

**IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY  
IN THE ABUJA JUDICIAL DIVISION  
HOLDEN AT MAITAMA – ABUJA**

**BEFORE HIS LORDSHIP: HON. JUSTICE S.U. BATURE  
COURT CLERKS: JAMILA OMEKE & OTHERS  
COURT NUMBER: HIGH COURT THIRTY FOUR (34)  
CASE NUMBER: FCT/HC/CV/05/2020  
DATE: 14<sup>TH</sup> MAY, 2020**

**BETWEEN:**

**1. JONA BROTHERS CONSTRUCTION LTD  
2. JONA BROTHERS CONSTRUCTION  
COOPERATIVE SOCIETY  
3. COMR. UCHE VINCENT**

} **CLAIMANTS**

**AND**

**1. U.I. PROPERTIES LIMITED  
2. WILLBOG NIGERIA LIMITED  
3. BEST BARGAIN AUTO PLAZA  
4. BOWAYS NIGERIA LIMITED**

} **DEFENDANTS**

**J U D G M E N T**

The Claimants filed this suit against the Defendants via a writ of summons dated and filed on the 10<sup>th</sup> Day of January, 2020 under the Fast Track Procedure of the F.C.T. High Court seeking for the following reliefs:

1. A Declaration that the 1<sup>st</sup> Claimant is the lawful owner of Plot 680 – 689 Cadastral Zone BO6 Mabushi District, Abuja allotted to it in June, 1992.
2. A Declaration that the actions of the Defendants to wit: purported sale of Plot 680 – 689 Cadastral Zone BO6, Mabushi District, Abuja to the 1<sup>st</sup> Defendant, forcible entry and trespass, breaking of some portions of the concrete/fence; and placement of barriers on the concrete fence without the lawful approval of the Claimants is unlawful, arbitral and wrongful and provocative.
3. A Declaration that the impersonation and collection of the Claimant's letter of Acknowledgment by the Defendants from the Ministry of Federal Capital Territory in respect of Plot 680 – 689 Cadastral Zone BO6, Mabushi District, Abuja is wrongful, unlawful, criminal and condemnable.
4. An Order of perpetual injunction restraining the Defendants, their agents, servants, privies, assigns or by whatsoever name called, from further trespassing on the Claimant's land.
5. An Order of this Honourable Court mandating the Defendants to return to the 1<sup>st</sup> Claimant its Letter of Acknowledgement unlawfully collected from the Ministry of the FCT Abuja without the consent and approval of the Claimants.
6. The sum of Fifty Million Naira (N50,000,000.00) being damages for trespass and destruction of the Claimant's concrete fence.
7. The cost of this suit.

Upon being served the processes, the 1<sup>st</sup> Defendant's representative as well as its counsel appeared before this court and filed its defence and counter claim. In the counter claim, the 1<sup>st</sup> Defendant claims against the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants jointly and severally as follows:

1. An Order of this Honourable Court mandating the Defendants to refund the 1<sup>st</sup> Defendant/Counter Claimant the deposit of 6.4 Million Naira being part payment of the land in dispute.
2. The sum of Two Million Naira (N2,000,000.00) against the Defendants for the cost of this suit.

The 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants did not file any process in defence of this matter nor did they enter any appearance.

The case proceeded to a full trial. On the 20<sup>th</sup> Day of February 2020, the Claimants opened their case and called one witness Comr. Uche Vincent who testified for himself and on behalf of the 1<sup>st</sup> and 2<sup>nd</sup> Claimants as PW1. He adopted his statement on oath and tendered the following documents in evidence and admitted and marked as follows:

1. A Certificate of Registration issued by Anocha Local Government dated 4/3/92 as Exhibit A.
2. A letter of urgent release of Certificate of Occupancy written by C.O.C. Emekalzima Esq. dated 18<sup>th</sup> November 2019 with a photocopy attached as Exhibit B.

