Cadastral A05, Maitama, Abuja carried out by the 1st Defendant.***

5. ***An order against the 1st Defendant to submit the original Right of Occupancy dated 31/01/2012 to this Honourable Court for onward transmission to the Plaintiff/or in the alternative an order against the 2nd and 3rd Defendants to cancel the original of the said Right of Occupancy and to issue a Certified True Copy thereof and submit the said Certified True Copy to this Honourable Court for onward transmission to the Plaintiff within 30 days from the date of judgment in this suit.***

6. ***An order that any improvement or development effected over Plot 3322 Cadastral A05, Maitama, forms part of and belongs to the said Plot which is owned by the Plaintiff***

Or in the alternative:

7. ***The sum of ₦1,000,000,000 (One Billion Naira) being general damages to the Plaintiff for the loss of his title over Plot 3322 Cadastral A05, Maitama,***

Abuja occasioned by the fraudulent act(s) of the 1st Defendant.

8. Such other relief of reliefs this Honourable Court may deem fit to grant the Plaintiff in this suit.

The respective defendants contested the Claimant's action. In the 1st Defendant's Statement of Defence filed on 04/10/2013, he denied that he was ever engaged by the Claimant to raise funds on his behalf to pay for the Certificate of Occupancy of the contested plot. He insisted that the contested Plot 3322 was offered to him by the Claimant as replacement for Plot 531, Gwarinpa District initially sold to him by the Claimant which was later revoked.

The 1st Defendant Counter Claimed against the Claimant as follows:

1. An Order of this Honourable Court dismissing the Plaintiff's claim as contained in the Statement of Claim.

- 2. A declaration of this Honourable Court mandating the Plaintiff to be bound by the terms and conditions contained in the Power of Attorney executed by the Plaintiff and the 1st Defendant on 20th April, 2005.**
- 3. A declaration of this Honourable Court directing the Plaintiff to be bound by the terms and conditions contained in the Deed of Assignment freely executed between the Plaintiff and the 1st Defendant with respect to Plot 531 Cadastral Zone C02, Gwarinpa, Abuja.**
- 4. A declaration of this Honourable Court that there exist a binding sale transaction between the Plaintiff and the 1st Defendant over a property situate at Plot 531 which was revoked by the agent of the 3rd Defendant vide a Notice of Revocation dated 4/05/2006 with Old file No: KN/4584, New file No: 10573 as recertified on 30th March 2005.**

5. ***A declaration of this Honourable Court that the 1st Defendant is the rightful holder of the interest over Plot 3322 with Old file No: 4584, New file No: 10573 situate at Cadastral Zone A05 to the exclusion of the Plaintiff or his successors-in-title or agents or any other person however so called.***

6. ***A declaration of this Honourable Court to the effect that Plot 3322 with Old file No: KN/4584, New file No: 10573 situate at Cadastral Zone A05, Maitama was granted by the 2nd and 3rd Defendants as a replacement for Plot 531, Gwarinpa District which was revoked earlier via a revocation notice dated 4/05/2006.***

7. ***An order of perpetual injunction restraining the Plaintiff, his agents, privies, assigns, administrators, successor-in-title, heirs howsoever so described from alienating by way of gift, selling, mortgaging or in any way transferring or laying claim of***

ownership of Plot 3322, situate at Cadastral Zone A05, Maitama, Abuja.

- 8. An order of this Honourable Court directing the Plaintiff to pay the 1st Defendant the sum of Twenty Million Naira only (₦20,000,000.00) as professional fees paid by the 1st Defendant to Messrs Mahmud & Co., Counsel to the 1st Defendant/Counter Claimant in this suit.**

- 9. The sum of Five Hundred Million Naira (₦500,000,000.00) as general and punitive damages for false and misrepresentation of facts by the Plaintiff to the Economic and Financial Crimes Commission which led to the arrest and detention of the 1st Defendant.**

The case of the 2nd and 3rd Defendants, as formulated in the Statement of Defence filed on their behalves on 07/04/2015, is that the 2nd Defendant initially allocated plot of land known as Plot 531,

Cadastral Zone C02 within Gwarinpa 1 District, Abuja, to the Claimant sometime in 2002; that when the policy for the recertification and re-issuance of Certificates of Occupancy was introduced by the 2nd Defendant in 2004/2005, it was discovered that the said Plot 531 offered to the Claimant had issues of double allocation, as a result of which it was revoked; and that after sustained pressures mounted by the Claimant on the 2nd Defendant, either to revisit the issue of revocation or to provide him with alternative plot, the 2nd Defendant eventually allocated Plot 3322, in dispute, to the Claimant in 2012, as alternative to the Plot 531 earlier revoked.

The Claimant thereafter filed Reply to the 1st Defendant's Statement of Defence/Counter-Claim on 29/01/2014.

At the plenary trial, the Claimant testified for himself and called no other witness(es). He tendered two (2) sets of documents in evidence as exhibits.

The 1st Defendant also testified in person. He called two other witnesses, namely, **Abubakar Saraki** and **Oluseye Ayo**. Between the 1st Defendant and his witnesses, a total of eleven (11) documents were tendered in evidence as exhibits.

For the 2nd and 3rd Defendants, one **Hannatu Ozaeyiza Nuhu**, staff of the 2nd Defendant, testified as the sole witness. She tendered a total of seven (7) sets of documents in evidence as exhibits.

Upon conclusion of plenary trial, parties filed and exchanged their written final addresses in the manner prescribed by the **Rules** of this Court.

In the final address filed on behalf of the 1st Defendant on 26/11/2018, by his learned counsel,

Danjuma. G. Ayeye, Esq., four (4) issues were formulated as having arisen for determination in this suit, namely:

- 1. Whether Plot 3322 situate at Cadastral Zone A05 of Maitama, Abuja, with old File No: KN4584 and new File No: KN10573 covered by Right of Occupancy dated 31/01/2012 is a replacement of Plot 531 within Gwarinpa District, Abuja with File No: 4584, revoked by the 2nd Defendant.**
- 2. Whether the allegation of forgery made against the 1st Defendant by the Claimant in his Statement of Claim has been proved beyond reasonable doubt as required by law.**
- 3. Whether the Claimant has not divested or assigned or transferred his title, ownership, right and interest over both Plot No 531 situate at Gwarinpa District, Abuja with File**

No: KN10573 which was revoked and replaced with Plot No 3322 situate at Cadastral Zone A05 of Maitama with File No: KN10573.

- 4. Whether the 1st Defendant has established his title, ownership, right and interest with respect to Plot No 3322 situate at Cadastral Zone A05 of Maitama, Abuja with old File No: KN4584 and new File No: KN10573 covered by the Right of Occupancy dated 31/01/2012, the subject matter of this suit.**

The 2nd and 3rd Defendant's final address was filed on their behalves on 02/07/2018 by their learned counsel, **Ramalan Jibrin Abdullahi, Esq.**, who formulated two issues as having arisen for determination in this suit, as follows:

- 1. Whether this suit discloses a cause of action against the 2nd and 3rd Defendants?**

2. Whether having regards to the evidence led in this case, the Claimant is entitled to his claim.

The Claimant on his part filed his final address on 06/02/2019, wherein his learned counsel, **M. I. Tola, Esq.**, formulated a sole issue for determination in this suit, namely:

Whether from the available evidence placed before the Court, the Claimant has proof (sic-proved) that he never transferred his interest over Plot 3322 Cadastral Zone A05, Maitama, Abuja, to the 1st Defendant?

