IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

HOLDEN AT GWAGWALADA

THIS THURSDAY THE 14TH DAY OF MAY, 2020

BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI – JUDGE

SUIT NO: FCT/HC/2346/2010

BETWEEN:

ALBERTO GLOBAL CONSULT NIGERIA LIMITED ……..CLAIMANT
(suing through her lawful Attorney; Kenneth Anakwe, Esq.)

AND

1. **THE MINISTER, FEDERAL CAPITAL TERRITORY, ABUJA**
2. **FEDERAL CAPITAL DEVELOPMENT ADMINISTRATION** } **..DEFENDANTS**
3. **WALIMO INVESTMENTS NIGERIA LIMITED**

JUDGMENT

This matter has a really chequred history. It is a fairly simply matter commenced as far back as 2010 vide a writ of summons and statement of claim dated 13th September, 2010 for declaration of title and it is a matter to be settled on fairly principles. The matter however suffered several sometimes avoidable interventions including settlement out of court which did not bear any positive result.

The plaintiff initially filed this action against only the 1st and 2nd Defendants who filed their defence and in the course of hearing and or proceedings, information available to the plaintiff revealed that the 1st defendant had allocated the disputed land to the 3rd defendant said to be based in Lagos. An application for joinder was brought to join this party as a 3rd defendant and this was granted. The plaintiff had to then amend the pleadings.

The plaintiff then faced considerable difficulties serving the 3rd defendant. After several faltering steps, the court was then able to conclude hearing and we are now finally at this stage of Judgment. Let us however commence from the very beginning. By an Amended Statement of claim dated 21st March, 2018, the plaintiff claims the following reliefs against the defendants as follows:

a. **A Declaration that the Claimant's Offer of Statutory Right of Occupancy dated 10th day of August, 2009 is first in time same is valid and subsisting.**

b. **A Declaration that the purported revocation of Right of Occupancy (R of O) by the 1st defendant through the 2nd Defendant of Plot No. 66 having an area of approximately 2660.47 square meters in Cadastral Zone C20 of Sector F, with New File Number MSC 103780, dated 10th day of August, 2009 via a letter titled "Notice of Revocation of Right of Occupancy" is contrary to the provisions of the Land Use Act and in effect illegal, unlawful, null, void and of no effect.**

c. **A Declaration that the purported Right of Occupancy (R of O) issued to the 3rd Defendant during the pendency of this suit is illegal, unlawful, null, void and of no effect.**

d. **An Order of Perpetual Injunction restraining the Defendants, their agents, agencies, servants, assigns, successors in title, privies, department, allies and or any person whosoever from further obstruction, interference or disturbance of the Claimant's possession, Occupancy and enjoyment of all rights and privileges in respect of Plot No. 66 having an area approximately 2660.47 square meters in Cadastral Zone C20 of Sector F, New File Number MISC 103780, with the Right of Occupancy (R of O) dated 10th day of August, 2009.**

e. **A Declaration that the Claimant is entitled to be issued the subsisting Statutory Certificate of Occupancy (C of O) over Plot No. 66 having an area of approximately 2660.47 square meters in Cadastral Zone C20 of Sector F, with New File Number MISC 103780 upon payment of required fees.**

f. A Mandatory Injunction directing the 1st and 2nd Defendants to issue the Claimant the subsisting Statutory Right of Occupancy over Plot No. 66 having an area of approximately 2660.47 square meters in Cadastral Zone C20 of Sector F, with New File Number MISC 103780 upon payment of required fees.

g. An Order of perpetual injunction restraining the defendants, their agents, agencies, servants, assigns, successors in title, or privies departments, allies and or any person howsoever called from interfering or continuing to interfere with the said Plot No. 66 having an area of approximately 2660.47 square meters in Cadastral Zone C20 of Sector F, with New File Number MISC 103780.

h. A Declaration that the claimant is entitled to the IMMEDIATE POSSESSION of the land known as Plot No. 66 having an area of approximately 2660.47 square meters in Cadastral Zone C20 of Sector F, with New File Number MISC 103780.

i. Cost of this suit at Five Million Naira (N5, 000, 000.00).

j. The sum of Five Million Naira (N5, 000, 000.00) as general and special damages.

The 1st and 2nd defendants filed their consequential Amended Statement of Defence dated 16th day of April, 2012.

The 3rd defendant did not file any process despite service of the originating court process and indeed never appeared in court all through the course of the proceedings despite service of hearing notices.

