IN THE HIGH COURT OF JUSTICE
FEDERAL CAPITAL TERRITORY OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT APO – ABUJA
ON, 16TH SEPTEMBER, 2020.
BEFORE HIS LORDSHIP:- HON. JUSTICE A. O. OTALUKA.

SUIT NO.:-FCT/HC/CV/1689/2006

BETWEEN:

SUPRA INVESTMENT LTD:.....CLAIMANT
(Suing by their Lawful Attorney,
Shelter Development Ltd)

AND

1) THE HON. MINISTER FEDERAL CAPITAL TERRITORY.
2) FEDERAL CAPITAL DEVELOPMENT AUTHORITY.:.....DEFENDANTS
3) ABUJA INVESTMENTS COMPANY LTD.

Dr. Hassan M. Liman (SAN) with YahayaDangana, Amani F. Amazi and Idris Musa Tallefor the Claimant.
Isah D. Haruna holding the brief of Habib O. Iladbari for the 1st and 2nd Defendants.
Mustapha A. Abubakar and Isah D. Haruna for the 3rd Defendant.

JUDGMENT.

The Claimant initiated this suit in 2006 vide Originating Summons to which she later effected a number of amendments.On the 19th day of June, 2018, the Claimant adopted a Further Amended Originating Summons dated the 27th day of March, 2018, and filed on the 3rd day of April, 2018 and the Defendants also adopted their respective counter affidavits in opposition to the Originating Summons as well as preliminary objections to the Originating Summons.

In a composite considered ruling delivered on the 26th day of September, 2018, the Court struck out the Further Amended Originating Summons and ordered the parties to file pleadings.

Consequently the Claimant filed a Writ of Summons dated and filed the 19th day of October, 2018, wherein she claimed against the Defendants jointly and severally as follows;

1. A declaration that the Claimant, Supra Investment Limited is still the valid and legal title holder of Plots 366-405, situate and lying at Maitama District, Cadastral Zone A06, Abuja, covered by Certificate of Occupancy No. FCT/ABU/MISC.2698 registered at the Land Registry Abuja as No. FC42 in Volume 42 (Certificate of Occupancy) and further assigned by consent of the 1st Defendant and also registered at the Registry Abuja as No. 117 at page 117 in volume 5 MISC. on the 16th December, 1992.
2. A declaration that the purported revocation of the Certificate of Occupancy No. FCT/ABU/MISC.2698 in respect of Plots 366-405, situate and lying at Maitama District, Cadastral Zone A06, Abuja, by the 1st and 2nd Defendants by themselves, agents, privies or any person acting on their behalf or instructions, is unconstitutional, null, void and of no effect whatsoever.
3. A declaration that the action of the 1st and 2nd Defendants by themselves, agents, privies or any person or authority howsoever acting on their behalf in purportedly re-allocating Plots 366-405, Maitama District, Cadastral Zone A06, Abuja, covered by Certificate of Occupancy No. FCT/ABU/MISC.2698 to the 3rd Defendant, a private limited liability company, or any person or corporation howsoever, other than the Claimant, the present holder of the Plot covered by Certificate of Occupancy No.

FCT/ABU/MISC.2698, is unconstitutional, null, void and of no effect whatsoever.

4. A declaration that the action of the Defendants, most especially the 2nd and 3rd Defendants in illegally entering into Plots 366-405, Maitama District, Cadastral Zone A06, Abuja, by arresting the Claimant's workers and men from the site and detaining them, demolishing the Claimant's property or structures, is illegal and also constitutes an act of trespass.
5. An order directing the 1st and 2nd Defendants to issue and or release to the Claimant, the new Re-certified Certificate of Occupancy covering Plots 366-405, Maitama District, Cadastral Zone A06, Abuja.
6. And order setting aside, cancelling or invalidating the purported revocation of Plots 366-405, Maitama District, Cadastral Zone A06, Abuja covered by Certificate of OccupancyNo. FCT/ABU/MISC.2698, which has been in the name of the Claimant all the material times and the re-allocation of the said Plots of land by the 1st and 2nd Defendants to the 3rd Defendant, a private limited liability company, or to any person(s), body, corporation or authority howsoever, and setting aside to that effect in the name of the 3rd Defendant.
7. An order of perpetual injunction restraining the 1st, 2nd and 3rd Defendants by themselves,agents, servants or any person, body or authority acting on their behalf or instructions from processing or further processing, or continuing with the process of issuance of any form of document howsoever in the name of the 3rd Defendant or to any person, corporation, covering Plots 366-405, Maitama District, Cadastral Zone A06, Abuja.
8. An order of perpetual injunction restraining the Defendants by themselves,agents, servants orprivies from further

entry or continuing with any further steps in furtherance of the purported revocation/re-allocation or other adverse transactions touching on the said Plots of land No. 366-405, Maitama District, Cadastral Zone A06, Abuja, covered by Certificate of Occupancy No. FCT/ABU/MISC.2698, allocated by the 1st and 2nd Defendants to the Claimant.