The respective Defendants thereafter filed their respective Replies on points of law to the Claimant's final address on 13/02/2019.

Upon a comprehensive appraisal of the pleadings before the Court, the reliefs claimed by the Claimant and the 1st Defendant's Counter-Claim; the totality of the admissible evidence led at the trial, the final

submissions of the respective learned counsel for the respective parties, my view is that the focal issues that have arisen for determination in this suit, without prejudice to the issues formulated by the respective learned counsel, could be succinctly distilled as follows:

- 1. Whether or not the Claimant establishes a subsisting right of occupancy over Plot 3322 in dispute in this suit;***
- 2. Whether the 1st Defendant's Counter-Claim before the Court is competent or not.***
- 3. If issue two is resolved in the affirmative, whether or not the 1st Defendant established his entitlement to the reliefs claimed by his Counter-Claim.***

TREATMENT OF ISSUES

ISSUE ONE:

The case of the Claimant is circumscribed in the *Statement on Oath* he deposed to on 09/07/2014. He testified that he was the original allottee and remains the valid title holder of the plot in dispute, being Plot 3322, Cadastral A05, Maitama, Abuja.

Now, it will be pertinent to bear in mind here that even though the general principle is that there are five ways in which a party can prove ownership of land; however, 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.

In response to this legal position; and in proof of his acclaimed legal title to the plot in dispute, the Claimant tendered in evidence photocopy of letter of offer of statutory right of occupancy, dated 31/01/2012, issued by the Director of Land Administration on behalf of the 2nd Defendant, granting him offer of statutory right of occupancy with respect to Plot No. 3322 of approximately 5571.77m² in Cadastral Zone A05, Maitama, Abuja. Attached to the offer letter is also a photocopy of the Site Plan delineating the said plot.

Records of Court bear out that at the trial proceedings of 25/02/2015, the said documents were only provisionally admitted in evidence as **Exhibits P1** and **P1A** respectively, with an undertaking by the Claimant's learned counsel at the material time, **A. Y. Abubakar, Esq.**, that certified copies of the same shall be produced in replacement

of the photocopies in the course of trial proceedings. This undertaking, learned counsel failed to fulfill.

Learned counsel for the 2nd and 3rd Defendants also noted in his final address, the failure of the Claimant's learned counsel to redeem his said undertaking to produce admissible copies of **Exhibits P1** and **P1A** that were provisionally admitted in evidence.

It is apparent that the documents **Exhibits P1** and **P1A**, for all intents and purposes, are public documents within the meaning of s. 102 of the **Evidence Act**. By the provision of s. 90(1)(c) of the **Evidence Act**, the only admissible secondary evidence of a public document is a certified true copy thereof.

That being the position of the law, the photocopies of the offer letter and the Site Plan tendered by the Claimant were inadmissible in evidence *ab initio*.

Since the Claimant failed to meet the condition for provisionally admitting the documents in evidence, **Exhibits P1** and **P1A** are liable to and are accordingly expunged from the records of this Court.

The seeming implication is therefore that the Claimant on his own failed to provide admissible evidence of his acclaimed title to the plot in dispute; and ordinarily this should have put an end to his case.

However, it is to be noted that in the course of proceedings, the 1st Defendant and the sole witness for the 2nd and 3rd Defendants tendered in evidence as **Exhibits D9** and **D18** respectively, certified true copies of the offer of statutory right of occupancy in issue, issued to the Claimant by the 2nd Defendant.

This being so, on the strength of the legal principle that a claimant for declaration of title to land is entitled to take advantage of or rely on evidence

led by the adverse party that strengthens his case, the Court holds, as having been well established, that the said Plot 3322 was offered to the Claimant *vide* **Exhibit D9/D18** respectively. See the Supreme Court decisions of Nkwo Vs. Iboe [1998] 7 NWLR (Pt. 558) 354 and Owie Vs. Ighiwi [2005] 5 NWLR (Pt. 917) 184, in this regard.

That settled, the case of the Claimant is further that he initially gave the 1st Defendant letter of authority to collect the said offer from the Abuja Geographic Information Systems (AGIS) on his behalf; but that the document was not issued to the 1st Defendant as a result of which he had to visit the office of the AGIS to personally collect the offer letter.

The Claimant further testified that the reason he had initially given the said letter of authority to the 1st Defendant in order to collect the letter of offer was part of an overall arrangement to commission the 1st

Defendant, after collecting the letter of offer, to raise funds to pay for the issuance of Certificate of Occupancy over the plot, because, at the material time, he (the Claimant), was not financially buoyant to personally pay the bill of **₱44,810,011.00** for the issuance of Certificate of Occupancy over the said plot.

The Claimant further testified that he trusted and relied on the 1st Defendant to assist in raising the said funds because he knew him to be a resourceful business facilitator with extensive contacts and also because of his close relationship with his late son-in-law; and that it was on the basis of the 1st Defendant's agreement to so assist to raise funds that he issued another letter of authority to him, upon the 1st Defendant's request.

The Claimant further testified that rather than helping him to raise funds as agreed, the 1st Defendant

absconded with the said letter of offer; and that he later found out that the 1st Defendant had sold the disputed plot to a third party and pocketed the proceeds.

The Claimant further testified that it was on the basis of this discovery that he wrote a petition to the **Economic and Financial Crimes Commission (EFCC)** against the 1st Defendant for betrayal and conversion of his property. He tendered in evidence as **Exhibit P2**, certified true copy of the said petition, dated 12 March, 2013.

The Claimant further testified that in the course of investigation of the petition he wrote to the **EFCC** against the 1st Defendant; the 1st Defendant made a statement to the **EFCC** wherein he stated that Plot 3322 was given in replacement for Plot 531, Gwarimpa District, Abuja, which he claimed to have purportedly purchased from him (the Claimant) but

which was subsequently revoked; but that he never sold the said Plot 531 to the 1st Defendant; that he never received from the 1st Defendant, consideration either for Plot 3322 or Plot 531; and that he never executed any Deed of Assignment or Power of Attorney to the 1st Defendant for the transfer of his interest or title over Plot 3322 and/or Plot 531.

It is to be noted that the Claimant further offered to tender records of proceedings in Suit No. FHC/ABJ/CS/241/2013 of 30th September, 2013, as evidence of the assertion that the **EFCC** investigations revealed discrepancies in the signatures on the Power of Attorney and the Deed of Assignment the 1st Defendant relied upon as his evidence of title; as well as File No. KN 10573 with the 2nd and 3rd Defendants, in further proof of his case; but did not tender any of these documents in evidence at the trial proceedings.