3. An Acknowledgment letter from Ministry of Federal Capital Territory dated 18/5/05 and Exhibit C.
4. A letter written by C.O.C. Emekalzima Esq. on threat to life, willful destruction of property, criminal trespass and intimidation of client by U.I. Properties Limited dated 12<sup>th</sup> December 2019 as Exhibit D<sup>1</sup>.
5. Photocopy of a banner with Caveat Emptor as Exhibit D<sup>2</sup>.
6. Certificate of Authentication of Exhibit D2 pursuant to Section 84 of the Evidence Act as Exhibit D<sup>3</sup>.
7. Photocopy of a broken wall with debris on the floor as Exhibit D<sup>4</sup>.
8. Certificate of Authentication of Exhibit D4 pursuant to Section 84 of the Evidence Act as Exhibit D<sup>5</sup>.
9. Leadership Newspaper as Exhibit D<sup>6</sup>.
10. A photocopy of Certificate of Occupancy containing five pages stamped and dated 29/4/2005 as Exhibit D<sup>7</sup>.
11. Two Revenue Collector's Receipts issued by Federal Capital Territory Abuja, Nigeria dated 11/8/93 and 30/7/92 and Exhibits E and F respectively.
12. Offer of Terms of Grant/Conveyance of Approval issued by Ministry of Federal Capital Territory dated 19<sup>th</sup> June, 1992 and Exhibit F<sup>2</sup>.
13. A photocopy of Certificate of Occupancy containing five pages as Exhibit F<sup>3</sup>.

14. Power of Attorney made between Jona Brothers Construction Limited and Comr. Uche Innocent as Exhibit F<sup>4</sup>.

PW1 was duly cross-examined and discharged. With the testimony of the Claimant's sole witness who testified for himself and other Claimants, the Claimants closed their case.

On the other hand, the 1<sup>st</sup> Defendant/Counter Claimant opened its defence and called one witness Mr. IfeanyiIsrael, the Managing Director of the 1<sup>st</sup> Defendant. He adopted his statement on oath and tendered in evidence an agreement between Willbog Nigeria Limited (Seller) and U.I. Properties Limited (Buyer) dated 7<sup>th</sup> Day of June, 2019 which was admitted and marked as Exhibit G.

DW1 was accordingly cross-examined by the Claimant's counsel and he was discharged.

The 1<sup>st</sup> Defendant/Counter Claimant with the testimony of its sole witness closed its case.

Written addresses were ordered by the court and parties filed and exchanged written addresses as ordered by the court. The 1<sup>st</sup> Defendant/Counter claimant's final written address is dated and filed on 28<sup>th</sup> Day of February 2020.

Two issues were formulated for determination in the 1<sup>st</sup> Defendant/Counter claimant's final written address as follows:

- 1. Whether the Claimants have proved their case against the 1<sup>st</sup> Defendant/Counter Claimant and whether the 1<sup>st</sup> Defendant/Counter Claimant is liable to the Claimant in the circumstances of this case.**
- 2. Whether the 1<sup>st</sup> Defendant/Counter Claimant has proved its counter claim against the 2<sup>nd</sup> Defendant and is entitled to the reliefs sought.**

The Claimant's final written address is dated 6<sup>th</sup> Day of March 2020 and filed 9<sup>th</sup> Day of March 2020. A sole issue was formulated for determination by the Claimants in their final written address as follows:

***“Whether the Claimant have proved their case against the Defendants to be entitled to their reliefs as contained in the writ of summons and statement of claim”***

Addressing the court on 16<sup>th</sup> March 2020, learned counsel to the 1<sup>st</sup> Defendant/Counter Claimant Alexander Oke Esq. adopted the submissions in the 1<sup>st</sup> Defendant/Counter Claimant's written address and urged the court to dismiss the claim of the Claimants and grant the 1<sup>st</sup> Defendant/Counter Claimant's counter claim.

In a similar claim, C.O.C. Emekalzima Esq. counsel to the Claimant adopted the submission in the Claimant's final written address and urged the court to find in favour of the Claimants and grant all their reliefs.

In arguing the issues, learned counsel to the 1<sup>st</sup> Defendant/Counter Claimant submitted on Issue one that the Claimants have no case against the 1<sup>st</sup> Defendant in this suit.