9. An order compelling the Defendants to jointly and severally pay the sum of N600,000,000.00 (Six Hundred Million Naira) to the Claimant being the value of the property or structures demolished/destroyed and building materials of the Claimant on site used or carted away by the Defendants.
10. An order compelling the payment to the Claimant by the Defendants jointly and severally, of the sum of N3,000,000.00 (Three Million Naira) only, being general damages for trespass, illegal arrest and detention of the Claimant's workers.

The case of the Claimant, as per paragraph 7 ofher statement of claim, is that a piece or parcel of land within the Federal Capital Territory, Abuja, consisting of Plot No. 366-405, originally granted to Messrs.Sauki Hospital Ltd on 23rd September, 1983, was by a Deed of Assignment made on the 16th day of December, 1992, and duly registered as No. 117 at page 1127 in volume 5 MISC, assigned to the Claimant all the interests and rights in the Certificate of OccupancyNo. FCT/ABU/MISC.2698, in respect of the said parcel of land.

The Claimant averred that at the time she purchased the property from the original title holder the property was already developed and was being occupied by tenants, and that she was issued a Statutory Right of Occupancy over the said piece of land consisting of Plots No. 366-405,covered by Certificate of

Occupancy No. FCT/ABU/MISC.2698, granted by the Minister of the Federal Capital Territory.

That she subsequently produced a re-designed project which was approved by the 1st and 2nd Defendants, with estimated cost of N1.3 billion, which project was aimed at erecting befitting accommodation to foreign investors and expatriates.That this led to the demolition of the existing structures on the land in 2005, leaving a stockpile of materials on site worth over N85 million for construction work.

The Claimant further stated in paragraph 15 statement of claimthat following the Re-certification and Re-issuance of Certificate of Occupancy exercise of the 1st and 2nd Defendants, Diamond Bank PLC, with whom she had deposited the Original Certificate of Occupancy, submitted the Original Certificate of Occupancy on behalf of the Claimant to the 1st and 2nd Defendants for Re-certification/ Re-issuance, and was issued with an acknowledgment dated 9th January, 2005.That the 1st and 2nd Defendants are in possession of the said Original Certificate of Occupancy till date, and no Re-certified certificate has been issued to the Claimant despite repeated demands.

The Claimant averred that on Wednesday the 14th day of June, 2006, the agents of the 1st and 2nd Defendants, together with seven (7) armed Mobile Policemen, on the instructions of the Defendants, and without the consent or permission of the Claimant, came upon the land and stopped the Claimant's workers from continuing construction works on the land and served them a document dated 14th day of June, 2006 and captioned "QUIT NOTICE". That the claimant had been exercising all the rights of a holder of Right of Occupancy over the land without any hindrance prior to the events of 14th June, 2006, and no form of notice other than the Notice to Quit was

served on her. She stated that on the 15th of June, 2006, without her consent or permission, the Defendants brought a truckload of Mobile Policemen on her land and arrested her workers on the land and took them to the Police Station. That it was after the arrest and detention of her workers that the Claimant was informed by the Police that the 1st Defendant had purportedly revoked her Certificate of Occupancy and allocated same to the 3rd Defendant.

She averred that on the 29th of July, 2006, workers and agents of the Defendants went to the land in dispute and pulled down part of the Claimant's fence and commenced reconstruction, and that despite orders of injunction issued on the 1st and 4th of August, 2006 for parties to maintain status-quo, the Defendants went ahead to demolish and destroy the Claimant's structures on the land, used and/or carted away the Claimant's building materials all valued at over N600,000,000.00 (Six Hundred Million Naira) only.

Following the filing of defence to the Claimant's suit by the Defendants, the Claimant filed Reply to their respective statements of defence.