The summary of the totality of the testimony of the Claimant is that he remained the rightful allottee of Plot 3322 in dispute and that he did not relinquish his title thereof to the 1st Defendant or any other person whatsoever.

The Claimant also seemed to have anticipated the 1st Defendant's defence to the claim by also asserting that he never sold Plot 531 to the 1st Defendant and that Plot 3322 was not offered in replacement for Plot 531; even though he failed to give clear evidence of his involvement with the said Plot 531.

In defence of the of the Claimant's claim, the 1st Defendant not only denied the totality of the Claimant's claim; but also shed more light on the nexus between Plot 531 *supra* to the plot in dispute.

He testified that sometime in 2005, the Claimant sold the said Plot 531, situate at Cadastral Zone C02, Gwarimpa, measuring about 1,600 sq. metres to him.

He tendered in evidence as **Exhibit D1**, certified true copy of the document of offer of terms of grant/conveyance of approval dated 09/04/02, issued to the Claimant by the Ministry of the FCT with respect to the said Plot 531. He further tendered as **Exhibit D2**, original Power of Attorney purportedly donated by the Claimant to him on 20th April, 2005, with respect to the said Plot 531.

The 1st Defendant further testified that after the Claimant had transferred his interest with respect to Plot 531 to him, he was served with a Revocation Notice of the plot. He tendered in evidence as **Exhibit D5**, certified true copy of Revocation Notice issued on 4th May, 2006, by the Asst. Chief Land Officer, on behalf of the Minister of FCT to **Tanko Yakasai**, with respect to Plot 531 within Gwarinpa I (C02) District on grounds of “**previous commitment**” as stated in the Notice.

The 1st Defendant further testified that after the revocation, his Solicitors, **Messrs. Mamman Lawan & Co. (Yusufar Chambers)**, wrote letters to the 2nd Defendant appealing for re-instatement of the said plot or a possible re-allocation of another plot to him; and that it was on this basis that the 2nd Defendant re-allocated Plot 3322 as a replacement for the earlier revoked plot; after which the Claimant donated another Power of Attorney to him with respect to Plot 3322. The 1st Defendant tendered in evidence as **Exhibit D9**, certified true copy of the said letter of offer of statutory right of occupancy with respect to Plot 3322 (referred to earlier on); and he also tendered as **Exhibit D3**, original Irrevocable Power of Attorney purportedly donated by **Tanko Yakasai** (the Claimant) to him **Umaru Tela**, on 27th February, 2012, with respect to Plot 3322. He further tendered in evidence as **Exhibit D8**, purported Sale Agreement made on 27th

February, 2012, between **Tanko Yakasai**, the Claimant; and **Umaru Tela**, the 1st Defendant, with respect to the purported sale of Plot 3322 by the Claimant to the 1st Defendant.

The 1st Defendant denied the Claimant's assertion that the original right of occupancy with respect to Plot 3322 was handed over to him by the Claimant for purposes of any fundraising to pay for the Certificate of Occupancy; that they had no written agreement to that effect; that the Claimant indeed issued him letter of authority to receive right of occupancy over the said Plot 3322, tendering in evidence as **Exhibit D6**, original letter written by the Claimant on 2nd February, 2012, to that effect.

The 1st Defendant further testified that there was no basis for the Claimant to request him to raise funds to pay for the processing of the Certificate of Occupancy over Plot 3322, as the Claimant alleged;

since he did not own or manage any financial outfit; neither was he a fundraiser.

The 1st Defendant further testified as to the circumstances that led to the Claimant releasing the original right of occupancy over the disputed plot to him. He stated that the Abuja Geographic Information Systems (AGIS) did not honour the letter of authority issued to him by the Claimant, **Exhibit D6**, insisting that the allottee must be physically present to receive the letter of offer; that upon informing the Claimant of the difficulties he had faced in collecting the letter of offer, that the Claimant insisted that he will only assist him to collect the right of occupancy if he gave him an i-Phone and to lodge him in an hotel at his expense; and also by paying the sum of **₦1,000,000.00** to his bank account with **First City Monument Bank (FCMB)** in

order for him to facilitate the execution of the Power of Attorney to him with respect to Plot 3322.

The 1st Defendant further testified that he complied with the Claimant's requests by lodging him at **Summerset Continental Hotel** for one night from 23 February, 2012 to 24 February, 2012, to enable him accompany him to the AGIS to collect the right of occupancy; and that he also paid the said sum of **₦1,000,000.00** to the Claimant's bank account on 20 March, 2012 as he demanded. The 1st Defendant tendered in evidence as **Exhibits D7** and **D11** respectively, Invoice issued by **Summerset Continental Hotel** for payment of the sum of **₦55,000.00** to lodge **Alh. Tanko Yakasai** on the said dates; and the **First City Monument Bank (FCMB)** deposit slip by which the said payment of **₦1,000,000.00** was deposited to the Claimant's account No. 0739886019 on 20 March, 2012. He

further testified that he gave the Claimant an i-Phone 4 series, as he requested.

The 1st Defendant further testified that it was after he paid the said sum of **₦1,000,000.00** to the Claimant that he applied for the registration of the Power of Attorney donated to him by the Claimant. He tendered in evidence as **Exhibit D10**, copy of application letter dated 27/02/2012, written by the Claimant to the Director, AGIS, requesting for registration of Power of Attorney with respect to Right of Occupancy No. KN10573 in favour of **Umaru Tela**.

The 1st Defendant further insisted in his testimony that he was the one that applied for replacement of the revoked Plot 531 with Plot 3322, but with the Claimant's consent.

The 1st Defendant did not stand alone in his defence of the Claimant's claim to ownership of the plot in

dispute. He called two witnesses. One was **Abubakar Saraki**, his former staff, who testified as to the role he played in all of these transactions. The other witness is by name **Oluseye Ayo**, representing **First City Monument Bank Plc.**, summoned by *Subpoena duces tecum* to produce a certain deposit slip for the payment of the sum of **₦1,000,000.00** into the account of the Claimant on 20 March, 2012, by one **Abigail Michael**. The deposit slip was received and tendered from the Bar by the 1st Defendant's learned counsel as **Exhibit D11**.

The said **Abubakar Saraki (DW1)** testified that he witnessed to most of the transactions between the Claimant and the 1st Defendant; that on several occasions he deposited monies into the Claimant's account to facilitate the transfer of interest over Plot 531 from the Claimant to the 1st Defendant. The witness further confirmed that indeed the Claimant

transferred his interest over Plot 531 to the 1st Defendant in 2005, after which the same was revoked and that upon pleas of the 1st Defendant's Solicitors, the 2nd Defendant offered Plot 3322 to the 1st Defendant in replacement for the revoked Plot 531; and that a Power of Attorney was executed by the parties in that regard.

The rest of the **DW1's** testimony, more or less, is a repetition of the 1st Defendant's testimony already narrated in the foregoing.