The learned counsel stated further that it is not in dispute that the land in question was undergoing regularization process at the Land Registry initiated by the Claimants. That this regularization process required that the original papers of the land be deposited at the Land Registry and the claimants have claimed that the original documents were given to one J.O. Eze to aid them in the regularization process at the Land Registry and the said Mr. J.O. Eze disappeared with the documents and could not be found till date.

More so, learned counsel stated that the 1<sup>st</sup> Defendant/Counter claimant has complained and given valid reasons for its presence on the land as an interested buyer who has shown seriousness by signing a purchase agreement with the 2<sup>nd</sup> Defendant and committing part payment to the 2<sup>nd</sup> Defendant to enable it complete the regularization process. Reference was made to Exhibit G.

Consequently, it was submitted that the 1<sup>st</sup> Defendant entered into the transaction in good faith without notice of fraud or misrepresentation on the part of its co-defendants.

It is the contention of the learned counsel that the 1<sup>st</sup> Defendant's purported acts of trespass was at the instance of the 2<sup>nd</sup> Defendant

and that these claims have not been in any way controverted by either the Claimants or the other Defendants in this case.

In another submission counsel stated that no reply was filed by the Claimants to controvert the claims of the 1<sup>st</sup> Defendant as contained in its statement of defence and no statement of defence was filed by the co-defendants, particularly the 2<sup>nd</sup> Defendant, to deny the 1<sup>st</sup> Defendant/Counter Claimant's case. As such counsel submitted more so that the 1<sup>st</sup> Defendant's defence having not been denied is deemed admitted and urged the court to so hold. Reliance was placed on the case of GEORGE WILL v OKWARA (2016) ALL FWLR (Pt 837) CA.

Finally on Issue one, counsel submitted that the 1<sup>st</sup> Defendant being an innocent purchaser for value without notice of any fraud or misrepresentation cannot and should not be held liable for the wrongful acts of the 3<sup>rd</sup> Defendant and urged the court to so hold.

On Issue two which is whether the 1<sup>st</sup> Defendant/Counter Claimant has proved its counter claim against the 2<sup>nd</sup> Defendant and is entitled to the reliefs sought. Learned counsel referred the court to the testimony of DW1 and Exhibit G and submitted that the 1<sup>st</sup> Defendant entered into the purchase agreement with the 2<sup>nd</sup> Defendant in respect of the land and paid an initial deposit of 6.4 Million Naira to enable it conclude the regularization process.



The learned counsel stated further that the 2<sup>nd</sup> Defendant was served with all the processes in this suit, including the 1<sup>st</sup> Defendant/Counter Claimant's counter claim but did not file any process to dispute the 1<sup>st</sup> Defendant/Counter Claimant's claim. Consequently, counsel submitted that the claims are deemed admitted. Reliance was placed on the case of INAKOJU v ADELEKE (2007) 1 S.C. (Pt 1) ESHIET v EFFIONG & ORS (2008) LPELR – 45184 (CA).

On the whole, counsel urged the court to grant the 1<sup>st</sup> Defendant/Counter Claimant's counter claim against the 2<sup>nd</sup> Defendant in the interest of justice.

On the part of the counsel to the Claimants he submitted on the sole issue raised in the Claimant's final written address that based on the evidence before this Honourable Court, there is no other person or company that has acquired any kind of right or interest in the land in dispute from the 1<sup>st</sup> Claimant. Reference was made to the case of TEMILE N. AWANI (2001) 12 NWLR (Pt 728) 726, 751 – 752 at Para F – A.

In another submission, counsel to the Claimants stated that since the 1<sup>st</sup> Defendant is claiming that his root of title or interest over Plot 680 – 689 Cadastral Zone BO6, Mabushi District FCT, Abuja is traced to the 2<sup>nd</sup> to 4<sup>th</sup> Defendants, it is the duty of the 2<sup>nd</sup> to 4<sup>th</sup> Defendants to challenge the claims of the Claimants, join issues and dispute the Claimant's claim of title to the land in dispute, but the 2<sup>nd</sup> to 4<sup>th</sup> Defendants failed to join issues with the Claimants in this case.

