

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**

**IN THE ABUJA JUDICIAL DIVISION**

**HOLDING AT APO**

**SUIT NO: FCT/HC/CV/3522/13**

**DATE: 25-06-2020.**

**MALLAM HALILU WAWIYA LAMORDE ..... PLAINTIFF  
(SUING THROUGH HIS LAWFUL ATTORNEY MRS. CHRISTINE  
ADESUA PANDA)**

**AND**

- 1. MRS. ONAIWU ENOGHADO GIWA OSAGIE ..... DEFENDANTS**
- 2. HON. MIN. FED. CAP. TERR. ADMINISTRATION**
- 3. FED. CAP. DEVELOPMENT AUTHORITY**
- 4. ABUJA GEOGRAPHICAL INFORMATION SYSTEM**

**JUDGMENT**

**(DELIVERED BY HON. JUSTICE SULEIMAN B. BELGORE)**

By an amended statement of claim, the Plaintiff – MallamHaliluWawiyaLamorde (Suing through his lawful Attorney, Mrs ChistineAdesua Panda) – prayed this court for the following reliefs;

- 1. A DECLARATION** that the Plaintiff is the rightful and exclusive owner of the land and its appurtenances, which is lying and situate at plot 132, with file number ED 10694 measuring approximately 2000 sq. meters located within cadastral zone B04, Jabi-Abuja.

2. **A DECLARATION** that the act of the 1<sup>st</sup> Defendant in its totality is unlawful and amounts to trespass to the property.
3. **A DECLARATION** that the purported “CAVEAT” notice placed on the Plaintiff’s land by the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendant is ultra vires, illegal, void and of no effect.
4. **AN ORDER** of perpetual injunction restraining the 1<sup>st</sup> Defendant, its agents, privies servant or representatives from parading as owner of the property and committing further trespass and structural alteration of the property and its appurtenances.
5. To pay the sum of N5,000,000 (Five Million Naira) only as General and special damages for trespass to the property.
6. The sum N2.000.000 (Two Million Naira) for the cost of this action.

The Defendants are:

1. Mrs Onaiwu Enoghado Giwa Osagie.
2. Hon. Minister of Federal Capital Territory Administration.
3. Federal Capital Development Authority.

#### 4. Abuja Geographic Information System.

Subsequent to the amended Statement of Claim of the Plaintiff, the 1<sup>st</sup> Defendant also amended her own Statement of Defence. The amended Statement of 1<sup>st</sup> Defendant contained a counter claim. In brief the amended Statement of Defence and Counter-claim dated and filed on the 24<sup>th</sup> March, 2014 prayed for the following reliefs:

1. **A DECLARATION** that Plot No. 132, Cadastral Zone B04, also known as No. 31 AsheikJarma Street, Jabi, Abuja was originally allocated to MallamHaliluWawiyuLamorde by the Honourable Minister of the Federal Capital Territory, Abuja.
2. **A DECLARATION** that Mrs. OnaiwuEnoghadoGiwaOsagie is the equitable beneficial owner of all that property situate and lying at Plot 132, Cadastral B04, also known as No. 31 AsheikJarma Street, Jabi, Abuja further to receipt of the purchase price from her by MallamHaliluWawiyuLamorde on the 21<sup>st</sup> July, 1997.
3. **A DECLARATION** that MallamHaliluWawiyuLamorde is not the Donor of the Power of Attorney registered as No. FC64 at page 64 of volume 42PA of the Land registry, Abuja and registered on the 7<sup>th</sup> June, 2005 by the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants wherein Christine Adesua Panda was appointed as his Attorney having never consented to her appointment or sign/executed the Power of Attorney.

4. **A DECLARATION** that the signature on the Power of Attorney registered as No. FC64 at page 64 of volume 42PA of the Land Registry, Abuja and registered on the 7<sup>th</sup> June, 2005 purporting to be the valid signature of MallamHaliluWawiyaLamorde was forged having never signed same himself.
  
5. **A DECLARATION** that the Power of Attorney registered as No. FC64 at page 64 of volume 42PA of the Land registry, Abuja and registered on the 7<sup>th</sup> June, 2005 confers no title or power on Christine Adesua Panda to deal and act in relation to Plot 132, Cadastral Zone B04, also known as No. 31 AsheikJarmaStreet ,Jabi, Abuja for or on behalf of MallamHaliluWawiyaLamorde or his privy and successors in title.
  
6. **A DECLARATION** that the purported claims of Christine Adesua Panda to Plot 132, Cadastral Zone B04, also known as No. 31 AsheikJarma Street, Jabi, Abuja on the strength of deriving title from MallamHaliluWawiyaLamorde is an infraction to title of the Counter Claimant and therefore null and void.
  
7. **AN ORDER** setting aside the registration of the Power of Attorney registered as No. FC64 at page 64 of volume 42PA of the Land Registry, Abuja and registered on the 7<sup>th</sup> June, 2005 appointing Christine Adesua Panda as the Attorney of MallamHaliluWawiyaLamorde from the Register of the Land registry, Abuja.

8. **AN ORDER** setting aside and cancelling the name of Christine Adesua Panda from the register of title in the Land Registry of the Federal Capital Territory, Abuja in relation to Plot 132, Cadastral Zone B04, also known as No. 31 AsheikJarma Street, Jabi, Abuja not being not being an Attorney or deriving any title from the original allottee of the plot, MallamHaliluWawiyaLamorde or his privy and successors in title.
9. **AN ORDER** of perpetual injunction restraining Christine Adesua Panda from laying claim or asserting ownership to all or any part of that property situate at Plot 132, Cadastral Zone B04, also known as No. 31 AsheikJarmaStreet,Jabi, Abuja on the strength of deriving title from MallamHaliluWawiyaLamorde whether by herself or her heirs, personal representatives and successor in title or howsoever called.
10. **AN ORDER** for cost.

The 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants did not defend this suit. They filed no Statement of Defence. However, upon subpoena ducestecum served on them, they (2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants) tendered documents in Court.

The nerve of this case this case is the sour relationship between a mother and a daughter. The sudden friction started, I would say, in very unforeseen manner. But once it started, it became very uncontrollable and the evidence of my observation is this case in court and the duration it has

lasted here and the fact of the case being fought up to judgment stage.

I recalled, that efforts were made, I was told by learned counsel to both parties to effect out of court settlement. But their efforts yielded no positive result. At a stage, I was moved in open court to persuade both sides to heed the call of their counsel for settlement. It is obvious that my brief and courteous intervention also yielded negative result. So, here we are, the case went through the entire gamut of trial and it is the outcome that I am reading now.

What is the case of the Plaintiff as presented during trial?