In her reply to the 1st and 2nd Defendant's statement of defence, the Claimant averred that the original allottee, Sauki Hospital and the Claimant, have fulfilled every term and condition of grant stated in the Certificate of Occupancy (including payment of ground rent), right from the time the Right of Occupancy was granted and up to the time the Certificate of Occupancy covering the said title was issued in favour of the Claimant.

She stated that the purported Notice of Revocation of her title is vague and lacks specificity as it did not state in clear terms which of the terms and conditions contained in the Certificate of

Occupancy that the Claimant had breached to warrant the purported revocation of her title.

Furthermore, that there is no evidence of delivery and receipt of the purported Notice of Revocation by either the original allottee or the Claimant, even as Shelter Development Ltd, the Claimant's attorney, who was allegedly served the Notice of Revocation, never occupied any address on Nkwere Street, off Ahmadu Bello Way, Abuja since its incorporation as a limited liability entity. That it is only the registered address of the 3rd Defendant that can be found on Nkwere Street, off Ahmadu Bello Way, Abuja.

Replying to the 3rd Defendant's statement of defence,the Claimant averred that the 2nd Defendant does not have any power to acquire or take over any asset or property of any person or body (whether corporate or incorporate) and that the powers of the 1stDefendant to revoke or acquire interest in lands are subject to strict compliance with the provisions of the Land Use Act as to the procedure for revocation of interest in lands. That the 3rd Defendant was also incorporated as a profit making entity as clearly stated in her Memorandum and Articles of Association.

The Claimant further averred that the legal personality of the original allotteeof the land in dispute is not in issue before the Court and that Sauki Hospital Ltd and Sauki Hospital, the original Grantee or Holder of the Certificate of Occupancy, are one and the same, as there is no distinction between the two names. Also,that the reason for the purported revocation of the disputed property by the 1st and 2nd Defendants, was not on the account of or had anything to do with the name of Sauki Hospital.

The Claimant stated that she is not in receipt of any purported revocation notice issued by the 1st and 2nd Defendants, and that the attached DHL Shipment Waybill is a mere evidence of dispatch and not evidence of actual delivery and receipt of the parcel containing the purported notice of revocation.

The Claimant opened her case on the 6th day of March, 2019, with the evidence of a subpoenaed witness, KelechukwuChineme, who, testifying as CW1, tendered a bundled of documents from the Abuja Geographic Information system, comprising of CTC of Deed of Assignment between Messrs Sauki Hospital Ltd and Messrs Supra Investments Ltd, certified true copy of Certificate of Occupancy No. FCT/ABU/MISC.2698, and certified true copy of Offer of Terms of Grant/ Conveyance of Approval, all admitted in evidence and marked as Exhibit CW1A, A1 & A2 respectively.

Thereafter, one Juliet Usman, a Quantity Surveyor with the Claimant's Attorney, gave evidence for the Claimant. Testifying as PW1, she adopted her witness statement on oath accompanying the Claimant's statement of claim and her additional witness statements on oath accompanying the various replies to the Defendants' statement of defence wherein she affirmed all the averments in the respective pleadings of the Claimant. She also tendered the following documents in evidence;

1. Court Order (ordering interim injunction) – Exhibit PW1A.
2. Enrolled Order (Dismissing appeal) – Exhibit PW1B.
3. Form CAC3 – Exhibits PW1C.

The PW1 was cross examined by the 1st and 2nd Defendants' counsel, during which she told the Court that the stockpile she referred to in paragraph 12 of the witness statement on oath, comprised of various quantities of building materials, cement,

gravels, sharp sand and iron rods. She further stated that she was not present when the quit notice was served on the land in dispute.

Under cross examination by the 3rd Defendant, the PW1 stated that the Claimant has approval for the alleged development she carried out on the land in dispute, as well as site plan, but that they are with Shelter Development Ltd. She stated that the demolition of the structures on the land were not carried out by development Control, but by the 3rd Defendant.

The PW1 consistently maintained that the receipts evidencing the alleged stockpile at materials, and all other documents evidencing their claims are with Shelter Development Ltd.

The 1st and 2nd Defendants who are the Minister of the FCT and the FCDA, respectively, filed a joint statement of defence dated and filed the 9th day of November, 2018. They averred that the disputed land was allocated to SaukiHospital by the 1st Defendant through the instrumentality of the 2nd Defendant, and a Certificate of Occupancy No. FCT/ABU/MISC.2698 was issued to the said Sauki Hospital. That the said Certificate of Occupancy contains certain terms and conditions including the obligation on the Sauki Hospital to erect and develop structures thereon within two years from the date of the commencement of the Right of Occupancy, which is effective from the 13th day of February, 1983.