To that extend, counsel further submitted that this Honourable Court has a duty to deem all the claims of the Claimant as stated in their statement of claim as undisputed and therefore require no further proof.

As such, counsel urged the court to so hold. He cited in support the case of OSUKPOWA v EDUAKA (2016) 1 NWLR (Pt 1493) 329, 338, Paras A – C.

In his further submission, counsel stated that the documents had duly discharged the burden of proof on their part through the evidence of PW1 and all the documents tendered before the court and the burden of proof then shifted to the Defendants to establish how they acquired the land in dispute from the Claimants either by purchase or by way of gift.

Therefore, counsel urged the court to hold that the Claimants have proved their assertions on preponderance of evidence while the Defendants have failed to discharge the onus which shifted to them in this case.

The learned counsel submitted again that the documents have established at least one of the five ways of proving ownership of land by tendering documents of title to the land in dispute without any of the Defendants producing any contrary evidence of selling, leasing, renting or farming on the land. In this respect, reliance was

placed on the case of ANYANWALE v ODUSAMI (2011) 18 NWLR (Pt 1278) 328, 341, 342 Paras G – B.

In addition, counsel submitted that in the absence of any contradicting documents tendered by the Defendants the title documents produced by the Claimants ought to be held to be sufficient proof of the 1<sup>st</sup> Claimant's ownership of Plot No. 680 – 689, Cadastral Zone BO6, Mabushi District, FCT Abuja and urged the court to so hold.

On the demolition of part of the Claimant's fence, learned counsel stated that the 1<sup>st</sup> Defendant admitted to be responsible for the damage done to the fence. As such counsel submitted that it is an admission against interest and no further proof is required to establish that the 1<sup>st</sup> Defendant's liability for the legal injury, his said action has caused the claimants. Therefore counsel urged the court to so hold.

Finally, counsel urged the court to resolve the sole issue for determination in the affirmative and grant all the reliefs sought by the Claimants in this case.

I have carefully perused the writ of summons, the reliefs sought, the statement of claim as well as the 1<sup>st</sup> Defendant/Counter Claimant's statement of defence and the counter claim. I have equally evaluated the entire evidence before the court both oral testimonies of witnesses and documentary evidence tendered. I have also

studied extensively the final written addresses of parties in this suit filed and adopted by their counsel.

Having done all these, it is my humble view that the issues for determination are two, namely:

1. Whether the Claimants have proved their case as required by law to be entitled to the reliefs sought.
2. Whether the 1<sup>st</sup> Defendant/Counter Claimant has made a case against the 2<sup>nd</sup> Defendant to be entitled to its counter claim.

Before I dwell on the issues for determination, it is pertinent to state that it is the case of the Claimants as distilled from the statement of claim and the evidence before the court that the 1<sup>st</sup> Claimant was allocated Plot No. 680 – 689 Mabushi District Abuja in June 1992 via a Certificate of Occupancy No. FCT/ABU/MISC 9231 also issued together is the Statutory Right of Occupancy (R. of O.)

The Claimants averred that after the acquisition of the land, they immediately took possession of same, by construction of concrete fence and iron gates to ward off trespassers from the property.

The Claimants further averred that sometimes in 2005; the Ministry of the Federal Capital Territory came up with re-certification policy whereby all land owners in the Federal Capital Territory were mandated to submit their land documents for re-certification. The land agent who was engaged by the Claimants to interface with the Ministry of FCT to effect the re-certification of the title document,

Mr. J.O. Eze actually collected the original copies of the title documents and submitted them to the issuing authorities who acknowledged receipt of both the documents and the necessary fees from Mr. J.O Eze.

That Mr. J.O. Eze became untraceable and not updating the Claimants as to whether the documents had been regularized or not which made the Claimants to declare Mr. J.O. Eze missing in a National Newspaper. All efforts of the Claimants to trace or reconnect with Mr. J.O. Eze in order to collect the re-certified copies proved abortive.