The 2nd and 3rd Defendants also called evidence. One **Nuhu Ozaeyiza Hannatu** testified on their behalves as their sole witness. At the material time when she testified, the witness was a Principal Town Planning Officer working with the Lands Department of the Federal Capital Territory Administration. In her testimony, the witness shed more light on the case at hand. She confirmed that the Claimant applied for

land allocation in the FCT after which a File was opened for him with File No. KN. 4584 and thereafter was offered Plot 531 *supra*. In proof of this piece of evidence, she tendered as **Exhibit D12**, certified true copy of offer letter for Plot 531, dated 09/04/2002, issued to the Claimant on behalf of the Hon. Minister, FCT.

The witness testified further that sometime in 2004-2005, the 2nd Defendant introduced the process of recertification and re-issuance of Certificates of Occupancy with a view to resolving cases of fake titles and double allocations of plots within the FCT; that the process required all allottees of plots to fill Forms to regularize their titles; that the Claimant complied with this process by filling the relevant Form as a result of which he was given a new File No. KN 10573 and an acknowledgment for recertification. The witness tendered in evidence as **Exhibits D13**

and **D14** respectively, certified true copies of Application Form for Re-certification filled by the Claimant on 28th December, 2004; and document of Acknowledgment of receipt of original Right of Occupancy with respect to Plot 531 issued on 30/03/2005 by the 2nd and 3rd Defendants to the Claimant.

The witness further testified that during the verification exercise, it was discovered that Plot 531 originally offered to the Claimant had an issue of double allocation, as a result of which the Claimant's title over the plot was revoked/withdrawn. She tendered in evidence as **Exhibit D15**, certified true copy of the acknowledged Notice of Revocation dated 4th May, 2006, written on behalf of the 2nd Defendant to the Claimant. According to the witness, it is shown on **Exhibit D15** that the Notice was

collected by the 1st Defendant, **Umaru Tela**, on 20/06/2006.

The witness further testified that the Claimant, apparently dissatisfied with the revocation, wrote series of letters appealing to the 2nd Defendant, either to revisit the issue of revocation or provide him with an alternative plot. She tendered in evidence as **Exhibits D16, D16A – D16C**, certified true copies of the said letters written by the Claimant on 16th August, 2006; 23rd May, 2007; 11th March, 2008 and 8th August, 2008 respectively to the 2nd Defendant and the Director, AGIS, in that regard.

The witness further testified that the 2nd Defendant again received another letter from **Mamman Lawan & Co. (Yusufari Chambers)**, certified true copy of which she tendered as **Exhibit D17**, also seeking for replacement for Plot 531 which was revoked from the Claimant; that it was this letter that was worked

upon that resulted in the 2nd Defendant being advised to allocate alternative plot and as a result Plot 3322 was offered to the Claimant in replacement for the revoked Plot 531. She tendered in evidence as **Exhibit D18** certified true copy of offer of Statutory Right of Occupancy dated 31/01/2012, with respect to Plot 3322, Maitama, made on behalf of the 2nd Defendant in favour of the Claimant.

Now, as revealed from the totality of the evidence adduced on record and as recapitulated in the foregoing, it is clear that the issue as to the Claimant's claim of ownership of Plot 3322 cannot be fully resolved without a determination as to its connection with Plot 531. This determination becomes imperative in that, even though, as I noted in the foregoing, that the Claimant merely made veiled reference to Plot 531 in his testimony on oath without

necessarily shedding light on its connection with Plot 3322; the 1st Defendant on the other hand contended that the Claimant had initially sold Plot 531 to him and that when the plot was revoked, the 2nd Defendant offered Plot 3322 to him in replacement for Plot 531; and such, that the Claimant no longer had any legal claim over or proprietary interest in Plot 3322.

ON PLOT 531, GWARINPA

The overwhelming documentary evidence adduced both by the 1st Defendant and the 2nd and 3rd Defendant's sole witness clearly established that the said Plot 531 was initially allocated to the Claimant in 2002. **Exhibits D1** and **D12**, certified true copies of the said offer letter of Plot 531 to the Claimant by the 2nd Defendant on 09/04/2004, which were

unimpeached throughout the trial, are clear on this point.

Again, the Claimant, under cross-examination by learned counsel for the 2nd and 3rd Defendants, admitted this much:

“It is correct that I was allocated Plot 531 at Gwarinpa. It was a long time ago. I cannot remember the precise time.”

The unequivocal finding of this Court is therefore that the 2nd Defendant offered Plot 531, Gwarinpa, to the Claimant, in 2002, *vide Exhibit D12*.

ON WHETHER OR NOT THE CLAIMANT SOLD PLOTS 531 AND 3322 TO THE 1ST DEFENDANT

The case of the Claimant is that he did not sell either Plot 531 or Plot 3322 to the 1st Defendant or anyone else for that matter at any time. He also denied executing any documents of sale whatsoever

with respect to the said plots. He made these assertions in *paragraphs 17, 18 and 19* of the *Statement of Claim*. He repeated the same assertion in *paragraphs 15, 16 and 17* of his *Statement on Oath*.

Now, a determination as to whether the Claimant sold Plot 531 to the 1st Defendant or not is crucial, as this will necessarily clear the air as to whether he indeed sold Plot 3322 in dispute to the 1st Defendant, considering the defence put forward by the respective Defendants.

The 1st Defendant gave oral testimony that the Claimant sold Plot 531 to him in 2005. He stated that after he paid the agreed consideration, the Claimant executed Power of Attorney and Deed of Assignment in his favour. His evidence is further that after the sale of Plot 531 to him, the same was revoked by the 2nd Defendant and that it was by his

efforts that the 2nd Defendant later approved the offer of Plot 3322 as a replacement of Plot 531.

Now, the 1st Defendant copiously pleaded the circumstances of how the Claimant sold Plot 531 to him and how eventually Plot 3322 was offered in replacement for Plot 531. He also gave evidence along these lines.

The first point to be made is that indeed the Claimant filed Reply to the 1st Defendant's Statement of Defence, on 29/01/2014, to which an additional Statement on Oath, deposed to by the Claimant, is attached. In these processes, the Claimant copiously responded to the 1st Defendant's contentions with respect to the purported sale of Plots 531 and 3322, asserting emphatically that the Deed of Assignment referred to by the 1st Defendant was forged; and that he never donated any Power of Attorney in favour of the 1st Defendant.

However, it turned out that the Claimant failed to adduce any evidence whatsoever in support of the Reply he filed. This is so in that the Claimant failed to adopt the *Statement on Oath* he filed to support the facts contended in the Reply. The position of the law, as correctly argued by the 1st Defendant's learned counsel, is clear to the extent that pleadings do not constitute evidence; and that pleadings in respect of which no evidence is adduced is deemed abandoned. See Jolayemi Vs. Alaoye [2000] 12 NWLR (Pt. 887) 322; Abubakar Vs. Joseph [2008] 13 NWLR (Pt. 1104) 307.

It is equally trite, as the 1st Defendant's learned counsel argued, that a *Statement on Oath* not formally adopted by the maker or witness is irrelevant and lacks evidential value and it is deemed abandoned. See also Yusuf Vs. Obasanjo

[2005] 18 NWLR (Pt. 956) 96; Zubairu & Anor Vs. Mohammed & Anor. [2009] LPELR-51217(CA).