## REVIEW OF EVIDENCE

The nerve of this case as The Plaintiff's Attorney, Mrs. Christine Adesua Panda under Examination-in-Chief testified on the 3<sup>rd</sup> April, 2014 as PW1, being the sole witness for the Plaintiff. She adopted her Witness Statement on Oath sworn on 22<sup>nd</sup> January, 2014 and tendered 16 documents which were admitted by consent of Counsel, viz:

1. Student overdraft facilities dated 12/11/96, 12/11/97, 10/10/96, September, 2011, 96/97-29/10/96- marked as **Exhibit A.**
2. Federal Housing Authority Letter of provisional allocation and its undertakings- marked as **Exhibit B.**

3. Entry and exit pages of British International Passport- marked as **Exhibit C**.
4. The teller number 22035 dated 30/4/2005 of the sum of N51,212.28 only for the payment of Ground Rent- marked as **Exhibit D1**.
5. Payment teller number 1342 for the payment of ground rent dated 27/4/2005- marked as **Exhibit D2**.
6. International passport number C496276- marked as **Exhibit E**.
7. Application letter to the Director of Lands AGIS of CTC of title documents dated 18<sup>th</sup> April, 2013- marked as **Exhibit F**.
8. Police extract- marked as **Exhibit G**.
9. Court affidavit of loss of title of documents- marked as **Exhibit H**.
10. CTC of the National Dailies publications- marked as **Exhibit 11, 12, and 13**.
11. Receipt of payment of ground rent with teller number and receipt numbers 000149624, 0035636, 0048250 and 0035646 dated 18/04/2013, 18/04/2013, 18/04/2013 and 8/5/2013 respectively- marked as **Exhibits J**.

12. A copy of the notice of ground rent dated 18/04/2013- marked as **Exhibit K**.
13. A copy of money transfer dated 25/03/2009- marked as **Exhibit L**.
14. Copy of money transfer dated 19/05/2009- marked as **Exhibit M**.
15. Copy of the letter of instruction to apply to CTC dated 20<sup>th</sup> May, 2013- marked as **Exhibit N**.
16. Letters to the Minister of FCT and Director of Lands AGIS on the CAVEAT dated 14<sup>th</sup>, 15<sup>th</sup>, and 16<sup>th</sup> May, 2013- marked as **Exhibit O**.
17. Letter to the Director of AGIS dated 28<sup>TH</sup> May, 2013- marked as **Exhibit P**.

**PW1's evidence-in-chief runs thus:**

PW1, the Plaintiff's Attorney, Mrs Christine Adesua Panda testified and adopted her Witness Statements on Oath as amended dated 22<sup>nd</sup> January, 2014 as her written evidence in the case and testified as follows during her Examination-in-Chief:

- That she knows the 1<sup>st</sup> Defendants as her biological mother.



- That she adopted the witness Statement on Oaths as amended and dated the 22<sup>nd</sup> January, 2014, as her witness statement in this case.
- That she was a married woman with Children and that she is domiciled in the United Kingdom.
- That her maiden name was Christine Adesualyobehebe and later changed via an affidavit of change of name to Christine Adesua Panda.
- That as at the year 1996, while she was still married, was also a student of Housing Management at the University of Middlesex, London, United Kingdom.
- That she was well taken care of by her late husband financially and morally and was also entitled and earning student grants, loans and Bank overdraft as at the year 1996.
- That sometime in 1997, the 1<sup>st</sup> Defendant approached and invited her to come and purchase property in Abuja, and as investing in landed property is lucrative and appreciating in future.
- That by virtue of the fact that the 1<sup>st</sup> Defendant, being her Mother, had earlier in the year 1996, having sent money to her for the purchase of the House No. 72, 3<sup>rd</sup> Avenue, Lugbe, FHA Estate, Abuja had signed and obtained all the legal documents on behalf of the Plaintiff, and sent the said allocation documents to her

in the United Kingdom, made her to trust and believe the 1<sup>st</sup> Defendant.

- That after much pressure from the 1<sup>st</sup> Defendant for her to come and inspect some available properties in a good location in Abuja.
- That she flew into Lagos-Nigeria on the 9<sup>th</sup> June, 1997 and left for Benin, Edo State the next day being the 10<sup>th</sup> June, 1997, spent some days with the 1<sup>st</sup> Defendants in Benin, and afterwards departed by road transportation to Abuja for the inspection of the available Lands.
- That having been taken to properties in Durumi and Area 1 Districts, where the 1<sup>st</sup> Defendant had her own Lands, which she declined not interested in the location and subsequently led to the Jabi District, Abuja by the 1<sup>st</sup> Defendant and her agent, which upon her arrival to the Plot 132, Jabi, Abuja, she immediately showed interest in the Plot for future development.
- That having developed her interest on the said Plot 132, Jabi District, Abuja, and after the 1<sup>st</sup> Defendant confirmed the amount for the sale from the Land owner, on the second day, the Plaintiff having exchanged some British pounds sterling in her possession, gave the sum of N1,000,000.00 (One Million Naira) and later on gave the sum of N3,500 (Three Thousand, Five Hundred Pounds) to the 1<sup>st</sup> Defendant for the purchase of all that property lying at Plot 132 Jabi District, Abuja.

- That after she gave the amount of money to the 1<sup>st</sup> Defendant, she requested for the receipt and documents to be executed for the sale, but the 1<sup>st</sup> Defendant did tell the Plaintiff that the solicitor to the Land owner was working on the transfer documents for the execution.
- That barely three days after the purchase of the land, the 1<sup>st</sup> Defendant brought copies of the Deed of Assignment and Power of Attorney between the Donor (Mallam Halilu Wawiya Lamorde) and herself to her.
- That having executed the space shown to her for execution on the transferred documents, and the 1<sup>st</sup> Defendant informed the Plaintiff of the needs for the Donor to execute his portion of the documents and based on trust, she handed over the signed documents to the 1<sup>st</sup> Defendant for onward execution of Mallam Lamorde and afterwards to obtain all the transferred documents and keep them on her behalf.
- That she trusted the 1<sup>st</sup> Defendant based on the fact that she is her biological mother, being a senior Lawyer and having purchased a property for her in Lugbe Abuja in the year 1996, signed and obtained the documents on her behalf and after which the 1<sup>st</sup> Defendant sent the allocation letters to her in the United Kingdom really made her to trust the 1<sup>st</sup> Defendant.
- That she never met with the Donor, Mallam Lamorde all through the purchase of the Land, but the 1<sup>st</sup> Defendant

assured her perfecting the documents for her, being a Lawyer and her mother.

- That barely three months after the purchase and registration of the Land in her name, that she departed Nigeria on the 1<sup>st</sup> September, 1997, and on her instruction to the 1<sup>st</sup> Defendant to receive all the executed and original title documents from the Donor for safe keep with her in trust.
- That barely two months after she departed Nigeria for the United Kingdom, the 1<sup>st</sup> Defendant did inform her that she, 1<sup>st</sup> Defendant had received all the executed Deed of Assignment and Power of Attorney and the original title documents and they are all in her safe custody, which she, the Plaintiff consented to her to keep the title documents.
- That sometime at about April, 2005, the 1<sup>st</sup> Defendant called her phone to inform her of the need to come to Nigeria for a mandatory recertification and title regularization exercises carried out by the 3<sup>rd</sup> and 4<sup>th</sup> Defendants, which barely one week after the 1<sup>st</sup> Defendant informed her, she later on received the information on Ben Television, United Kingdom, informing Nigerians owning property in Abuja to proceed for the regularizing exercise in Abuja.
- That thereafter having ascertained the information on the recertification exercise of land title documents

within the FCT, she departed the United Kingdom for Nigeria sometime on the 15<sup>th</sup> April, 2005 for Land title regularization at the 4<sup>th</sup> Defendant's office.