In proof of its case, the plaintiff in total called three witnesses contrary to the assertion in Plaintiffs' address that they called only one witness. It is important to state that the first two witnesses gave evidence prior to the joinder of 3rd defendant which necessitated the final Amendment of the claims of plaintiff. **Kenneth Anakwe** testified as PW1. He initially adopted his witness deposition dated 13th

September, 2010 when hearing commenced on 7th April, 2011 but when an objection was made to the admissibility of his letter of authority; they sought for an adjournment to put their house in order. The plaintiff then applied to amend its pleadings which was granted and a new deposition of PW1 was again filed dated 13th February, 2012. He again adopted this deposition at the hearing and tendered in evidence the following documents:

1. Letter of authority to PW1 dated 25th August, 2009 was admitted as **Exhibit P1.**

2. Certificate of Incorporation of Alberto Global Consult Nigeria Ltd was admitted as **Exhibit P2.**

3. Application for grant of a Statutory Right of Occupancy acknowledgment with a Receipt payment were admitted as **Exhibit P3 a and b.**

4. Notice of Revocation of Right of Occupancy dated 29th September, 2009 was admitted as **Exhibit P4.**

PW1 was then cross-examined and in the process, the following documents were admitted:

1. The Application for grant/re-grant of statutory right of occupancy was admitted as **Exhibit P5.**

2. Certified True Copy (CTC) of Form C07 of Alberto Consult Nigeria Ltd was admitted as **Exhibit P6.**

3. Certified True Copy of court processes to wit: CV/2350/10, CV/2348/10, CV/2352/10, CV/2279/10, CV/2280/10, CV/2347/10 were admitted as **Exhibits P7a – 7f.**

Hassan Musa Argungu was subpoenaed and he testified as PW2. He said he was subpoenaed to tender documents and given evidence but he does not have access to those documents or information. Under cross-examination, he said he only has access to documents and information made available to him in the office.

Mr. Albert Adeyi Bello testified as PW3. He adopted his witness deposition dated 21st March, 2018 and identified the documents already tendered in evidence, to wit: Exhibits P1 – P7 (a) – (f). He then tendered the following documents:

1. Certified True Copy of Statutory Right of Occupancy issued to the plaintiff dated 10th August, 2009 and the Receipt of payment to AGIS for the Certified True Copies of documents were admitted as **Exhibits P8a and P8b.**

2. Copy of Record of collection of Right of Occupancy was admitted as **Exhibit P9.**

3. Documents titled "Letter of Acceptance/Refusal of offer of grant of Right of Occupancy in the FCT" dated 12th August, 2009 was admitted as **Exhibit P10.**

4. Letter by the law firm of Asek Chambers dated 15th August, 2017 to the Director AGIS for a caveat and cessation of all actions on the disputed plot was admitted as **Exhibit P11.**

5. Copy of the Right of Occupancy to 3rd defendant Walimo Investment Nig. Ltd dated 29th November, 2010 was admitted as **Exhibit P12.**

Learned counsel to the 1st and 2nd defendants indicated that they will not cross-examine PW3; that the cross-examination of PW1 and PW2 suffices. With the evidence of PW3, the plaintiff closed its case and the matter adjourned for defence.

When the matter came up for defence of the 1st and 2nd defendants, Counsel again indicated that they have decided not to lead/call evidence and rested their case on that of plaintiff.

On application of learned counsel for the plaintiff, the case of 3rd was closed since they had never appeared or filed any process despite service of the originating court process and hearing notices. The matter was then adjourned for address. Again the 1st and 2nd defendants elected not to file an address. For the 3rd defendant as stated at the commencement of this judgment, despite the service of the originating court processes and hearing notices, at different times during the course of this proceedings, the 3rd Defendant chose or elected not to respond or

appear in court. Now I recognize that fair hearing is a fundamental element of any trial process and it has some key attributes; these include that the court shall hear both sides of the divide on all material issues and also give equal treatment, opportunity and consideration to parties. See **Usani V Duke (2004) 7 N.W.L.R (pt.871) 16; Eshenake V Gbinijie (2006) 1 N.W.L.R (pt.961) 228.**

It must however be noted that notwithstanding the primacy of the right of fair hearing in any well conducted proceedings, it is however a right that must be circumscribed within proper limits and not allowed to run wild. No party has till eternity to present or defend any action. See **London Borough of Hounslow V Twickenham Garden Dev. Ltd (1970) 3 All ER 326 at 343.**

The 3rd Defendant here has been given every opportunity to respond to the case made out by Plaintiff against them but they have exercised their right by not responding. Nobody begrudges this election. It is only apposite to reiterate that nobody is under any obligation to respond to any court process once properly served if he so chooses. I leave it at that.