The 1st and 2nd Defendants averred that the Claimant, in clear breach of the fundamental terms of the grant of title in the disputed property, failed and neglected to erect and develop structures on the disputed property within the two years' time line stipulated in the title document, and indeed, did not erect any such structures from the said period of 13/02/1983 up to the end of the year 2005, covering an aggregate period of 22

years. That on account of the failure of the Claimant or her authorised attorney to comply with the fundamental terms of the grant of title to the property in developing structures on the property to the monetary value of N4,600,000.00 within 2 years from 13/02/1983, the 1st Defendant exercised his statutory power of revocation of the Claimant's title to the property vide Notice of Revocation dated 04/01/2006.

They stated that the Notice of Revocation was served on the Claimant through her Attorney by a prepaid registered courier service, DHL and subsequently, the land was reallocated to the 3rd Defendant, the Claimant's title having been effectively extinguished by the service of the Notice of Revocation, and two statutory certificates of occupancy issued to the 3rd Defendant in respect of the property.

The 1st and 2nd Defendants further averred that the allocation of the disputed property to the 3rd Defendant is for public purpose, regard being had to the ownership structure of the 3rd Defendant, and that it was influenced by the desire to redevelop Maitama Housing Estate and to discourage the piecemeal development of the properties within Maitama A06 District which was not aesthetically pleasing and which runs counter to the laid down planning standards. Furthermore, that as at the time of the revocation of the Claimant's title in the disputed property, there was no development on the property to the tune of N4.6 million as required by the terms of the grant.

The 1st and 2nd Defendants admitted that the Claimant submitted the original copy of the Statutory Certificate of Occupancy No. FCT/ABU/MISC.2698 for recertification, but stated that the recertification could not be processed on account of the fundamental breach of the terms of the grant by the Claimant, which culminated in the revocation of title in the

property and reallocation of same to the 3rd Defendant. They stated further that the Claimant had no investment or properties on the disputed land to the tune of N600 million and that no incident of destruction/demolition of the Claimant's properties occurred as the Defendants did not carry out such act, neither did they cart away properties belonging to the Claimant.

The Defendants opened their defence on the 18th day of February, 2020. One UdehChineme Martha, a Chief Town Planning Officer in theLands department of Abuja Geographic Information System (AGIS), gave evidence for the 1st and 2nd Defendants. Testifying as DW1, she adopted her witness statement on oath deposed to on the 14thday of October, 2019, wherein she affirmed all the averments in the 1st and 2nd Defendants' Joint Statement of Defence. She also tendered the following documents in evidence.

1. Notice of Revocation of Undeveloped Plots dated 4th January, 2006 – Exhibit DW1A.
2. DHL Shipment Air Waybill – Exhibit DW1B.

The DW1 was basically cross examined by the Claimant, on the work area, reasons for revocation, experience of the DW1 and the construction of the documents in evidence. The evidence of DW1 was that the revocation was for non-development of the land.

In her own defence, the 3rd Defendant in her statement of defence dated and filed on the 8th day of November, 2018, stated that the 3rd Defendant is a limited liability company incorporated to assist and enable the 2nd Defendant to carry out some of its statutory responsibilities, including the provision and establishment of municipal and infrastructural services within the Federal Capital Territory. That the 2nd Defendant and its nominees or officials are the exclusive shareholders of the

3rdDefendant which has been previously known as ABUJA INVESTMENTS LTD, ABUJA INVESTMENTS AND PROPERTY DEVELOPMENT COMPANY LTD, and ABUJA INVESTMENT AND FINANCE COMPANY LTD.

The 3rd Defendant averred that the Certificate of Occupancy No. FCT/ABU/MISC.2698 from which the Claimant purportedly derived her title, was originally granted to SAUKI HOSPITAL, which is a mere business name or enterprise and thus not capable of owning property or being granted a Right or Certificate of Occupancy over land. That the Deed of Assignment executed in purported assignment or transfer of the interest and rights or title of SAUKI HOSPITAL in the disputed property to the Claimant, was executed by one SAUKI HOSPITAL LTD, which is distinct or different from SAUKI HOSPITAL, the original grantee or holder of the Certificate of Occupancy over the disputed property.