- That on the 27<sup>th</sup> April, 2005, she left for the recertification exercise alongside with the 1<sup>st</sup> Defendant to the 4<sup>th</sup> Defendant's office.
- That the 1<sup>st</sup> Defendant went to the 4<sup>th</sup> Defendants' office with her own land's documents in Area 1, Abuja and Durumi District for their recertification and regularizing exercises.
- That after she made all the necessary payments as prerequisite for the recertification, such as the receipts of payment of ground rent till date, her application form, irrevocable Power of Attorney donated to her by Mallam Lamorde and other necessary original land documents were duly confirmed, scanned, stamped and was captured on the system data camera, after which an acknowledgement slip meant to be used to obtain the stamped and Registered Power of Attorney was issued to her.
- That having considered her departure date for the United Kingdom for the 5<sup>th</sup> May, 2005, she gave 1<sup>st</sup> Defendant an authority letter to receive and obtain all the registered title documents from the office of the 4<sup>th</sup> Defendant on her, the Plaintiff's behalf.
- That after a while, the 1<sup>st</sup> Defendant called her to inform her that she had received and obtained all the

registered title documents from the 4<sup>th</sup> Defendant and they are all in her possession and safe custody.

- That upon the recertification and regularizing of all the original title documents on Plot 132, Jabi District, Abuja, the 4<sup>th</sup> Defendant effected all the title holder and ownership of the said plot of land to her name in all their records and data, with the file Number- ED 10694.
- That having departed for the United Kingdom, the 1<sup>st</sup> Defendant called to advise the Plaintiff to commence development of the plot of land, which she conceded to and made several huge transfer to the 1<sup>st</sup> Defendant for the construction of the first two numbers of three bedroom flats on the side of the Land and later on the development of the main building on the Land.
- That after the completion of the two flats, she did authorize the 1<sup>st</sup> Defendant to put in tenants on the two flats on the understanding that the proceeds recouped from the tenants be used to complement the funds she is sending for the development of the main building on the Land.
- That since the year 1997, she did not and had never transferred her interest on the Land or the entire property to any person or group of persons, nor did she transfer the property to the 1<sup>st</sup> Defendant.
- That sometime in the year 2013, she did inform the 1<sup>st</sup> Defendant of her intention to come to Nigeria, to offset all the outstanding ground rent bills on her land at the

Plot 132, Jabi District, and upon her arrival to Abuja, she told the 1<sup>st</sup> Defendant of her intention to visit the 4<sup>th</sup> Defendant, who opted to follow and accompany her to the 4<sup>th</sup> Defendant office, but before their departure for the 4<sup>th</sup> Defendant's office, she requested from the 1<sup>st</sup> Defendant of the original title documents, who responded that all the documents were in her possession.

- That upon their arrival to the office of the 4<sup>th</sup> Defendant, at the front desk, she demanded for the original title documents from the 1<sup>st</sup> Defendant, whom showed being frightened and asked the Plaintiff whether she did not pick the brown envelope on her bed and further apologized to the Plaintiff that it seems they have left the envelop consisting of all the title documents in the house or left it in the taxi that brought them to the 4<sup>th</sup> Defendant's office.
- That being her biological mother, she believed the 1<sup>st</sup> Defendant and left with her back home and upon their arrival to the house, searched the whole room and the house with no trace of the said brown envelope containing all the title documents, with all the effort to locate the said brown envelope proved abortive.
- That she reported the case to the Utako Divisional Police Station and applied to the High Court of the FCT, of the loss of title documents, where she was issued the Police

Extract and an Affidavit of loss of her land and title documents, respectively.

- That she also made Publications on three different National dailies as required for the loss of documents and for the reissuance of a Certified True Copy by the 4<sup>th</sup> Defendant.
- That sometime on the 18<sup>th</sup> April, 2013, she applied to the office of the 4<sup>th</sup> Defendant for the Certified True Copies of her title documents, which application was well acknowledged, but neither did the 4<sup>th</sup> Defendant approve the application nor the payment for the Certified True Copies of all her title documents.
- That sometime on the same 18<sup>th</sup> April, 2013, she applied for the bill of the ground rent for her land lying at plot 132, Jabi-Abuja and the demand notice for the ground rent was printed out for her and having received the ground rent bill, she made several payments into the designated bank of the 4<sup>th</sup> Defendant on the 18<sup>th</sup> and 19<sup>th</sup> April, 2013 to offset the ground rent from 2005 till the year 2013.
- That upon her arrival to the office of the 4<sup>th</sup> Defendant to exchange the bank teller of payment to the office receipt, she was informed by the revenue officer on desk of the need for her effect the balance payment in the sum of N10,000 (Ten Thousand Naira) for the ground rent, which she effected to the 4<sup>th</sup> Defendant's bank account on the 8<sup>th</sup> May, 2013 and on the same day,



upon her arrival to the 4<sup>th</sup> Defendant's office to exchange the teller, the Revenue officer did inform her of a CAVEAT NOTICE placed on her land file.

- That she tried all she could to ensure the lifting of the Caveat from her land file, which proved abortive, only for the privilege information she received from the staff of the 4<sup>th</sup> Defendant that the CAVEAT NOTICE was placed on her file on the instigation of the 1<sup>st</sup> Defendant, as also laying claim of ownership on her land.
- That having tried all she could to remove the Caveat notice placed on her file, which proved abortive, instructed her Solicitors to demand the lifting of the Caveat notice off her file, which later dated 16<sup>th</sup> May, 2013 was well received and acknowledged, but were not responded to by the 4<sup>th</sup> Defendant.
- That she later on instructed her Solicitors to officially apply for the Certified True Copies of all her title documents with a letter dated 20<sup>th</sup> May, 2013, which upon several visits to the office of the 4<sup>th</sup> Defendant on the application proved abortive as the application was never approved for payment of necessary fees nor for the the Certified True Copies of all her title documents.

**End of Examination-in-Chief.**

**CROSS EXAMINATION OF PW1, (CHRISTINE ADESUA PANDA).**

This PW1 was cross examined by the 1<sup>st</sup> Defendant's Counsel on 11<sup>th</sup> June and 10<sup>th</sup> July, 2014. The Cross Examination was not concluded, as PW.1 did not appear in Court for further Cross Examination. 1<sup>st</sup> Defendant was forced to abandon Cross Examination on 17<sup>th</sup> November, 2015. There was no Re-examination also for the reason of PW.1's absence resulting in Plaintiff's case foreclosure on 4<sup>th</sup> February, 2016.