In the final address of claimant, one issue was raised as arising for determination, to wit:

Whether in the face of the evidence adduced before the Honourable Court, judgment should be entered in favour of the claimant in this suit.

I have carefully considered the pleadings and evidence led and it does appear, to me that the issue raised by the claimant is apt subject to a slight modification by the court hereunder. In the courts considered opinion, the slightly modified issue which arises for determination is simply **whether the claimant has established his case against Defendants in the circumstances and therefore entitled to the reliefs sought.**

This issue fully captures and or incorporates the issue raised by claimant and has succinctly captured the pith or crux of the contest that remains to be resolved shortly by court and it is therefore on the basis of this issue that I would now proceed to consider the evidence and submissions of counsel.

ISSUE 1

Whether the claimant has established his case against Defendants in the circumstances and therefore entitled to the reliefs sought.

Now at the beginning of this judgment, I had stated the claims of the claimant rooted fundamentally on declaration of title and other ancillary reliefs. I had indicated that the 1st and 2nd defendants filed a statement of defence but they elected not to lead evidence in support of their defence. The implication in law is that in the absence of evidence in proof of the defence, the statement of defence is deemed as lacking probative value and abandoned. In **N.I.M.V. LTD V F.B.N. Plc (2009)16 N.W.L.R (pt.1167)411at 437 D.E**. the Court of Appeal stated thus:

"Pleaded facts on which no evidence was adduced in support are deemed abandoned. Pleadings are the body and soul of any case in a skeleton form and are built and solidified by the evidence in support thereof. They are never regarded as evidence themselves and if not supported by evidence are deemed abandoned."

On the part of the 3rd defendant, despite the difficulties faced in serving them, they were finally served through one of the Directors, **Cecelia Okeke** vide proof of service filed by the bailiff of court dated 28th January, 2019. She was said to have accepted the originating process and hearing notice but refused to acknowledge receipt. The 3rd defendant did not appear or file any process at all, all through the proceedings. In law, it is now accepted principle of general application that in such circumstances, the 3rd defendant is assumed to have accepted the evidence adduced by plaintiff and the trial court is entitled or is at liberty to act on the plaintiffs' unchallenged evidence. See **Tanarewa (Nig.) Ltd. vs. Arzai (2005) 4 NWLR (pt. 919) 593) at 636 C – F; Omoregbe vs. Lawani (1980) 3 – 7 SC 108 and Agagu vs. Dawodu (1990) 7 NWLR (pt. 160) 56.**

Notwithstanding the above general principle, the court is however still under a duty to examine the established facts of the case and then see whether it entitles the claimant to the relief(s) he seeks. I find support for this in the case **of Nnamdi Azikiwe University vs. Nwafor (1999) 1 NWLR (pt. 585) 116 at 140-141** where the Court of Appeal per Salami JCA expounded the point thus:

"The plaintiff in a case is to succeed on the strength of his own case and not on the weaknesses of the case of defendant or failure or default to call or produce

evidence … the mere fact that a case is not defended does not entitle the trial court to over look the need to ascertain whether the facts adduced before it establish or prove the claim or not. In this vein, a trial court is at no time relieved of the burden of ensuring that the evidence adduced in support of a case sustains it irrespective of the posture of the defendant…"

A logical corollary that follows the above instructive dictum is the attitude of court to the issue of burden of proof where it is not satisfactorily discharged by the party upon which the burden lies. The Supreme Court in **Duru vs. Nwosu (1989) 4 NWLR (pt. 113) 24** stated thus:

"… **a trial judge ought always to start by considering the evidence led by the plaintiff to see whether he had led evidence on the material issue he needs to prove. If he has not so led evidence or if the evidence led by him is so patently unsatisfactory then he had not made out what is usually referred to as a *prima-facie* case, in which case the trial judge does not have to consider the case of the defendant at all."**

It is also apposite to state that the substance of the reliefs sought by plaintiff are **Declaratory Reliefs**. In law declarations are in the nature of special claims or reliefs to which the ordinary rules of pleadings particularly on admissions have no application. Indeed it would be futile when declaratory reliefs are sought to seek refuge on the proposition that there were admissions by the adversary on the pleadings. The authorities on this principle are legion. I will refer to a few.