In the further averment, the Claimants stated that since the acquisition of the land in June 1992, they have enjoyed uninterrupted/exclusive possession without any adverse claim until sometimes in November, 2019 when they noticed that the 1<sup>st</sup> Defendant, acting in collusion with the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants trespassed into the land and sought to claim ownership of same.

Having pointed out these, let me now consider the issues for determination one after the other.

On Issue One which is whether the Claimants have proved their case as required by law to be entitled to the reliefs sought.

The law is settled that the burden of proof lies on the party who asserts. To put it differently, he who asserts must prove with credible

and admissible evidence. This regard See Section 131 (1) of the Evidence Act 2011 provides thus:

***“Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist”***

See also the case of MUSTAPHA N. ZARMA & ORS (2018) LPELR – 46326 (CA) AT Pages 36 – 44 Paras F – D where it was held per ABIRU J.C.A. thus:

***“As rightly stated by the lower court, the legal burden of proof in civil cases is on a claimant to prove to the satisfaction of the court the assertions made in the pleadings of the contention upon which he meets his case and he has the onus of proving his case by preponderance of evidence, the refusal of Defendant to testify cannot alleviate the primary burden on the Claimant”***

Similarly, it was held in the case of SOKINO v KPONGBO (2008) 7 NWLR (Pt 1080) 242 at 362, Paras C – E that:

***“It behoves the Appellant to give testimony in support of the pleadings if he wants to succeed in his case. A cardinal principle of law is a Plaintiff who asserts must prove his case with credible and unchallenged evidence. In civil cases a party who wishes to succeed in obtaining judgment in his favour must adduce such credible evidence for such cases are***

***decided on preponderance of evidence and balance of probability”***

See also the case of INIAMA v AKPABIO (2008) 17 NWLR (Pt 116) 225.

It should be noted that the Claimants in the instant case from their reliefs as endorsed on the writ of summons are seeking or claiming declaration of title to the land in dispute known and described as Plot 680 – 689 Cadastral Zone BO6 Mabushi District, Abuja.

As such, it is settled law that it is for the Claimant seeking a decree of declaration of title that the onus of proof usually rests. In this regard see the case of LAWAL v AKANDE (2008) 2 NWLR (Pt 1126) 425 at 336 Paras A – B where it was held thus:

***“...As earlier stated in this judgment the burden of proof is on the Plaintiff in an action for declaration of title to establish his claim by preponderance of evidence. It is enough if he produces sufficient and satisfactory evidence in support of his claim”***

See also the case of ALAO v AKANO (2005) 11 NWLR (Pt 935) 160 at 173 Para C – D where it was held thus:

***“It is important to bear in mind that the claims of the Appellant before the trial court were essentially declaratory hence the duty was on him to succeed on the strength of his own case and not on the weakness of the Defendant’s case”***

Therefore, the question that comes to mind at this junction is whether the Claimants here have been able to prove that the land in dispute was actually allocated to the 1<sup>st</sup> Claimant.

The Claimants by their pleadings claim title by grant to 1<sup>st</sup> Claimant from the Ministry of Federal Capital Territory via Certificate of Occupancy No. FCT/ABU/MISC 9234. On the other hand, the 1<sup>st</sup> Defendant stated in its pleadings that it acquired the land in dispute in good faith without any notice of fraud or misrepresentation from the 2<sup>nd</sup> Defendant which in turn informed it that it acquired same from the Claimants.

At the trial, the Claimants called a sole witness Comr. Uche Vincent who testified for himself and on behalf of the other Claimants as PW1.

During his evidence-in-chief PW1 tendered in evidence several documents which were admitted in evidence and marked as Exhibits A – F4.

I have studied carefully the entire exhibits tendered by the Claimants in this case, particularly Exhibit D7 that is photocopy of Certificate of Occupancy; it bears the name of the 1<sup>st</sup> Claimant i.e. JONA BROTHERS CONSTRUCTION LTD as the holder.