PW1 testified under cross examination as follows:

1. That she made three witness Statements on Oath.
2. That she had only adopted the second witness Statement on Oath.
3. That she signed both witness Statements on Oath.
4. That she made mention of MallamHaliluWawiyaLamorde in her Power of Attorney.
5. That in 2005 she submitted the Power of Attorney to AGIS.
6. That she authorized the 1<sup>st</sup> Defendant to collect it from AGIS.
7. That the 1<sup>st</sup> Defendant told her that all her Documents were misplaced.

8. That up till date she does not know if the documents have been found.
9. That she executed the Power of Attorney and that it bears her name and she signed it.
10. That she has never met with MallamHaliluWawiyaLamorde.
11. That she did not at any time consult with MallamHaliluWawiyaLamorde before filing this suit.
12. That in 1997 she gave the 1<sup>st</sup> Defendant £7000 (Seven Thousand Pounds).
13. That she also gave the 1<sup>st</sup> Defendant £3500 (Three Thousand Five Hundred Pounds) in 1997.
14. That between 1996 and 1997 she was an undergraduate student.
15. That she was not working during the period, that she was a housewife and a student.
16. That she was on academic grant from the government.
17. That the grant was over £6000 (Six Thousand Pounds) in 1996.
18. That the grant was over £6000 (Six Thousand Pounds) in 1997.

19. That the grants are evidenced by Exhibit A. That the amount of the grant for 1996 stated on Exhibit A is £476 (Four Hundred and Seventy-Six Pounds).
20. That no document in Exhibit A is showing the grant for 1997.
21. That she does not have any other document to show her grant in 1997.
22. That she was given an acknowledgment letter in 2005 after the recertification exercise.
23. That she gave the said document to the 1<sup>st</sup> Defendant and it is lost.
24. That both Exhibits G and H were made on the same date 9/4/2013.
25. That she arrived Nigeria on the 9<sup>th</sup> day of June,1997.
26. That she gave her mother£7000 (Seven Thousand Pounds) on no specific date.
27. That she has not lived or worked in any establishment in Nigeria.
28. That she never worked in FCDA personnel management department.

29. That she purchased the land in July and left on 31<sup>st</sup> August.
30. That her children were with her when she gave her mother (1<sup>st</sup> Defendant) the said £7000 (Seven Thousand Pounds) three days later after purchase of the plot and the money was converted to One Million Naira.
31. That the £3500 (Three Thousand and Five Hundred Pounds) was not given to the initial visit during her initial visit to Nigeria.
32. That she does not have any documentary evidence that she gave the 1<sup>st</sup> Defendant £3500 (Three Thousand Five Hundred Pounds).
33. That the 1<sup>st</sup> Defendant has lived on her property (subject matter of dispute) since 2006.
34. That she asked the 1<sup>st</sup> Defendant to pack out in 2009.
35. That she continued to live there with her consent after 2009.
36. That as soon as she roofed the guest house, the 1<sup>st</sup> Defendant moved in.
37. That the premises have tenants on the property.

38. That herself and the 1<sup>st</sup> Defendant put some tenants on the property.
39. That she has 14 tenants on the property and 2 of the 14 tenants have agreements made with her.
40. That she does not have any tenancy agreements in Court.
41. That she instructed the 1<sup>st</sup> Defendant to use the proceeds of rent to enhance the property.
42. That the rent is about N16,000,000.00 (Sixteen Million Naira) only.
43. That she does not have analysis of the rents and the Defendant's expenditure of the N16,000,000.00 (Sixteen Million Naira).
44. That all her title document, that is Power of Attorney, Deed of Assignment and Acknowledgement letter from AGIS are with the 1<sup>st</sup> Defendant.
45. That the documents were lost.
46. That she had custody of the documents at some stage before handing them over to the to the 1<sup>st</sup> Defendant.

47. That between 1997 and 2013 she wrote the 1<sup>st</sup> Defendant once but does not have the copy in Court.
48. That she has not filed any against the 1<sup>st</sup> Defendant except this present action.
49. That she personally participated in the recertification exercise in 2005.
50. That she has never demanded in writing for her documents from the 1<sup>st</sup> Defendant even though, she only did verbally.
51. That she has never made any complain to the Nigerian Police against the 1<sup>st</sup> Defendant.

**The Plaintiff closed her case on the 20<sup>th</sup> day of March, 2017.**

**1<sup>ST</sup> DEFENDANT/COUNTER CLAIMANT'S CASE.**

The 1<sup>st</sup> Defendant/Counter Claimant opened her case on the 18<sup>th</sup> October, 2017 and called two witnesses who testified as DW1 and DW2.

**DW1 (MallamHaliluWawiyaLamorde).**

DW1 testified on the 18<sup>th</sup> October, 2017 when he adopted his Witness Statement on Oath dated 9<sup>th</sup> October, 2013 and tendered six documents which are marked as:

1. Certified True Copy of the Certificate of Occupancy with certificate No. FCT/ABU/GG-382- marked as **Exhibit Y1**.
2. Handwritten receipt acknowledging payment – marked as **Exhibit Y2**.
3. Power of Attorney – marked as **Exhibit Y3**.
4. Deed of Assignment – marked as **Exhibit Y4**.
5. Certified True Copy of letter dated 23<sup>rd</sup> April, 2013 – marked as **Exhibit Y5**.
6. A copy of Affidavit of Disclaimer – marked as **Exhibit Y6**.

**CROSS EXAMINATION OF DW 1 (MALLAM HALILU WAWIYA LAMORDE).**

DW1 was extensively cross examined by the Plaintiff's Counsel on the 18<sup>th</sup> October, 2017. He testifies that:

1. That he is very much aware he is on Oath.



2. That he is not aware that the 1<sup>st</sup> Defendant at any point in the time acted on behalf of anybody in acquiring the property from him.
3. That the 1<sup>st</sup> Defendant never revealed to him during the course of their transaction that she has a daughter.
4. That the documents he handed over to the 1<sup>st</sup> Defendant are the original Certificate of Occupancy and handwritten receipt of payment only in July, 1997.
5. That the 1<sup>st</sup> Defendant brought a lawyer to his office who prepared the documents, Power of Attorney and Deed of Assignment.
6. That he is not acting out any script written for him.
7. That the Power of Attorney was not prepared anywhere but in his office.

## **EXAMINATION OF DW2 (MRS.ONAIWU ENOGHADO GIWA OSAGIE)**

On the 5<sup>th</sup> December, 2017, DW2 adopted her Witness Statement on Oath dated 26<sup>th</sup> March, 2014 and the Additional Witness Statement on Oath dated 6<sup>th</sup> May, 2014. She tendered various documents marked as:

1. Original copy of Federal Capital Development Authority with Ref. FCDA/LP&S/DC/BP/RSD/PHS.II/343 dated 14<sup>th</sup> November, 1997 addressed to MallamHalilu W.