In **Vincent Bello V. Magnus Eweka (1981)1 SC 101 at 182,** the Supreme Court stated aptly thus:

"It is true as was contended before us by the appellants counsel that the rules of court and evidence relieve a party of the need to prove what is admitted but where the court is called upon to make a declaration of a right, it is incumbent on the party claiming to be entitled to the declaration to satisfy the court by evidence not by admission in the pleading of the defendant that he is entitled to the declaration."

The law is thus established that to obtain a declaratory relief as to a right, there has to be credible evidence which supports an argument as to the entitlement to such a

right. The right will not be conferred simply upon the state of the pleadings or by admissions therein.

In **Helzgar V. Department of Health and Social Welfare (1977)3 AII ER 444 at 451; Megarry V.C** eloquently stated as follows:

"The court does not make declarations just because the parties to litigation have chosen to admit something. The court declares what, it has found to be the law after proper argument, not merely after admissions by the parties. There are no declarations without argument. That is quite plain."

I may also refer to the observations of Nnamani J.S.C of blessed memory in **Sorungbe V. Omotunwase (1988)3 N.S.C.C (vol.10)252 at 262 (1988)5 N.W.L.R (pt.92)90** as follows:

"The court of Appeal relied on the decision of this court in Lewis & Peat (N.R.I.) Ltd V. Akhimien (1976)7 SC 157 to the effect that an averment which is not expressly traversed is deemed to be admitted. Admittedly, one does not need to prove that which is admitted by the other side, but in a case such as one for declaration of title where the onus is clearly on the plaintiff to lead such strong and positive evidence to establish his case for such a declaration, an evasive averment...does not remove the burden on Plaintiff. See also Eke V. Okwaranyia (2001)12 N.W.L.R (pt.726)181; Akaniwo V. Nsirim (2008)9 N.W.L.R (pt.1093)439; Maja V. Samouris (2002)7 N.W.L.R (pt.765)78 at 100-101."

The point from the above **authorities** is simply that declarations are not made because of the stance or position of parties in their pleadings but on proof by credible and convincing evidence at the hearing.

Again from the above, the point appears sufficiently made that the burden of proof lies on the plaintiff to establish his case on a balance of probability by providing credible evidence to sustain his claim irrespective of the presence and/or absence of the 3rd defendant. See the case of **Agu v. Nnadi (1990) 2 NWLR (pt. 589)131 at 142; Oyewole V. Oyekola (1999)7 N.W.L.R (pt.612) 560 at 564.**

Now in law, it is now fairly settled principle that there are five (5) independent ways of proving title to land as expounded by the Supreme Court in **Idundun v. Okumagba (1976) 9/10 SC 221** as follows:

(a) Proof by traditional evidence;

(b) Proof by production of documents of title duly authenticated, unless they are documents 20 or more years old, produced from proper custody;

(c) Proof of acts of ownership, in and over the land in dispute such as selling, leasing, making grants, renting out of any part of the land or farming on it or a portion thereof extending over a sufficient length of time numerous and positive enough as to warrant the inference that the persons exercising such proprietary acts are the true owners;

(d) Proof by acts of having possession and enjoyment of the land which prima facie may be regarded as evidence of ownership; and

(e) Proof of possession of connected or adjacent land in circumstance rendering it probable that the owner of such connected or adjacent land would in addition be the owner of the land in dispute.

See also **Oyedoke V The Registered Trustees of C.A.C (Supra)632 A-D.** In law, proof of title to land could be founded on any of the above way(s).

In the case at hand from the uncontroverted confluence of oral and documentary evidence before me which I find neither improbable or falling below the accepted standard expected in a particular case, I find the following facts as firmly established in this case namely:

1. The plaintiff a limited liability company **vide Exhibit P2**, the Certificate or Incorporation applied for a grant of statutory right of occupancy vide **Exhibit P5**.

2. The application was duly received and acknowledged by the 1st and 2nd defendants vide **Exhibit P3a** and Claimant similarly paid the sum of N21, 000

(Twenty One Thousand Naira) land application processing fee to the 1st and 2nd defendants vide **Exhibit P3b.**

3. The claimant was then granted an offer of statutory right of occupancy dated 10th August, 2009 which was accepted **vide Exhibit P10**. The original copy got missing and the claimant accordingly applied for a Certified True Copy which was issued by the Department of Land of the Defendants and tendered as **Exhibit P8 (a).** The receipt of payment of fees to the defendants for the Certified True Copy was tendered as **Exhibit P8 b.**

4. The claimant appointed Kenneth Anakwe vide letter of authority **Exhibit P1** to consult surveyors for purposes of plot identification and beaconing and they then subsequently commenced preparations for immediate development of the plot.