In addition, this Exhibit D supports the averment contained in paragraph 10 and 11 of the statement of claim as well as paragraphs 13 and 14 of the witness statement on oath which



clearly show that the 1<sup>st</sup> Claimant was allocated the said Plot of land in dispute by the Ministry of Federal Capital Territory, Abuja.

Therefore, the evidence of PW1 has given credence to the Exhibits tendered, particularly Exhibit D7 before the court. In that respect, I refer to the case of OPEYA v OLADEPE (2011) 11 NWLR (Pt 1259) 505 at 533 Paras D – G where it was held thus:

***“The law is settled that when documentary evidence supports oral evidence led becomes more credible. This is so because documentary evidence serves as a hanger from which to access oral testimony”***

More so, under cross-examination of PW1, the following ensued inter alia:

Q: Comrade Uche how did your company acquire the land subject matter of this suit?

A: The land was allocated to our company by the FCDA.

Furthermore, the following equally ensued inter alia under cross-examination of DW1:

Q: Am I correct to say that whenever or whenever in the case of a company its name appears on the Certificate of Occupancy of a particular plot of land

within the Federal Capital Territory, is the rightful owner of that land?

A: Yes.

Q: In respect of the land subject matter of this suit did you see the Certificate of Occupancy of this land before you went into agreement to purchase it?

A: I saw copies of the Certificate of Occupancy.

Q: When you saw copy of the Certificate of Occupancy whose name did you see on it?

A: Jona Brothers Construction Limited.

Q: That is the 1<sup>st</sup> Claimant?

A: Yes.

Consequently, from the foregoing it is clear that PW1 gave evidence both during examination-in-chief and cross-examination that the land subject matter of this suit was allocated to the 1<sup>st</sup> Claimant as evidenced by Exhibit D7.

To that extent I am of the considered opinion that from above pieces of evidence the Claimants particularly the 1<sup>st</sup> Claimant is the allottee of the plot subject matter of this suit, I so hold.

At this point the question is did the 1<sup>st</sup> Claimant transfer its title to the 2<sup>nd</sup> Defendant?

From the pleadings before the court, the Claimants averred at paragraphs 25 of the statement of claim and 28 of the witness statement on oath to the effect that they never at anytime sold Plot 680 – 689 Cadastral Zone BO6 Mabushi District Abuja to the Defendants or anybody or ordered the Defendants to collect their letter of acknowledgment from the Ministry of the Federal Capital Territory.

On the other hand, the 1<sup>st</sup> Defendant averred in paragraph 2 of the statement of defence and paragraph 3 of the witness statement on oath to the effect that it acquired the land subject matter of this suit from the 2<sup>nd</sup> Defendant who in turn acquired it from the Claimants.

However, at the trial during cross-examination of DW1, the following ensued inter alia:

Q: From the inception of your transaction with your co-defendants did they show you any evidence of payment of any sum for the purposes of acquiring land from the 1<sup>st</sup> Claimant?

A: No, they have not shown me.

Q: That Letter of Acknowledgment was found in your possession?

A: Yes.

Q: How did you come about it?

A: It was given to me by the 2<sup>nd</sup> Defendant as promised after the advance payment after getting from the other party and I confirmed it, it was the original.

Q: Whose name appeared on that document as the owner of the land?

A: Jona Brothers Construction Limited.

Q: Did you ask them of the whereabouts of Jona Brothers Construction Limited in the entire transaction?

A: Yes, I did.

Q: And what was their response?

A: Their response was that they acquired from Jona.

Q: By what means did they say they acquired it from Jona, was it by gift or purchase?

A: They said they purchased from Jona.

Q: Even this part payment you made it was reduced into writing?

A: Yes, it was reduced into writing.

Q: How come they did not show you any document that they executed with Jona Brothers in respect of the land?

A: I was expecting the document at the end of the transaction before this problem started.

Q: I put it to you that with the level of your experience in land matters you could not have entered into a transaction worth Eighty Million Naira, without seeing documents that show the root of title from the original allottee to the person that is directly selling to you?