- Lamorde titled Conveyance of Approval for Development plan marked as **Exhibit Z1**.
2. Zenith Bank Plc Cash Deposit slip (ARIK) No. 0048055 – marked as Exhibit as **Exhibit Z2**.
  3. Zenith Bank Plc Cash Deposit slip (ARIK) No. 0048056 – marked as Exhibit as **Exhibit Z3**.
  4. Zenith Bank Plc Cash Deposit slip (ARIK) No. 0047863 – marked as Exhibit as **Exhibit Z4**.
  5. 3 Booklets of Ivie Community Bank Nig. Ltd – marked as **Exhibit Z5**.
  6. Original acknowledged copy of the correspondence of Hon. (Mrs.) O.E. GiwaOsagie dated 24<sup>th</sup> December, 2012 and acknowledged by the Front Desk AGIS on 3<sup>rd</sup> January, 2013 – marked as **Exhibit Z6**.
  7. Federal Capital Territory Administration's correspondence to Mrs. GiwaOsagie dated 07/05/2013 – marked as **Exhibit Z7**.
  8. Payslip of Mrs. Christine Panda dated 4/12/09 – marked as **Exhibit Z8**.
  9. Original copy of Tower Building Products receipt dated 23/04/04 in favour of Mr. Osas (Mrs. GiwaOsagie) in the sum of N436,540 – marked as **Exhibit Z9**.

10. Original handwritten tenancy receipt issued to Christine Osai dated 14/06/06 – marked as **Exhibit Z10**.
11. Original copy of Tenancy Agreement of 31 AsheikJarma Street, Jabi, Abuja between Mrs. GiwaOsagie and Ebtek Learning Service Limited dated 16<sup>th</sup> April, 2009 – marked as **Exhibit Z11**.
12. Original copy of Tenancy Agreement of 31 AsheikJarma Street, Jabi, Abuja between Mrs. OnaiwuGiwaOsagie and Alex Oyindo dated 30<sup>th</sup> May, 2012 – marked as **Exhibit Z12**.
13. Original copy of Tenancy Agreement of 31 AsheikJarma Street, Jabi, Abuja between Mrs. OnaiwuGiwaOsagie and TijaniKayode commencing 20<sup>th</sup> April, 2008 – marked as **Exhibit Z13**.
14. Original copy of Tenancy Agreement of 31 AsheikJarmaSteet, Jabi, Abuja between Mrs OnaiwuGiwaOsagie and Rachael EshieOsibu dated 15<sup>th</sup> September, 2009 – marked as **Exhibit Z14**.
15. Original copy of Tenancy Agreement of 31 AsheikJarmaSteet, Abuja between Mrs OnaiwuGiwaOsagie and ChinweEkeneEzeigbo dated 5<sup>th</sup> January, 2013 – marked as **Exhibit Z15**.
16. Original copy of Tenancy Agreement of 31 Asheik Jarma Street, Jabi, Abuja between Mrs

OnaiwuGiwaOsagie and Juliet OlileayaOzuloha dated 24<sup>th</sup> May, 2012 – marked as **Exhibit Z16**.

17. Original copy of the Deed of Transfer between OnaiwuEvbouwan and Engr. TheophilusOsamakueOdigie dated 25<sup>th</sup> August, 2000 – marked as **Exhibit Z17**.
18. Original copy of National Judicial Institute’s correspondence to Jevoc Caterer dated 18<sup>th</sup> October, 1999 – marked as **Exhibit Z18**.
19. Original copy of National Judicial Institute’s correspondence to Jevoc Caterer dated 7<sup>th</sup> October, 1999 – marked as **Exhibit Z19**.
20. Original copy of National Judicial Institute’s correspondence to Jevoc Caterer dated 26<sup>th</sup> October, 1999 – marked as **Exhibit Z20**.
21. Original copy of National Judicial Institute’s correspondence to Jevoc Caterer dated 29<sup>th</sup> October, 1999 – marked as **Exhibit Z21**.
22. Original copy of National Judicial Institute’s correspondence to Jevoc Caterer dated 1<sup>st</sup> June, 1999 – marked as **Exhibit Z22**.
23. Original copy of National Judicial Institute’s correspondence to Jevoc Caterer dated 5<sup>th</sup> October, 1999 – marked as **Exhibit Z23**.

24. Original copy of National Judicial Institute's correspondence to Jevoc Caterer dated 2<sup>nd</sup> September, 1999 – marked as **Exhibit Z24**.
25. Original copy of Family Economic Advancement's correspondence to Jevoc Caterer dated 21<sup>st</sup> November, 1997 – marked as **Exhibit Z25**.
26. Original copy of Nigerian-Russian Chamber of Commerce's correspondence to Jevoc Caterer dated 6<sup>th</sup> October, 1997 – marked as **Exhibit Z26**.
27. Original copy of Nigerian Custom Service's correspondence to Jevoc Caterer dated 14<sup>th</sup> January, 1999 – marked as **Exhibit Z27**.
28. Original copy of Special Committee on the Military handover of the Federal Republic of Nigeria to Civilian Government on 29<sup>th</sup> May, 1999 to correspondence to Jevoc Caterer – marked as **Exhibit Z28**.
29. Original copy of Nigerian Industrial Development Bank Limited dated 9<sup>th</sup> February, 1998 to correspondence to Jevoc Caterer- marked as **Exhibit Z29**.
30. Original copy of Federal Ministry of Industry's correspondence to Jevoc Caterer dated 5<sup>th</sup> October, 1999 – marked as **Exhibit Z30**.
31. Two original copies of Jevoc Caterer receipt booklets – marked as **Exhibit Z31**.

32. Nigeria Police Force Extract from Crime Diary dated 3<sup>rd</sup> June, 2013 – marked as **Exhibit Z32**.
33. Acknowledgement copy of Recertification and Re-issuance of Certificate of Occupancy dated 7<sup>th</sup> July, 2006 – marked as **Exhibit AA1**.
34. Bundle of handwritten receipts – marked as **Exhibits AA2 A - E**.
35. A Deed of Assignment – marked as **Exhibit AA3 A – D**.

DW 2 also testified that upon her receipt of the Acknowledgment copy and Recertification and Re-issuance of Certificate of Occupancy dated 7<sup>th</sup> July, 2006 (Exhibit AA1), a photocopy of the front page of the Certificate of Occupancy was attached to it with the word “cancelled” stamped on it. That the essence of the recertification exercise was for the verification of title, retrieval of the old Certificate of Occupancy and the issuance of a new Certificate of Occupancy.