5. That sometimes in September 2009, a bundle of documents were dumped at the entrance of the claimants Directors house at No. 10 Egbede close, Garki 2, Abuja and on close look, it turned out to be a notice of revocation of the claimants title on grounds of **"discretion by authority"**. The notice was admitted as **Exhibit P4.**

6. That all attempts at resolving this purported revocation with 1st and 2nd defendants proved abortive hence the resort to the extant court action.

7. That during the course of this case, they were informed of the allocation of this same plot to the 3rd defendant and they immediately through their counsel wrote **Exhibit P11** to the defendants through the Director AGIS requesting for a caveat and cessation of all allocations on the disputed plot to the 3rd defendant in view of the pending case.

Since the above pieces of evidence and facts have not been challenged by the opposite party who has the opportunity to do so, it is always open to the court seized of the proceedings to act on the unchallenged evidence before it; See **Agagu V Dawodu (supra) 169 at 170.** This is so because in civil cases, the only criterion to arrive at a final decision at all time is by determining on which side of the scale the weight of evidence tilts. Consequently where a defendant chooses not to

adduce evidence the suit will be determined on the minimal evidence produced by the plaintiff. See **A.G. Oyo State V. Fair Lakes Hotels Ltd (No.2) (1989) 5 N.W.L.R (pt 121)255; A.B.U V Molokwu (2003) 9 N.W.L.R (pt 825) 265.**

Now in law, it is recognized that production of title document is one way of proving ownership of land. See **Idundun V. Okumagba (1976)9-10 SC 227; Raphael V. Ezi (2015)12 N.W.L.R (pt.1472)39 and Ilona V. Idakwo (2003)12 MJSC 35 at 54.**

On the evidence, I am abundantly satisfied that by a combined effect of Exhibits P3 a and b, P5, P8 a and b and even Exhibit P4, that when the plaintiff applied for a parcel of land, it was duly allocated plot 66 having an area of approximately 2660.47 in Cadastral Zone C20 of Sector F FCT Abuja. The fact of the allocation vide Exhibit P8, the Certified True Copy of the offer of statutory right of occupancy is not in doubt. There is no counter evidence challenging or impugning this narrative. The 1st and 2nd defendants did not cross-examine PW3 on the specifics of the loss of the original copy of Right of Occupancy and how they had to apply to the 1st and 2nd defendants to issue them a Certified True Copy. In law, where there is no cross-examination of a party on material facts, the unchallenged evidence is deemed admitted. Indeed in such situation, the court is not only entitled to act on or accept such evidence, but it is in fact bound to do so provided that such evidence by its very nature is not incredible. Thus where the adversary fails to cross-examine a witness upon a particular matter as in this case, the implication is that he accepts the truth of that matter as led in evidence. See **Oforiette V State (2000) 12 NWLR (pt.681) 415 at 436 B-C**. Indeed the **notice of revocation vide Exhibit P4** by the 1st defendant accentuates in all material particulars this fact of allocation, for if there was no allocation in the first place, there will be no room for the Minister to revoke same. The bottom line here is that on the unchallenged facts, the claimant was rightly allocated the disputed plot.

Now having made the allocation, the claimants said the allocation was said to have been revoked vide Exhibit P4, due to **"Discretion of Authority"** and same was allocated to another private company during the pendency of this action?

The pertinent question is whether these actions of the Minister can be countenanced in law?

Let quickly underscore the point that Revocation of a Right of Occupancy must be done pursuant to the provisions of **Section 28 of the Land Use Act** and the revocation must comply strictly with the provisions of the said section. See **IBRAHIM VS. MOHAMMED (2003) 4 MJSC 1 at 18G-19A**. A revocation of a right of occupancy is signified under the hand of a public officer duly authorized in that behalf and it is effective upon the notice of revocation being given to the holder of a right or certificate of occupancy. See **IBRAHIM VS. MOHAMMED (supra) at 36**C. A holder of a right of occupancy, whether evidenced by a certificate of occupancy or not, holds that right as long as it is not revoked and he will not lose his right of occupancy by revocation without his being notified first in writing and the subsequent revocation must also be notified to him in writing. The revocation must state the reason or reasons for the revocation. Any other method may be a mere declaration of intent; it will never be notice or revocation. Indeed, it will be a nullity. See **OSHO VS FOREIGN FINANCE CORPORATION (1991) 4 NWLR (PT184) 157 at 187 and NIGERIA ENGINEERING WORKS LTD VS DENAP LTD (2002) 2 MJSC 123 at 145.**

Now the notice of revocation indicates that the reason for the revocation was due to the **"Discretion of the Authority".** No where was this sentence or phrase explained. Now whether the reason was explained or not; it is doubtless that the reason given for the revocation cannot be situated within any of the grounds streamlined clearly under **Sections 28 and 51 of the Land Use Act**. There is no where **"Discretion of Authority"** can be located under **Section 28** and it certainly does not come within the interpretation of public purpose within the purview of **Section 51 of the Land Use Act**. The point to underscore is that the act and purpose of revocation is strictly regulated by these provisions.