A: I said earlier that it depends on the understanding of the parties.

In this respect, I refer to the case of TTOYINBO v OSADEYI (2009) 16 NWLR (Pt 1168) 605 at 631 – 632 Paras H – B where it was held thus:

***“...Where as in the present case an issue of title of real owner of the land in dispute had arisen, the origin or root of title of such a grantor must not only be clearly averred in the pleadings it must be proved by credible and preponderate evidence...”***

See also the case of UCHE v EKE (1998) 9 NWLR (Pt 564) 24.

It should be noted that from the evidence before the court, the 1<sup>st</sup> Defendant tendered Exhibit F<sup>4</sup> which is the Sale Agreement between Willbog Nigeria Limited (Seller) i.e. 2<sup>nd</sup> Defendant and U.I. Properties Limited (buyer) i.e. 1<sup>st</sup> Defendant.

The said Exhibit F<sup>4</sup> is a Sales Agreement between the 2<sup>nd</sup> Defendant and 1<sup>st</sup> Defendant in respect of the Plot of land subject matter of this suit. Nothing in the said Exhibit F<sup>4</sup> indicates/or shows that the 1<sup>st</sup> Claimant transferred its title to the 2<sup>nd</sup> Defendant.

As such it is my strong opinion that the 1<sup>st</sup> Defendant has failed to lead credible evidence as to the origin or root of title of the 2<sup>nd</sup> Defendant to the Plot of land, subject matter of this suit, I so hold.

Furthermore, the Claimants claim for trespass on what constitutes trespass to land, it was held in the case of ADUA v ESSIEN (2010) 14 NWLR (Pt 1213) 141 at 158 Paras C –D that:

***“Trespass to land in law constitutes the slightest disturbance to possession of land by a person who cannot show a better right to possession. A trespass to land is an entry upon land or any direct and immediate interference with the possession of land”.***

It was further held in ADUA v ESSIEN (Supra) at Page 158 Paras D – G that:

***“So far a Plaintiff to institute or commence an action that he is in exclusive possession. Exclusive in the sense that he does not share his right of possession with any other person. A Plaintiff need not show ownership of the land. Proof of actual possession can sustain action on trespass...”***

In the instant case, the Claimants averred in paragraphs 13 and 14 of the statement of claim and paragraphs 16 and 17 of the witness

statement on oath to the effect that after the acquisition of the land, they immediately took possession of same, to wit: construction of concrete fence and iron gate to ward off trespassers from the property and also engaged the services of security agents to secure the land and leased some portion to auto-mechanics carrying on machine repairs on the land.

More so, the Claimants led evidence on the particulars of trespass and tendered Exhibits D<sup>2</sup>, D<sup>3</sup>, D<sup>4</sup> and D<sup>5</sup> in support.

The 1<sup>st</sup> Defendant on the other hand averred in paragraphs 6 and 7 of the statement of defence to the effect that he is not liable for any act of trespass as it went into the land with the approval and authority of the 2<sup>nd</sup> Defendant and that all its actions were in good faith and sanctioned by the Defendants who it acquired the land from.

As stated earlier on, the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants who were duly served with the court processes in this suit refused, neglected and or avoided to file their respective statement of defence in defence of this suit against them.

In consequence therefore, the law is well settled that all the averments in both the statement of claim and counter claim of the 1<sup>st</sup> Defendant are deemed to be admitted in law. In this respect see the case of *AGBOR v THE POLYTEHNIC CALABAR (2009) LPELR 8690 (CA)*.

Consequently I agree with the submission of the learned counsel to the 1<sup>st</sup> Defendant that the purported acts of trespass of the 1<sup>st</sup> Defendant was at the instance of the 2<sup>nd</sup> Defendant, I so hold.

The Claimants further claim for an order of perpetual injunction, the law is settled that an order of perpetual injunction, in view of its nature of finality, is only granted to protect a claimant's established right. See the cases of ADENIRAN v ALAO (1992) 2 NWLR (Pt 223) 350 at 372 and BIYO v AKU (1996) 1 NWLR (Pt 422) 1 at 34.