### **CROSS EXAMINATION OF DW2 (MRS. ONAIWU ENOGHADO GIWA OSAGIE)**

DW2 was cross examined by the Plaintiff’s Counsel on 5<sup>th</sup> December, 2017 wherein she testified that;

1. That she is Mrs OnaiwuEnoghadoGiwaOsagie.

2. That she has sworn to tell the truth.
3. That the documents for recertification of her other plots are not in Court.
4. That she did not do anything when she noticed a change of name to her daughter's in the teller.
5. That she submitted only Certificate of Occupancy for recertification.
6. That the Plaintiff did not pay ground rent from 1997 – 2005. That she gave the Plaintiff money to pay the ground rent.
7. That the Plaintiff gave her receipts for the payments.
8. That the Plaintiff's name was on all the receipts because she went to pay.
9. That she did not take any steps to correct the anomaly at that time.
10. That the Plaintiff's status in 1997 was that she was married.
11. That she did not know whether the Plaintiff's husband was catering for her.

12. That she does not know whether the Plaintiff was a Student on loan and working at that time.

With the end of the testimony of DW2 on 4 – 12 – 17, we adjourned the case to 26 – 2 -18 to enable the Counsels file their Written Address and adoption of same on that day.

On 26 – 2 – 18, the address could not be taken because the Plaintiff's Counsel had not filed anything. He told the Court he was bereaved, and travelled out of Abuja and recently came back.

On 5 – 7 – 18, when the Court resumed, the Plaintiff's Address was still not filed. In fact, Plaintiff's Counsel brought an application; vide M/7347/18 for Extension of time to enable them do so. Mr James Idih did not oppose the Application and it was granted by me.

On 21 – 11 – 19, the Counsels asked for an adjournment to enable them adopt their Written Addresses. I granted the Oral Application and fixed 4 – 2 – 2020 to enable them do so.

On 4 – 2 -2020, both Counsels adopted their Written Addresses. The 1<sup>st</sup> Defendant's Counsel had earlier filed a Written Address dated 27 – 12 – 17 and also filed a Reply Address on points of law which is dated 4 – 7 – 18. Learned Counsel – Mr James Idi, adopted both the Addresses as his argument in this case and urged the court to dismiss the Plaintiff's case and grant their counter-claim.



As for the Plaintiff, the Final Address was filed on 20 – 6 – 18 though dated 14 – 6 – 18. Mr Odunwo adopted it as his arguments and urged the Court to grant all the reliefs they claimed.

Learned Counsel for the 1<sup>st</sup> Defendant, postulated 3 issues for determination, to wit:

- 1. Whether or not the Power of Attorney (Exhibit S3) is tainted with crime as to make it unfit for the Honourable Court to rely upon in support of the Plaintiff's Attorney case?**
- 2. Whether or not the Plaintiff's Attorney has sufficient locus standi, to maintain the action brought on behalf of the Plaintiff and entitled to the reliefs claimed there in?**
- 3. Whether the 1<sup>st</sup> Defendant/Counter-Claimant has sufficiently proved her case to enjoy the indulgence of the Court for the relief claim (in her Counter-Claim)?**

Mr. Odunwo of Counsel to the Plaintiff distilled, also, 3 issues for determination. They are:

- 1. Whether from the evidence adduced during trial, the Plaintiff/Claimant established his claim of being entitled to the declaration as the rightful and exclusive ownership on all that properly lying and situated at Plot 132, with file number ED 10694, measuring approximately 2000 square metres within the cadastral**

**zone B04, Jabi-Abuja, belonging to Mrs Christine Adesua Panda.**

**2. Whether or not the continuing action of the 1<sup>st</sup> Defendant on the property amount to trespass to the land.**

**3. Whether the Plaintiff on the preponderance of evidence has shown sufficient proof to be entitled to the grant of reliefs sought and judgment in this suit.**

It is in my view that the issue framed by learned Counsel to the 1<sup>st</sup> Defendant deals or focus on specific areas that are germane to a proper resolution of all contending matters in this case. They went straight to the core issues in this case. For clarity, the issue of Power of Attorney (Exhibit S3) is very important. Was it fraudulently procured? Also does the the Plaintiff's Attorney have Locus Standi – (this is a jurisdictional issue) – to institute this case? Also Is the Counter-Claim of the 1<sup>st</sup> Defendant proved?

To my mind, issue 1 & 3 framed by the Plaintiff's counsel are one and the same thing in different words. While issue can conveniently be resolved by issue 1 & 3, especially issue 3 of the Defendant's Counsel's formulation.

It is for the above reason that I adopt the 3 issues framed for determination by the 1<sup>st</sup> Defendant's learned Counsel as the issues that are up for determination in this case.

Before proceeding further, let us glance through facts not in issue i.e. Established facts;

1. The Original allottee of the subject matter in dispute is one MallamHaliluWawiyaLarmorde (DW1).
2. The Subject matter i.e. the Plot in dispute is Plot 132, Cadastral Zone B04, Jabi, Abuja with file No FCT/ABU/66/382.
3. That plot is covered by a Certificate of Occupancy \_\_\_\_\_ dated 19 – 11 – 1992.
4. A Power of Attorney (Exhibit S3) executed in favour of Plaintiff's Attorney is the pillar upon which the case of the Plaintiff rested.
5. The Plaintiff himself has denied donating any Power of Attorney to his Attorney – Mrs Christine Adesua Panda. See Paragraph 9 – 14 of his Statement on Oath which he adopted as his evidence in this case.
6. The 1<sup>st</sup> Defendant is also claiming being given a Power of Attorney by the same Plaintiff – MallamHaliluWawiyaLamorde. Her own Power of Attorney is Exhibit Y3.
7. The Plaintiff himself (MallamWawiyaLamorde)confirmed he donated a Power of Attorney to 1<sup>st</sup> Defendant which is **Exhibit Y3**.
8. Plaintiff's Attorney put a total of X documents in evidence.

9. The 1<sup>st</sup> Defendant put in Evidence a total of Y documents.
10. Exhibit S3 (Power of Attorney said to be given to Plaintiff's Attorney) was not signed by her PW1.
11. Mrs Adesuwa Panda and MallamLamorde have never met before nor was there any consultation between them before this suit. See was instituted. See Evidence of PW1 under Cross-examination.
12. A Caveat Notice has been put on the file of the land – Plot 132 Jabi by the 4<sup>th</sup> Defendant.

Now I proceed to the issues set out for determination. I start with issue 2;

**“Whether or not the Power of Attorney has sufficient locus standi to maintain the action brought on behalf of the Plaintiff and entitled to the reliefs claim therein?”**

Locus Standi is a jurisdictional issue. The absence of same would strike at the root of the case or claim. Hence its importance and the need to treat it is a first line matter.

The learned Counsel to the Plaintiff, Mr. Odunwo did not address this issue. As important as it is, no argument was offered by the Plaintiff's Attorney's Counsel whether in a positive or negative way. But 1<sup>st</sup> Defendant's Counsel did at paragraph's 29 – 78, pages 29 – 52 of his Final Address.