In the interpretation of statutes, it is now settled principle that where the language used is clear, plain and unambiguous as in the case of Sections 28 and 51, effect must be given to its plain lateral meaning. See **Adewunmi V Ekiti State (2002) 2 NWLR (pt.751) 474 at 511 – 512 HB.** Giving the provision of **Sections 28 and 51** of the Land Use Act, its plain literal meaning, the reason the 1st defendant gave for the revocation is alien or strange to the Land Use Act and accordingly unlawful.

In law, where a statute provides a procedure for divesting a citizen of his property, the procedure so provided must be adopted. See **Ndoma-Egba V Chuwuogor**

(2004) 6 NWLR (pt.869) 382 at 423 C-D. Similarly the law is also settled that a statute which encroaches on the right of a subject, whether as regards person or property, are to be construed as penal, strictly in favour of the subject. See **Okotie-Eboh V Manager (2004) 18 NWLR (pt.905) 242 at 282 – 283 A-B.**

The bottom line is that the 1st and 2nd defendants as government institutions have an obligation to adhere strictly to these provisions. They can only revoke a statutory right of occupancy within the limits of the law and not outside it and do so in good faith and reasonably. The 1st and 2nd defendants clearly did not keep strict fidelity to the law in revoking the Right of Occupancy of claimant in this case and the failure to follow the law and procedure renders the whole exercise null and void and shall accordingly be set aside.

Now in evidence, it is the case of the claimant that during the pendency of this case, the 1st and 2nd defendants allocated the same disputed plot to the 3rd defendant. The claimant tendered a photocopy of the allocation in evidence and it was admitted as **Exhibit P12**. Now in law the Right of Occupancy to 3rd defendant is obviously a public document within the purview of **Section 102 of the Evidence Act**. Being a public document, it is only the original or a Certified True Copy that is admissible in evidence.

In this case, Exhibit P12 is neither the original and being a photocopy, it was not certified. In the circumstances, it is inadmissible and will be expunged. The authorities are clear that an inadmissible evidence which was wrongly admitted can be expunged at the stage of writing a judgment. See **Saraki V. Kotoye (1992) 9 NWLR (pt.264) 156 at 202 A; UBA Plc V. Ayinke (2000) 7 NWLR (pt.663) 83 at 100 B-C**. Indeed it has been firmly established that where inadmissible evidence has been admitted, it is the duty of the court not to act on it. See **A.G. Leventis (Nig.) Plc V. Akpu (2007) 17 NWLR (pt.063) 410 at 440 G-H.**

Exhibit P12 may have been expunged but there is no counter-evidence challenging the fact that this same plot was allocated during the pendency of this suit. Most importantly from the Records of Court which the court can have recourse to, during the substantive hearing as earlier indicated, the claimant applied to join the 3rd defendant on grounds that the 1st and 2nd defendants have allocated the plot to 3rd defendant. The 1st and 2nd defendants did not oppose the application and it was

granted. The implication is that the fact of allocation to 3rd defendant is really no longer in dispute.

Now the principle of *Nemo dat quod non habet* has resonance in this case; you cannot give or allocate what you don't have. See **Egbuta & ors V Onuna (2007) 10 NWLR (pt.1042) 263.** In this case, I have found that the revocation of the Right of Occupancy of claimant lacked legal validity and was unlawful meaning that the allocation to claimant remained valid. In such circumstances, the 1st defendant was is no position to allocate the same plot to any other person or body. It is even worse that the allocation was done during the pendency of the extant action or when the action was **"lis pendens"** which simply means a pending law suit. It is the jurisdiction, power or control by a court over a property while a legal action is pending. See **Ezomo V N.N.P.C Plc (2007) All FNLR (pt.368) 1032 at 1056 A-B.** What the doctrine of lis pendens means is that the law does not allow the litigant, parties or gives to them during the currency of the litigation involving any property, rights in such property so as to prejudice any of the litigation parties. See **Okafor V The Administrative, General and Public Trustee Anambra State & Anor (2006) 12 NWLR (pt.993) 12 C-D.**