In the light of the above, the Claimants having in my humble view satisfactorily established the declarations sought are entitled to an order of perpetual injunction. Therefore, the relief for perpetual injunction succeeds, I so hold.

In the final analysis, it is my considered opinion from the entire circumstance adduced before this Honourable Court that the Claimants have proved their case as required by law and entitled to the grant of the reliefs sought.

In the circumstances, I hereby resolve Issue one in favour of the Claimants against the Defendants and enter judgment for the Claimants and delare as follows:

1. That the 1<sup>st</sup> Claimant is the lawful owner of Plot 680 – 689 Cadastral Zone BO6, Mabushi District, Abuja allotted to it in June 1992.



2. That the actions of the Defendants to wit: purported sale of Plot 680 – 689, Cadastral Zone BO6, Mabushi District, Abuja to the 1<sup>st</sup> Defendant forcible entry and trespass, breaking of some portion of the concrete fence and placement of barriers on the concrete fence without the lawful approval of the Claimants is unlawful, arbitral and wrongful and provocative.
3. That the impersonation and collection of the Claimant's letter of acknowledgment by the Defendants from the Ministry of Federal Capital Territory in respect of Plot 680 – 689 Cadastral Zone BO6 Mabushi District, Abuja is wrongful, unlawful, criminal and condemnable.
4. That the Defendants, their agents, servants, privies, assigns are hereby restrained perpetually from further trespassing on the Claimant's land.
5. That the Defendants are hereby ordered forthwith to return to the 1<sup>st</sup> Claimant its Letter of Acknowledgment unlawfully collected from the Ministry of the FCT Abuja without the consent and approval of the Claimants.
6. That the sum of Two Million Naira (N2,000,000.00) is hereby awarded to the Claimants as damages for trespass and destruction of the Claimant's concrete fence to be paid by the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants jointly.
7. I make no order as to cost. Parties should bear their respective cost.

On Issue Two which is whether the 1<sup>st</sup> Defendant/Counter Claimant has made out a case against the 2<sup>nd</sup> Defendant to be entitled to its counter claim.

I believe I need not dissipate my energy on this Issue two because the evidence adduced by the 1<sup>st</sup> Defendant/counter claimant in proof of its counter claim against the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants is unchallenged and/or uncontradicted. In that respect, I refer to the case of YAKUBU v M.W.T. ADAMAWA STATE (2000) 10 NWLR (Pt 989) 513 at paragraph C – F where it was held thus:

***“It is the law that where evidence adduced by a party to any proceedings is not challenged by the opposite party who had an opportunity to do so, it is open to the court seized of the proceedings to act on those unchallenged facts”***

It was also held in the case of HEIN NEBULUWE ISENSEE K.G. v U.B.A. PLC (2012) 16 NWLR (Pt 1326) 357 at 384 Para C that:

***“...where evidence is uncontroverted, unchallenged and credible, the court will be left with no option than to accept same”***

See also the case of INAKOJU v ADELEKE (2007) 4 NWLR (Pt 1025) 423.

To that extent therefore the 1<sup>st</sup> Defendant/Counter Claimant having led evidence in proof of its counter-claim which same is unchallenged and uncontroverted, without further ado hold that the 1<sup>st</sup> Defendant/Counter Claimant is entitled to its counter claim.

On that note I hereby resolve Issue two in favour of the 1<sup>st</sup> Defendant/Counter Claimant against the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants.

In sum, I hereby enter judgment for the 1<sup>st</sup> Defendant/Counter Claimant against the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants and order as follows:

1. That the Defendants should forthwith refund the 1<sup>st</sup> Defendant/Counter Claimant the deposit of 6.4 Million Naira being part payment of the land in dispute.
2. Five Hundred Thousand Naira N500,000.00) is hereby awarded as cost of this suit against the Defendants.

**(Sgd)**  
**HON. JUSTICE S.U. BATURE**  
**(PRESIDING JUDGE)**  
**14/5/2020**