In effect therefore, the totality of the Reply filed by the Claimant on 29/01/2014, in purported response to the 1st Defendant's Statement of Defence is deemed abandoned. The implication is further that any aspect of the 1st Defendant's Statement of Defence, of which reply is required and which is not shown to have been discredited under cross-examination, will be accepted by the Court as having proved the 1st Defendant's defence. I so hold.

In this regard, I must fault the submissions of the Claimant's learned counsel, tending to lay the blame of the lack of diligence exhibited by the Claimant's learned counsel at the material time, for failure to get the Claimant to adopt the additional Statement on Oath he purportedly filed in support of his Reply to the 1st Defendant's Statement of Defence. It must

be reckoned that is not part of the duties of learned counsel for a defendant to teach a claimant's counsel how to conduct his case. As such, the Claimant and his learned counsel in the present case must personally take responsibility for the consequences of their tardiness in this respect.

Now, under cross-examination by the Claimant's learned counsel, the 1st Defendant testified further about his contention that the Claimant sold Plot 531 to him. He had this to say:

“I purchased Plot 531 from the Plaintiff. I paid ₦700,000.00 as purchase price to the Plaintiff. I paid partly by cash and also partly through my staff, Abubakar Saraki, to the Plaintiff's bank account. I paid ₦400,000.00 by cash and ₦300,000.00 to the bank account of the Plaintiff.”

The 1st Defendant's testimony here was further corroborated by the **DW1, Abubakar Saraki**, in

paragraph 4 of his *Statement on Oath*, when he testified that he deposited monies into the bank account of the Claimant to facilitate the transfer of interest between the Claimant and the 1st Defendant with respect to Plot 531. The **DW1** further maintained this position under cross-examination by the Claimant's learned counsel.

I have also noted the Power of Attorney tendered in evidence by the 1st Defendant as **Exhibit D2**. It was made on 20/04/2005, by the Claimant in favour of the 1st Defendant with respect to Plot 531. By the said Power of Attorney, the Claimant intended to transfer all his rights and interest in and over Plot 531 to the 1st Defendant. Even though the said Power of Attorney was not impeached at the trial, the position of the law remains that a power of attorney is not an instrument which confers, transfers, limits, charges or alienates any title to land to the

donee. It is only after, by virtue of the power of attorney, the donee leases or conveys the property, the subject of the power, to any person including himself that there can be said to be alienation. See Ude Vs. Nwara [1993] 2 NWLR (Pt. 277) 638 @ 665; Abu Vs. Kubayan [2002] 4 NWLR (Pt. 758) 599.

As such, **Exhibit D2** cannot be relied upon as evidence that the Claimant sold Plot 531 to the 1st Defendant. I so hold.

It is also noted that the 1st Defendant tendered a Deed of Assignment, purported to have been executed with him by the Claimant with respect to Plot 531, on 20th April, 2005. However, the said Deed of Assignment was rejected by this Court for being inadmissible in law on the ground that it was an unregistered registrable instrument tendered for the purpose of establishing sale of land.

However, of particular significance to the determination of the dispute in this suit is the Sale Agreement tendered by the 1st Defendant as **Exhibit D8**. It was executed between the Claimant and the 1st Defendant on 27th February, 2012, for the sale of Plot 3322 by the Claimant to the 1st Defendant.

Let me at first deal with the issue as to whether or not **Exhibit D8** is admissible in evidence, even though it was admitted without objection by the Claimant's learned counsel. The document is tagged "**SALE AGREEMENT..... IN RESPECT OF PLOT NO: 3322 STATUTORY RIGHT OF OCCUPANCY CADASTRAL ZONE A05 MAITAMA, ABUJA FILE NO: 10573 (OLD KN 4584).**"

Without doubt, this document is in the status of a purchase receipt which requires no registration in order for it to be admissible in evidence. This position conforms with the decision of the Court of Appeal in

Sankey Vs. Onayifeke [2013] LPELR-21997(CA),
where it was held as follows:

“The correct position of the law is as submitted by respondent's learned counsel to the effect that Exhibit A being a purchase receipt required no registration for it to be admitted in evidence. It is not a registrable instrument which required registration under Section 2 of the Lands Instrument Registration Law 1976 aforementioned. A purchase receipt is no more than being evidence of payment and acknowledgement of the same for the sale of a portion of land covered by it. Thus, generally an unregistered land sale agreement is good evidence which creates an equitable title in favour of the purchaser. Obijuru Vs. Ozims [1985] 2 NWLR (Pt. 6) 167 @ 179 - 181; [1985] 4 SC 142; Okoye Vs. Dumez [1985] 6 SC 3; [1985] 1 NWLR (Pt. 4) 783.”

The position of the law on this point was further espoused by the Court of Appeal in Farmers Supply

Company (KDS) Ltd. Vs. Mohammed [2009] LPELR-8196(CA), where it was held as follows:

“There are two broad stages that culminate in the vesting of title to a purchaser in land transaction. The first stage is the agreement or contract stage. This stage does not require the consent of the Governor under Section 22 of the Land Use Act. At this stage of entering into a contract for sale of land, no alienation has taken place as envisaged by the said Section 22 and therefore the requirement of consent of the Governor does not arise. Up to the point of arriving at a binding contract, no consent of the Governor is required as a legal prerequisite. The second stage involves alienating or transferring the vendor's right of occupancy and which is done by a conveyance or deed. Because this stage invariably involves the vesting of title in the purchaser, consent of the Governor must, as a legal prerequisite, be sought and obtained.”

In order to further underscore that **Exhibit D8** is intended to be a contract for sale of land/cum purchase receipt, it is clearly stated in clause (g) thereof that the transfer of the Claimant's rights over the plot is subject to obtaining the consent of the Minister of FCT.

In the present case, the case of the Claimant is that he did not sell either Plot 531 or Plot 3322 to the 1st Defendant and did not receive any money from him in that regard. As such, he contends that he still retains legal interest in Plot 3322. The case of the 1st Defendant, on the other hand, is that he paid the sum of **₦700,000.00** to the Claimant for the sale of Plot 531 to him and that the said sum was appropriated or converted for the sale of Plot 3322 when the same was offered to the Claimant in replacement for Plot 531 that was later revoked.

It is to be noted also that under cross-examination by the Claimant's learned counsel, the 1st Defendant testified further as follows:

“It was after I paid the ~~N~~700,000.00 to the Plaintiff that I signed Exhibit D8.”

In furtherance of the foregoing state of the evidence on record, the 1st Defendant tendered the Sale Agreement, **Exhibit D8**, in evidence to establish that he had an agreement with the Claimant relating to the sale of both Plot 531 which was revoked and subsequently Plot 3322; and that he paid the sum of **~~N~~700,000.00** to the Claimant as purchase price for the transaction. To that extent only, **Exhibit D8** is admissible in evidence and I so hold.