The 1st and 2nd defendants have being parties to the extant action from the very beginning and participated actively. They were thus fully aware of the proceedings and acted in complete disregard of the court proceedings. What makes the doctrine of Lis pendens applicable here is not even whether they were aware (and in this case they are aware). The doctrine of lis pendens operates by the operation of the law and operates independent of the wills of parties. See **Olori Motor Co. Ltd & ors V U.B.N Plc (2006) 10 NWLR (pt.989) 586.**

The actions of the 1st defendant to, as it were, pull the rug off the feet of the court by seeking to allocate the disputed plot during the pendency of this action is equally wrongful. Any interest thus granted during the pendency of this action must necessarily be subject to the outcome of this litigation. See **Enyibros Foods Processing Co. Ltd & Anor V N.D.I.C & ors (2007) 3 SC (pt.11) 175.**

On the whole, there is no evidence before me that the Right of Occupancy granted claimant vide **Exhibit P12** was legally revoked or otherwise extinguished. In accordance with the law, it remains valid and existing and has established claimants

right to the land in dispute. By the same token, the validity of the allocation having been affirmed by court, there is no room for any allocation to any other person or body. It is worse, as in this case, when the purported allocation to the 3rd defendant was done during the pendency of the extant case. This allocation is accordingly compromised *ab initio* and lacking legal validity.

In the light of the above; the findings on the salient issues arising in this case provides both factual and legal basis to determine whether the reliefs sought by plaintiff are availing.

Reliefs (a), (b) and (c) succeed on the basis of the findings of the court that the right of occupancy issued to claimant vide **Exhibit P12** issued on 10th August, 2009 remains valid and subsisting and that the purported revocation contrary to the provisions of the Land Use Act is unlawful, null and void and of no effect. Similarly the purported allocation of the disputed plot to 3rd defendant during the pendency of this action is equally unlawful, null and void and of no effect and is accordingly set aside.

With the success of **Reliefs (a) – (c)**, **Relief (d)** succeed only to the extant that the Defendants and their agents are restrained from acts capable of affecting the lawful and subsisting interest of the claimant over the disputed plot as guaranteed under the Land Use Act and the 1999 Constitution of the Federal Republic of Nigeria.

Relief (e) is for a declaration that the Claimant is entitled to be issued the subsisting Statutory Certificate of Occupancy (C of O) over Plot No. 66 having an area of approximately 2660.47 square meters in Cadastral Zone C20 of Sector F, with New File Number MISC 103780 upon payment of required fees.

There is nothing on the pleadings and evidence indicating that the necessary bills (like the statutory right of occupancy bill) has been issued and fees paid by claimant for the issuance of a **Certificate of Occupancy**. As stated earlier, a declaration is not granted as a matter of course. It is predicated on cogent evidence been advanced. It is expected that with the affirmation of the validity of its right of occupancy, that the claimant takes steps to get the necessary bills, pay same and get the Certificate of Occupancy. This relief cannot be availing in the circumstances and is accordingly struck out.

Relief (f) is for Mandatory Injunction directing the 1st and 2nd Defendants to issue the Claimant the subsisting Statutory Right of Occupancy over Plot No. 66 having an area of approximately 2660.47 square meters in Cadastral Zone C20 of Sector F, with New File Number MISC 103780 upon payment of required fees.

This Relief clearly has been overtaken by events. The claimant in evidence said they were given the original copy of the Right of Occupancy over the plot which got missing. They applied for a certified true copy, paid the fees and they were given Exhibit P12. It is difficult therefore to situate the basis of this relief; it is not availing.

Relief (g) appears to be a repetition of Relief (d) and is struck out. **Relief (h)** has been equally been overtaken by Relief (a) and cannot be availing. The validation of the Right of Occupancy of claimant implies certain rights enures in its favour including right of ownership and possession. **Relief (h)** is struck out.

I take **Relief (j)** before **Relief (i)**. Relief (j) is for Five Million Naira (N5, 000, 000) general and special damages.

In law, general damages flow from the wrong complained of and is usually awarded to assuage loss suffered by the plaintiff from the alleged act(s) of the defendant complained of. Put another way, general damages are the kinds implied by law in every breach of **legal rights**, its quantification however being a matter for the court. See **Corporative Development Bank Plc V. Joe Golday Co. Ltd (2000)14 N.W.L.R (pt.688)506; UBA V. BTL Ind. Ltd (2001)AII F.W.L.R (pt.352)1615.** The emphasis here is on breach of legal rights and not fanciful or imagined rights.