The doctrine of locus standi or standing determines the competence of a person to assert the matter of their complaint before the court. In **A.S.U.U. V B.P.E: (2013) 14 NWLR (PT. 1374) 398**@415 the court stated thus;

*“Locus Standi connotes the right to bring an action or to heard in a give forum.*

*Locus Standi is the legal capacity to institutes legal proceedings in a court of law. Therefore; standing to sue does not depend on the success or failure or even the merits of the particular proceeding.”*

A person maintaining an action must establish sufficient interest in the cause of action before same can be maintained. In **CENTRE FOR OIL POLLUTION WATCH V NNPC (2013) 15 NWLR (PT. 1378) 556**@ 574 the court stated thus;

*“Locus Standi is predicated on the assumption that no court is obligated to provide a remedy for a claim in which the applicant has a remote hypothetical or no interest.*

*A Plaintiff is said to have a locus standi when he shows sufficient interest in a suit. A Plaintiff will have locus standi only if he has special right or alternatively, if he can show that he has sufficient or special in the performance of*

*the duty sought to be enforced or where the interest is adversely affected. Where a Plaintiff instituted an action claiming a relief or reliefs, which on the face of the cause of action is or are readily enforceable by another person then such a Plaintiff cannot succeed because he lacks the requisite locus standi to stand on.”*

The incident of locus standi is fundamental to the Jurisdiction of the Court as the absence of it deprives the Court of the authority to adjudicate of the case. In **DAGAZAU V. BOKIR INT’L CO. LTD. (2011) 14 NWLR (PT. 1267) 261 CA**, it was held that;

*“Locus Standi goes to affect the jurisdiction of the court before which an action is brought because if there is no Locus Standi to file an action in the first place, the court has no Jurisdiction to entertain the suit.”*

In considering the case of the Plaintiff’s Attorney s constituted in this case and determining whether PW.1 has shown sufficient interest to invest her with the Locus Standi for the case or to the subject matter of the dispute, it would be viewed and argued from three perspectives, to wit;

- a. Whether PW.1 is actually the Plaintiff’s Attorney?
- b. Whether the 1<sup>st</sup> Defendant is a Trustee for the PW.1 ownership of the property?

- c. Whether PW.1 has shown any possessory right over the subject matter of dispute as to raise any inference of ownership?

SUB-ISSUE1:

### **Whether PW1 is actually Plaintiff's Attorney?**

It is PW1 testimony under Cross Examination that she never met with and neither did she consult with the original allottee and Plaintiff in this case, who is her Donor of the Power of Attorney before instituting this case as his Attorney.

A Power of Attorney is an instrument for the donation of power to an Attorney and the scope of the power is expressly limited to what is stated in the instrument of Power of Attorney. Thus, in **WECHIE V. OKWUWORLU (2015) 11 NWLR (PT. 1469) 95** at 126 that;

*“A Power of Attorney vest authority in the done to act in the capacity of the donor to the extent provided in the document. It is written authorization to represent or act on another's behalf in a private affair, business or some other legal matter, sometimes against the wishes of the other.”*

The Attorney of delegated powers can only maintain an action in the name of his principal/donor for any breach or injury to the subject matter of the delegated powers. In **NTIA**

**V. JAMES (2007) ALL FWLR (PT. 351) 1600** at 1612  
Paragraphs. D – F (CA) that;

*“The Donee of a Power of Attorney or an agent in the presentation of a court suit or action pursuant to his power must sue in the name of the donor or his principal and not otherwise. In the instant case even though as an agent Emmanuel Jones has stepped into stead of his principal i.e APICO in this matter by the authority as per Exhibit EA the Locus Standi to sue still resides in his principal i.e. in this case the APICO so that the agent must necessarily sue in the name of his donor or principal and not otherwise.”*

The alleged Donor and original allottee of the subject matter testifying as D.W.1 has denied knowing or authorised PW1 as his Attorney and having no knowledge of the suit before it was instituted. In essence, there is no proximate connection between the Donor and the Attorney to invest the Attorney with authority or Locus Standi for her to act on behalf of the alleged Donor of Exhibit S3.

The Power of Attorney, Exhibit S3 from which the Attorney alleges her Locus Standi is wrought with irregularities and tainted with crime and we herein adopt our fuller argument in Issue 1 above in coming to the conclusion the PW.1 is not an Attorney of MallamHaliluWawiyaLamorde and lacks the Locus Standi to institute a case on his behalf and



consequently the case cannot be sustained by PW.1 on the basis of Exhibit S3.

In **AJAYI V. ADEBIYI (2012) 11 NWLR (PT. 1310) 137** at 176 it was held:

*“Locus Standi to institute proceedings in a court is not dependent on the success or merits of a case; it is a condition precedent to the determination of a case on the merits.”*

My finding that the Plaintiff’s Attorney has no Locus Standi is enough to dismiss this suit. But assuming I am wrong on the 2<sup>nd</sup> issue (I am not saying so), I will quickly run through the 1<sup>st</sup> issue.

1 ISSUE (Paragraphs 73 – 78; Page 49 – 52 of 1<sup>st</sup> Defendant’s Final Written Address)

- The Plaintiff’s entire claim put title in issue as it seeks for declaration, injunction and damages. Thus, in **AGBOOLA V U.B.A PLC (2011) 11 NWLR PART 1258**, page 411 para D that;

*“Where a Plaintiff has claimed for declaration, damages and perpetual injunction, title is obviously put in issue between parties.”*

- The Plaintiff is claiming for declaration reliefs and fundamentally, for title but declaration of title is strongly founded on proof of ownership and where that is lacking, there can be no locus standi for it. Thus, in **OBI V INEC & ORS (2007) LPELR-2166 (SC)** that;

*“I wish to go further by saying that to be able to claim declaratory reliefs, a Plaintiff must have the necessary standing to sue. He does not need to have a subsisting cause of action or a right to a subsisting cause of action or a right to some other relief, but some legal right of his own must be in issue, actually or contingently. Unless this is the case, there is nothing relating to his legal position which the Court can declare. This statement of mine was amplified by Lord Diplock when Gourié V Union of Post Office Workers (1978) A.C. 435, he reasoned thus at page 501 and I quote “But the Jurisdiction of the Court is not to declare the law generally or to give advisory opinion; it is confined to declaring contested legal rights, subsisting or future of the parties represented in Litigation before it and not those of any one else.” Per Aderemi J.S.C. (Pp. 36- 37 paras. C -A).*

- The claim for declaration must be founded on legal right. Thus, in **ADESINA V OJO (2012) 10 NWLE (PT. 1309) 552 @ 583** that;

*“A proper declaratory judgment is one which is merely a judicial statement confirming or denying a legal right of a party. It is a procedural device for ascertaining and determining the rights of parties or for the determination of a point of law. It merely declares and goes no further in proving a consequential relief to the Applicant.”*

The conditions for the grant of declaratory relief generally include the following;

- a) The claim to which the declaratory relief relates must be substantial; that is, the Plaintiff must be entitled to the relief in the fullest meaning of the word;
- b) A declaration will be granted even when the relief has been rendered unnecessary by the lapse of time for the action to be tried, if at the time the action was commenced it raised substantial issue of law;
- c) The relief claimed must be something which would not be unlawful or unconstitutional or inequitable for the court to grant;

- d) The relief should also not be contrary to the accepted principles upon which the Court exercise its jurisdiction;
  - e) A declaration will only be granted where there is a breach;
  - f) The Plaintiff must establish a right in relation to which the declaration can be made because the Court will not generally decide hypothetical question.”
- The Plaintiff’s other relief is for injunction, damages and cost of action. These reliefs are contingent on the grant of title which would invest the right in the Plaintiff to the reliefs. In **AFOLAYAN V OGUNRINDE (1990) 1 NWLR (PT. 127) 371** at 391, the attributes of rights were well stated that;

“ A right is an interest recognised and protected by the law. Every right involves a three-fold relation in which the owner stands, viz;

- a. It is a right against some person or persons;
- b. It is a right to some act or omission of such person or person;
- c. It is a right over or to something to which the act or omission relates.”