Now, on the issue of the credibility of **Exhibit D8**, I must note that apart from the fact that the Claimant's learned counsel did not object to its tendering at the trial, he also cross-examined the 1st Defendant on it

but failed to impeach its authenticity. As such, the contentions of the Claimant's learned counsel that the document was forged or that the Claimant did not sign it or that he did not have the opportunity to look at it in order for him either to admit or deny signing the same cannot arise. As I had noted earlier on, the Claimant, although filed a Reply to the Statement of Defence of the 1st Defendant, but failed to call any evidence in respect to the same. As such the Claimant is deemed, in law, to have admitted making the document. I so hold.

At this point, it is pertinent to remark that the Claimant's learned counsel must have misapprehended the state of the pleadings before the Court; and in particular the bounden duty on the Claimant who claims declaratory reliefs to adduce cogent evidence to establish the same, when he argued severally that the 1st Defendant failed to put

the documents he relied on to the Claimant under cross-examination. Learned Claimant's counsel also raised the doctrine of *non est factum*, contending that the Claimant was not shown to have signed the documents tendered by the 1st Defendant.

All of these arguments clearly overlooked the Claimant's bounden responsibility to prove his case without reference to the 1st Defendant's defence, except the aspect that supports his case. See Dumez Nigeria Ltd. Vs. Nwakhoba [2009] All FWLR (Pt. 461) 842.

Furthermore, the Claimant, having failed to adduce evidence to support the Reply he filed to the 1st Defendant's Statement of Defence, is deemed to have admitted the new issues raised in the defence to which he ought to have responded by way of Reply. I so hold.

Another significant relevance of **Exhibit D8** is that an examination of its recital seems to have shed more light on the nexus between Plot 531 and Plot 3322 and the intentions of the Claimant and the 1st Defendant when the document was made.

A “**recital**” is defined as a preliminary statement in a contract or deed explaining the reasons for entering into it, or the background of the transaction, or showing the existence of particular facts. See Suu Vs. Jobak Nigeria Ltd. [2012] LPELR-2147(CA).

The legal essence of a recital was further expatiated upon by the Court of Appeal in Ashaka Cement Vs. Asharatul Mubashshurun Investment Ltd. [2016] LPELR-40196(CA), where it was held as follows:

“A recital ... is usually preceded by the word ‘whereas’. It is settled that where a recital contains a statement of the existence of a fact, it constitutes an estoppel and the party or parties who made the

statement in the recital are not allowed to deny subsequently the existence of that fact - Oyefeso Vs. University College Hospital Board of Management [1930] NCLR 94 at 103, Ejigini Vs. Ezenwa [2003] 16 NWLR (Pt.846) 420.”

In the instant case, the recital to **Exhibit D8** contains some statements of fact that seem to have been established by some other concurring oral and documentary evidence adduced in the course of trial.

Paragraph (a) of the recital states essentially that the Claimant assigned his interests in Plot 531 to the 1st Defendant for a consideration of the sum of **₦700,000.00**. This statement accords with the evidence, particularly extracted from the 1st Defendant by the Claimant’s learned counsel under cross-examination, thereby debunking the testimony of the Claimant that he did not sell Plot 531 to the 1st Defendant.

Again, paragraph (b) of the recital states that Plot 531 was revoked by the 1st Defendant on 4th of May, 2006. The Notice of Revocation tendered in evidence by the 1st Defendant as **Exhibit D5**; and subsequently by the sole witness to the 2nd and 3rd Defendants as **Exhibit D15** supports this fact.

Paragraphs (c) and (d) of the recital further state that with the consent of the Claimant, the 1st Defendant made representations to the 2nd Defendant to allocate another plot in replacement for the revoked Plot 531 and that Plot 3322 was offered to the Claimant in that regard. To corroborate these facts, the **DW3** tendered documents, **Exhibits D16** series; and **Exhibit D17**, to establish that the Claimant and his Solicitors wrote letters to the 2nd Defendant to plead for a replacement for the revoked Plot 531. The **DW3** further testified that it was on the consideration of the Solicitor's letter, **Exhibit D17**,

that the 2nd Defendant eventually offered Plot 3322, covered by **Exhibit D19**, to the Claimant in replacement for Plot 531.

In order to further establish that there is a link between the revoked Plot 531 and Plot 3322, it will be seen that the document of offer of Statutory Right of Occupancy with respect to Plot 3322 by the 2nd Defendant to the Claimant, **Exhibit D19**, contains the Claimant's Old File No. KN 4584, on the basis of which Plot 531 was processed; and the new File No. KN 10573, upon which Plot 3322 was processed.

On the basis of the overwhelming oral and documentary evidence on record as analyzed in the foregoing, I must reject the testimony of the Claimant that he gave the Right of Occupancy with respect to Plot 3322 to the 1st Defendant to raise the sum of **~~N~~44,810,010.00** for processing issuance of Certificate of Occupancy over the plot. Apart from

the fact that the testimony of the Claimant is a bare assertion that is not supported by any concrete evidence; I believe the plausible testimony of the 1st Defendant, which is supported by documentary evidence, of how the AGIS refused to honour the Letter of Authority issued to him by the Claimant to obtain the Right of Occupancy over Plot 3322, after which he had to invite the Claimant to Abuja, lodged him in an hotel to enable him accompany him (the 1st Defendant) to the AGIS to obtain the Right of Occupancy; and how, after this was done the Claimant handed over the document to him in line with their agreement that Plot 3322 shall be a replacement for the revoked Plot 531 for which the 1st Defendant had already paid the Claimant the sum of **₦700,000.00** at the material time.

The said Letter of Authority, **Exhibit D6**, which apparently also establishes that there was a link between Plot 531 and Plot 3322, states thus:

“02 February, 2012

The Director of Land,

Abuja Geographic Information System (AGIS),

Federal Capital Territory,

Abuja.

LETTER OF AUTHORITY

I, Alhaji S. A. Tanko Yakasai of No. 45 Sagir Kumashi, Kawaji-Kano, hereby authorized (sic) Umar Tela of No. 7, Durban Street, Wuse 2, Abuja, to collect on my behalf the Right of Occupancy (R of O) file No. KN 4584/10573 in respect of my land earlier revoked and now replaced.

Kindly accord him the necessary assistance.

Accept my best regard please.

Sincerely yours,

(Signed)

Alh. S. A. Tanko Yakasai

08067779280

08097779280”

(Underlined portion for emphasis)

Indeed the Claimant made reference to a Letter of Authority he executed in favour of the 1st Defendant in *paragraphs 9 and 10* of his *Statement on Oath* but he apparently hid the truth when he stated that the purpose for the Letter of Authority was to enable the 1st Defendant raise funds on his behalf to pay for processing the Certificate of Occupancy. For one, he failed to disclose how he arrived at the amount of **N44,810,010.00** which he claimed was the bill for the issuance of the Certificate of Occupancy for Plot 3322. He tendered no such bill before the Court.

To further show the correct sequence of events, the 1st Defendant tendered the Invoice, **Exhibit D7**, issued by **Summerset Continental Hotel** for the accommodation of the Claimant on 23/02/2012 – 24/02/2012, which supports the inference that indeed the Claimant visited Abuja from his Kano base, was lodged in the hotel as he demanded from the 1st Defendant, for the purpose of accompanying him to the AGIS to collect the Right of Occupancy over Plot 3322.