The Supreme Court in **Lar V. Sterling Astaldi (Nig) Ltd (1977)11-12 SC 53 at 63** defined general damages as such damages as may be given when the judge cannot point out to any measure by which they may be assessed, except the opinion and judgment of a reasonable man. **Elf Petroleum Nig. V. Umah (2006)AII F.W.L.R (pt.343)1761.**

On the other hand, special damages have been defined as damages of the type as the law will not infer from the nature of the act; they do not flow in the ordinary course; they are exceptional in their character and therefore, they must be claimed specially

and strictly proved. See **A.T.E. Co. Ltd V M.L. Gov. Ogun State (2009) 15 N.W.L.R (pt.1163) 26 at 71; Ekennia V Nkpakara & 2 ors (1997) 5 SCNJ 70 at 90.**

The Apex Court in **X.S (Nig.) Ltd. Vs. Tasei (W.A) Ltd**. **(2006)15 N.W.L.R. (pt.1003) 533 at 552 B-E; 552 E-G** Mohammed J.S.C. stated as follows:

***"With regard to how to plead and prove special damages, the law is quite clear that special damages must be specifically pleaded and proved strictly…In this respect, a plaintiff claiming special damages has an obligation to plead and particularise any item of damage. The obligation to particularise arises not because the nature of the loss is necessarily unusual, but because the plaintiff who has the advantage of being able to base his claim on a precise calculation must give the defendant access to the facts which make such calculation possible*"**

Also in **Neka BBB Manufacturing Co. Ltd V A.C.B. LTD (2004) 2 NWLR (pt.858) 521** the Apex Court stated thus:

"A damage is special in the sence that it is easily discernable. It should not rest on a puerile conception or notion which would give rise to speculation, approximation or estimate or such like fractions."

Now with respect to the claim of General damages, I am of the view that on the facts as found that it was a wrong exercise of power by the 1st Defendant to the detriment of Plaintiff to have revoked the plot of land granted in the manner done in this case and on no discernable legal grounds. The 1st and 2nd defendants have here denied the plaintiff of the profitable use of the land in the manner the plot was revoked and allocated to a third party and as such should be reasonably damnified in general damages for the wrong done to the plaintiff.

With respect to special damages there is absolutely no strict pleadings of particularization of special damages in this case and also absolutely no evidence in proof of these alleged losses. The claim of special damages is clearly not availing.

On the whole, I am of the view that the sum of N200, 000 is availing as general damages to plaintiff in the circumstances.

The final **Relief (i)** is for cost of this action in the sum of **N5, 000, 000**. There is absolutely no evidence before court to sustain this leg of relief. What the claimant will be entitled to is reasonable costs arising from the prosecution of the case under the provision of **Order 56 Rule 1 (3) of the Rules of Court**. No more.

On the whole, the sole issue raised is answered substantially in favour of claimant. For the avoidance of doubt, I hereby make the following orders:

1. **It is hereby Declared that the Claimant's Offer of Statutory Right of Occupancy dated 10th day of August, 2009 is first in time, valid and subsisting.**

2. **It is hereby Declared that the purported revocation of Right of Occupancy (R of O) by the 1st defendant through the 2nd Defendant of Plot No. 66 having an area of approximately 2660.47 square meters in Cadastral Zone C20 of Sector F, with New File Number MSC 103780, dated 10th day of August, 2009 via a letter titled "Notice of Revocation of Right of Occupancy" is contrary to the provisions of the Land Use Act and in effect illegal, unlawful, null, void and of no effect.**

3. **It is hereby Declared that the purported Right of Occupancy (R of O) issued to the 3rd Defendant during the pendency of this suit is illegal, unlawful, null, void and of no effect.**

4. **The Defendants and their agents are restrained from acts capable of affecting the lawful and subsisting interest of the plaintiff over the disputed plot as guaranteed under the Land Use Act and the 1999 Constitution of the Federal Republic of Nigeria.**

5. **Reliefs (e), (g) and (h) are hereby struck out.**

6. **Relief (f) is dismissed.**

7. **I award General Damages in the sum of N200, 000 payable by 1st and 2nd Defendants to the Plaintiff.**

8. **I award cost assessed at N50, 000 payable by 1st and 2nd Defendants to the Plaintiff.**

…….
Hon. Justice A.I. Kutigi

<u>Appearances</u>:

1. **Abiodun E. Olusanya, Esq., for the Claimant.**

2. **K.G. Omang, Esq., for the 1st and 2nd Defendants.**