- The PW1 by these claims has to establish her title. It is trite that a claim in trespass and for perpetual injunction calls to question the issue of title of the parties and thus for the Plaintiff to be entitled to the relief, she must copiously establish her title to the land. In **MORENIKEJI V ADEGBOSIN (2003) FWLR (PT. 163) 45** at 61 that;

*“Whenever a claim for trespass is coupled with a claim for perpetual injunction, the title of the parties is automatically put in issue.”*

Also in **OLANIYAN V FATOKI (2013) 17 NWLR (PT. 1384) 447**at 493 that;

*“A Plaintiff who claims damages for trespass as well as injunction regarding the land in dispute puts his title in issue. He succeeds on proving that he has a better title to the land than the Defendant. The principle is all the more extant, as in the instant case, where the Appellants also counter-claimed the land in dispute.”*

- Where the relief claimed in an action can only be exercised by another person as in this case, the PW. 1 would not have the locus standi to maintain the suit or claims. This fact is borne out by the fact that she has been denied and accessed of falsifying the signature of

the original allottee, Mallam Halilu W. Lamorde and ordinarily, the reliefs claimed belongs to the original allottee. Thus, the case of PW1 must fail.

It is in evidence that all the parties agreed that the counter-claimant is in possession of the property. The DW1 was not even cross-examined on the fact of her possession. The presumption of law would enure to the benefit of the DW2 (Defendant) here. **S.143 of Evidence Act** says:

*“When the question is whether any person is owner of anything of which he is shown to be in possession, the burden of proving that he is not the owner is on the person who affirms that he is not the owner”.*

See also **APATA V OLANLOKUN (2013) 17 NWLR (PT 1383) 221** where it was held that proof of ownership is prima facie proof of possession, the presumption being that the person having title to land in dispute is in possession.

Furthermore, the 1<sup>st</sup> Defendant (DW2) was not challenged as regard the transfer of title to her by the original allottee. One would have expected such devolution of title to her to be probed or questioned vigorously. But alas, it was not done. The point is clear that the original allottee having passed title to this 1<sup>st</sup> Defendant, nothing remains for him (Original allottee) to pass to any fellow. In the case of **GBADAMOSI V AKINLOYE (2013) 15 NWLR (PT 1378) 455**, the court put it bluntly as follows:

*“Where a party has fully divested himself of all interest in land, no right vests in him to deal with the same property by way of further alienation anymore. He is caught by the maxim, nemo dat quod non habet, that is, he cannot give that which he no longer has”.*

It was the contention of the counter-claimant that she was put into possession after the original allottee collected money from her and this fact was evidenced by Exhibits Z2, Z3, and Z4. The original allottee, Mallam Halilu Wawiya Lamorde, did not deny this fact in his testimony.

The law is long settled that where a person pays a purchase price and he is put in possession of the land, he automatically acquires an equitable title in respect of it. So, the counter-claimant from 21<sup>st</sup> July, 1997 as reflected in Exhibit Z2 became the equitable owner of the property in issue. See **Gbadamosi V Akinloye** (Supra). See also **MOHAMMED V MOHAMMED (2012) 11 NWLR (PT 1310)** where it was held that receipt of purchase price coupled with the delivery of possession confers an equitable interest in the land.

It is therefore my strict view that this counter-claim having shown evidence of acquisition of the land, evidence of security approval to develop same and in fact developed same, evidence of being in possession and usage for good sixteen years and is surely on firm ground.

Now, the counter-claimant is claiming various reliefs ranging from declaratory, specific orders of various forms and costs. I had in the earlier part of this judgment set out the counter-claims in full, I need not repeat them.

I must here emphasize that the falsification of the signature of the original allottee on Exhibit S3 and the subsequent registration of same with 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants should not be allowed to stand.

It is for the above reason that claims 1,2,3,4,5,6,7, and 8 of the Counter-claims has considerable merit and it is hereby granted.

The next claim, number 9 which is for perpetual injunction looks to me straight forward. It is a consequential order being sought for. In **GOLDMARK (NIG) LTD V IBAFON CO LTD (2012) 10 NWLR (PT 1308) 291** it was held;

*The grant of the relief of perpetual injunction is a consequential order which should naturally flow from the declaratory order sought and granted by the court. The essence of granting a perpetual injunction on a final determination of the rights of the parties is to prevent permanently the infringement of those rights and to obviate the necessity of bringing multiplicity of suits in respect of every repeated infringement”.*



The counter-claimant is also claiming an order for cost. To my surprise, this relief is not even specified talkless of any attempt to prove same. How much does the counter-claimant want as cost of prosecuting the counter-claim? It is no where stated. So, this claim is vague, uncertain, lacks specificity and largely remain unproved. It is therefore jettisoned.

Before I wrap up this judgment, I must say that this case where a daughter dragging her mother to court is very unusual in this clime. They could not resolve their differences over property which in my view cannot worth the bond of love and affection that should naturally exist between them. It is really nauseating and repugnant to good conscience. This kind of scenario is certainly not in our culture. I think, I have said something similar in the earlier part of this judgment. I better stop on that.

Secondly, I must commend the exemplary good conduct of the learned Counsel for both parties. They exhibited very high standard of professionalism in handling this case. Aside from their gentlemanly conduct and calmness in court even when the tension was high and emotion threatened smooth conduct of proceeding leading to almost dangerous altercation between a mother and daughter in public glare, they both produced superb final addresses from which I have benefitted greatly in the writing of this judgment. I confess, I did little or no research on my own as regard some relevant authorities that I found very useful in this decision. As

Ministers in this temple, they lived up to expectation and I thank them for that.

On the whole and in finality, I am satisfied with the case of the 1<sup>st</sup> Defendant/Counter-claimant in a substantial manner.

Claims 1,2,3,4,5,6,7,8 and 9 are therefore granted while claim 10 is refused.

SIGNED  
Suleiman Belgore  
(Judge) 25-6-2020.