The Claimant again lied against documentary evidence, when under cross-examination, he insisted that he did not receive the sum of **₦1,000,000.00** from the 1st Defendant; whereas the Deposit Slip, **Exhibit D11**, clearly established that the said sum of **₦1,000,000.00** was deposited by one **Abigail Michael** to the Claimant's account at **FCMB** on 20/03/2012. The said **Exhibit D11**, and the 1st

Defendant's oral testimony that the said **Abigail Michael** was his staff, whom he sent to deposit the money in the Claimant's bank account, were not challenged under cross-examination.

The Claimant, again, under cross-examination by the 1st Defendant's learned counsel, admitted to receiving an i-Phone 4 from the 1st Defendant thereby confirming the 1st Defendant's claim. But he denied demanding for the phone; he stated that it was a freewill gift from the 1st Defendant to him.

Again, the Sale Agreement, **Exhibit D8**, made between the Claimant and the 1st Defendant on 27/02/2012, was a crystallization of the agreement between the two parties with respect to Plot 3322, as properly captured in the recital thereof.

It is also to be noted that on the same 27/02/2012, the Claimant wrote an application to the Director of AGIS, seeking to register Power of Attorney he made

in favour of the 1st Defendant with respect to Plot 3322. The said application, admitted in evidence as **Exhibit D10**, reads as follows:

***“No. 45, SAGIRH KUMASI KAWAJI,
KANO.***

27/02/2012

***The Director,
Abuja Geographical Information System (AGIS),
Abuja.***

Dear Sir,

***APPLICATION TO REGISTER AN IRREVOCABLE
POWER OF ATTORNEY IN RESPECT OF
STATUTORY RIGHT OF OCCUPANCY NO KN
10573 (OLD FILE KN 4584) dated 31st JANUARY,
2012***

***I am the holder of the above mentioned Statutory
Right of Occupancy and now wish to register it in
favour of UMARU TELA of No. 7, DURBAN STREET,***

WUSE 2, ABUJA, FCT. Find attached copies of the Power of Attorney for your kind consideration and approval.

Yours faithfully,

(Signed)

TANKO YAKASAI''

The 1st Defendant further tendered in evidence the counterpart Irrevocable Power of Attorney referred to in the letter, **Exhibit D10**, as **Exhibit D3**. Both **Exhibits D10** and **D3** were made the same day, 27/02/2012; and were not impeached at the trial by the Claimant.

The **DW1, Abubakar Saraki**, whose name appeared on both **Exhibit D8**, the Sale Agreement and the Irrevocable Power of Attorney, **Exhibit D3**, as witness, gave oral evidence in that regard to confirm that he witnessed the execution of the documents for the 1st Defendant.

Under cross-examination by the Claimant's learned counsel, the **DW1** further testified as follows:

“The agreements were signed in 2012. It is correct to say that I witnessed the agreements. ... When the agreements were signed in 2012, the Plaintiff and the 1st Defendant were present. I signed the documents in their presence. ... It is correct that I stated that the Plaintiff executed Power of Attorney in favour of the 1st Defendant in respect of Plot 3322, Maitama. The Power of Attorney was executed in 2012. I was witness to the execution of the Power of Attorney.”

It is also pertinent to note the testimony of the 1st Defendant, under cross-examination by the Claimant's learned counsel that he was unable to proceed with the registration of the instruments executed in his favour by the Claimant with respect to Plot 3322 because of the petition the Claimant wrote against him to the EFCC.

To further underscore the credibility of the 1st Defendant's defence that the Claimant agreed to sell Plot 531 to him which was later revoked; the endorsement on the face of the Revocation Notice, **Exhibit D15** tendered in evidence by the **DW3**, shows that it was **Umar Tela**, the 1st Defendant, that collected the original Revocation Notice on 20/06/2006; and the only plausible explanation why it was the 1st Defendant and not the Claimant, that collected the Revocation Notice, considering the totality of the evidence on record, is that the Claimant had already divested himself of his interest in the plot of land as of that time. I so hold.

I agree with the arguments of the 1st Defendant's learned counsel, on the basis of totality of the unassailable evidence adduced by the 1st Defendant, that indeed there was a meeting of mind between the Claimant and the 1st Defendant to sell Plot 531

to the 1st Defendant and subsequently for Plot 3322 to replace the revoked Plot 531. The intention of both parties is clearly encapsulated in the Sale Agreement, **Exhibit D8**. This Court is duty bound to construe the document on the basis of the clear intentions expressed therein; which, in simple terms is that the Claimant agreed to accept from the 1st Defendant the sum of ~~₦~~**₦700,000.00** initially paid to him by the 1st Defendant for the sale of Plot 531 as “**disposal price**” for Plot 3322 . I so hold.

It is also pertinent to make reference to the testimony of the Claimant that he reported the 1st Defendant to the EFCC for betrayal and conversion of his property. He tendered copy of the said petition in evidence as **Exhibit P2**. He further sought to rely on the findings of the EFCC to show that there were discrepancies in his signatures on the documents relied upon by the 1st Defendant to show that he sold

Plot 3322 to him. However, as correctly noted by learned counsel for the 2nd and 3rd Defendants, the Claimant failed to adduce any further evidence on the outcome of the EFCC investigation so as to show whether indeed any *prima facie* case of conversion of property was made out against the 1st Defendant. As such, merely tendering **Exhibit P2** has not in any way improved or added any probative value to the Claimant's case and I so hold.

I must also find that learned Claimant's counsel's further argument that the 1st Defendant merely tendered documents without demonstrating them at the trial before the Court is misconceived. As has been shown in the appraisal of the evidence adduced on record in the foregoing, not only did the 1st Defendant adduce oral evidence to demonstrate the documents he tendered, he also called witnesses

to further give oral evidence in support of the documents.

In totality, the finding of the Court is that the Claimant's contention that he remains the valid owner and title holder of Plot 3322, covered by the Right of Occupancy, **Exhibit D9/18**, is not supported by evidence led at the trial. I so hold.

It is also the finding of the Court, on the basis of the overwhelming evidence adduced by the 1st Defendant which heavily discredited the testimony of the Claimant, that the Claimant lied on oath when he testified that the purpose for which he handed over the original Right of Occupancy of Plot 3322 to the 1st Defendant after collecting the same from AGIS was for the 1st Defendant to assist him source for funds to pay for processing the Certificate of Occupancy of the plot. I further so hold.

On the whole, I resolve issue (1), as set out against the Claimant and hold that he has failed to establish a subsisting legal title over Plot 3322. Consequently, I further hold that the Claimant, having divested himself of equitable title over Plot 3322, on the basis of the totality of the documentary evidence adduced by the 1st Defendant, is not entitled to any of the ancillary reliefs claimed in this suit.

ISSUE TWO:

The issue here devolves on the competence of the 1st Defendant's Counter-Claim.

The Claimant's learned counsel had contended that the 1st Defendant failed to support his Counter-Claim, being a cross action, with separate pleadings and evidence and as such must fail.

The provision of **Order 23 Rule 16** of the **Rules** of this Court as applicable as of the time the 1st

Defendant filed his Statement of Defence and Counter Claim states as follows:

“Where a defendant seeks to rely on a fact as supporting a right of set-off or counter-claim, he shall, in his statement of defence, state specifically that he does so by way of set-off or counter-claim as the case may be and the particulars of the set-off or counter-claim shall be given.”

This provision of the **Rules**, similar to the provision of **Order 17 Rules 6** and **7** of the extant **Rules** of this Court, has been given judicial interpretation in a number of decided cases and by learned authors of published works on Civil Procedure. In the book, Civil Procedure in Nigeria, by **Fidelis Nwadialo, SAN** 2nd Edition, the learned author discussed counter-claim in Chapter 21 thereof and opined as follows (@ pages 396-397):

“Although a counter-claim is pleaded in the ‘Statement of Defence,’ the facts constituting it are pleaded separately. These facts come under a heading “Counter-claim”, and are stated in numbered paragraphs, following on in the same serial, from those of the defence and not starting a new series. The heading, “Counter-claim”, distinguishes these facts from those alleged by way of ordinary defence. But the absence of such heading would not invalidate a counter-claim which otherwise is properly pleaded. If any fact which has been alleged under the defence proper is also material for the counter-claim, it has to be alleged again under “counter-claim”. But it is not necessary to restate the facts literally as it can be incorporated in the counter-claim by reference. This is done by the use of the expression, “And by way of Counter-claim, the defendant repeats the allegations contained in the relevant paragraphs of the defence.” Facts material to the counter-claim which are only alleged in the defence but are not

repeated under “Counter-claim” or incorporated therein by reference as illustrated above, cannot be used by the defendant in establishing the counter-claim.”

(Underlined portions for emphasis).

For his propositions, the learned author referred to the authorities of Oseyomon Vs. Ojo [1997] 7 SCNJ 365 @ 380-381; Benbow Vs. Low [1880] 13 Ch. D 553.

I had carefully examined the Statement of Defence filed by the 1st Defendant on 04/10/2013, which is the extant pleading he relied upon in this suit. The said Statement of Defence contained a total of seventeen (17) main paragraphs. Apart from this, the only portion of the pleadings that constitutes the Counter-Claim is the relief portion captioned:

“COUNTER CLAIM

WHEREOF the 1st Defendant Counter Claim (sic) against the Plaintiff as follows:

a. AN ORDER of this Honourable Court dismissing the Plaintiff's claim as contained in the Statement of Claim. ..."

In the purported Counter-Claim, the 1st Defendant merely set out the nine (9) reliefs he sought to claim against the Claimant thereby. He however failed to plead, by separate paragraphs, the facts he sought to rely upon for his Counter-Claim. He did not also indicate that he incorporated by reference, facts averred in the Statement of Defence as constituting the same facts upon which the Counter-Claim is grounded.

The position of the law is that merely claiming reliefs by way of counter-claim without pleading facts upon which those reliefs are based did not make for a proper and valid counter-claim. The position of the

learned author, **Nwadialo, SAN** (of blessed memory), reproduced in the foregoing was fully endorsed by the Court of Appeal in the recent decision of Rikichi Vs. Gambo [2019] LPELR-315223(CA).

The issue is further cleared by the Court of Appeal in Nduka Vs. Agbai [2018] LPELR-4231(CA), where it was held, per **Oredola, JCA**, as follows:

“Most defendants while drafting their statement of defence usually do so with the intention of utilizing the pleaded facts in support of their counter-claim, which ordinarily is permissible provided there is a clear cut indication by the defendant in his counter-claim that he intends to rely on the pleaded facts of his statement of defence. But where no such indication is made or any fact pleaded by the defendant in respect of the counter claim, any piece of evidence adduced in support of the said counter-claim goes to no issue. See the cases of Okonkwo

Vs. C. C. B. [2003] All FWLR (Pt. 154) 457; Adeniyi v. Oroja [2006] All FWLR (Pt. 324) 1834; Ali Vs. Salihu [2010] LPELR - 3744, [2011] 1 NWLR (Pt. 1213) 227 and Friday & Ors. Vs. The Governor of Ondo State & Anor. [2012] LPELR - 7886.”

See also Amosun Vs. INEC [2010] LPELR 4943(CA), where the Court of Appeal also held as follows:

“... a party cannot claim a relief/reliefs in vacuo and that any reliefs claimed in a case must relate to, arise from or be based on the facts set out in the pleadings of the party. The facts averred in the pleadings are the foundation from which any relief/reliefs in a case must be built and based otherwise the relief/reliefs would have no legs to stand in law. Specific reliefs cannot therefore be claimed without the relevant facts in the pleadings which ground them.”

See also Neka Vs. Kunini [2015] LPELR-26031 (CA).

Applying these authorities to the case at hand, it turns out that the reliefs claimed by way of Counter-Claim by the 1st Defendant without pleading facts to ground such reliefs make the reliefs bare and impotent and incapable of delivering any benefits to him. I regrettably so hold.

The implication is further that the totality of the credible evidence adduced by the 1st Defendant as already analyzed in the foregoing upon which the Court made findings are only valid to constitute his defence to the Claimant's claim and no more. I further so hold.

Without any further ado therefore, I hold that there is no competent Counter-Claim made out by the 1st Defendant against the Claimant in this suit; as such the reliefs claimed thereby are hereby struck out.

In the final analysis, having found no merit in the Claimant's case in the main, the same shall be and is

hereby accordingly dismissed. In the same token, the 1st Defendant's Counter-Claim, having been found to be incompetent, shall be and is hereby struck out. Parties shall bear their respective costs.

OLUKAYODE A. ADENIYI
(Presiding Judge)
11/05/2020

Legal Representation:

M. I. Tola, Esq. – (with Amina Ahmadu (Ms.)) – for the Claimant

Mahmud A. Magaji, Esq. SAN – (with Danjuma G. Ayeye, Esq.; Efut Okoi, Esq.; Chima Obih, Esq.; Foluso Adedeji (Ms.); M. O. Ubaneche, Esq.; Mariam Mohammed Abdulkadir (Miss); Khadija Mustapha (Miss) & Ehi Ejeh (Miss)) – for the 1st Defendant

H. U. Ivoke, Esq. – for the 2nd & 3rd Defendants

Cardoso Vs. Daniel (supra) wherein it was held that the Court owes it the duty to consider the case and claim of parties on its merit and not allow the coverings and clouds of technicality to dim its vision on the road to justice.

"...the law is firmly settled that documentary evidence remains the best evidence through which claims in court can easily be proved and also disproved. A.G. Bendel State v. UBA Ltd (1986) 4 NWLR (pt. 37) 547; Agbareh v. Mimre (2008) 2 NWLR (pt. 1071) 378 at 411. Hence, documentary evidence is the hanger or yardstick upon which oral evidence by witnesses in an action are assessed.