The 3rd Defendant further averred that theDeed of Assignment by which title in the disputed property was purportedly transferred to the Claimant is not valid and does not convey any title to the Claimant. Also that the Claimant did not have a stockpile of materials for construction worth over N85 million, or any other materials on the disputed property, and that the Claimant did not obtain any approval from the1st and 2nd Defendants for its alleged redesigned project on the disputed property.

The 3rd Defendant stated that the Right of Occupancy evidenced by the Certificate of OccupancyNo. FCT/ABU/MISC.2698granted to SAUKI HOSPITAL over the disputed property was duly revoked by the 1st Defendant in exercise of the powers conferred on him by Section 28(s)(a)&(b) of the Land Use Act, Cap L15, LFN 2004. That

sequel to the said revocation, the 1st Defendant duly reallocated the Right of Occupancy over the property to the 3rd Defendant vide two Offers of Right of Occupancy both dated 17th June, 2006, in consequence of which the 1st Defendant issued two Certificates of Occupancy Nos. 17C4W-10724-62f3r-ee98u-10 and 17C4W-10726-733fr-10220-10, both dated 7th August, 2006, over the disputed property in favour of the 3rd Defendant.

The 3rd Defendant stated further that following the said Right of Occupancy granted to her, she took possession of the property sometimes in June, 2006 with the mandate of the 1st and 2nd Defendants, and commenced development of a housing estate therein, with a view to addressing in part, the problem of acute shortage of housing or residential accommodation in the Federal Capital Territory. That prior to the taking over possession of the disputed property by the 3rd Defendant, the Claimant had no buildings or legal structures on the property but that there were previously illegal structures constructed on the property without legal permit or approval from the 1st and 2nd Defendants, and that the said structures were voluntarily demolished or removed before the 3rd Defendant took over possession of the said disputed property.

She stated that she had already entered and commenced construction work on the disputed property before the Claimant applied for and obtained the Orders of injunction pleaded by her. That the Defendants did not destroy, demolish or cart away from the disputed property any structure, property or building materials belonging to the Claimant as alleged or at all, and that the Claimant did not have any structure or building materials worth N600,000,000.00 or any value near the said sum on the disputed property.

One AdakuAmadi, Acting Company Secretary/Legal Adviser of the 3rd Defendant gave evidence as DW2 for the 3rd Defendant. She adopted her witness statement on oath in affirmation of the averments in the 3rd Defendant's statement of defence and tendered the following documents in evidence;

1. Certificates of Incorporation of a Company – Exhibits DW2A-A2.
2. Return of Allotment – Exhibit DW2A3.
3. Memorandum and Articles of Association – Exhibit DW2A4.
4. 2 certificates of Occupancy – Exhibits DW2B and DW2C.
5. 2 Offers of Statutory Right of Occupancy – Exhibits DW2D and DW2E.

The DW2 was duly cross examined by the Claimant during which she admitted that the name of the 3rd Defendant on the Certificates of Occupancy, Exhibits DW2B and DW2C does not have the word "Ltd". She however, maintained that the address of the 3rd Defendant is No. 4 Nkwere Street and not Plot 1341 Nkwere Street. She further admitted that the 3rd Defendant is a profit making company.

At the close of the case of the Defendants, the Claimant invoked Section 127(b) of the Evidence Act, 2011 and applied to the Court for a visit to the locus in quo.

On the 19th of February, 2020, the Court visited the locus in quo in company of the representatives of the parties and the respective legal counsel. At the locus, the Court was shown two plots of land on both sides of the road leading into the British High Commission, Maitama, Abuja as the land in dispute. The Court observed no construction going on, on the land and that the plots were overgrown with weeds and trees.

Learned Claimant's counseltold the Court that the case of the Claimant is that both plots of land belong to the Claimant and that they are covered by one Certificate of Occupancy No. FCT/ABU/MISC.2698.

The 3rd Defendant's learned counsel told the Court that the 3rd Defendant's case is that both plots belong to the 3rd Defendant; the one to the right when facing the British High Commissioncovered by Certificate of Occupancy with File No. MISC.83414 while the one to the left is covered by Certificate of Occupancy with File No. 83566.

The Court observed that the piece of land by the left, accommodatesfour(4)abandoneduncompleted buildings which have been roofed. The representative of 3rd Defendant (Francisca Ibezim) was unable to proffer any reasons why the project of building was abandoned.

The Court further observed that at the extreme end of the portion of land to the right, there is a lone plastered block house, with roof, without windows, and barricaded by a wall. The Claimant's representative, Juliet Usman, told the Court that the said building was the first building the Claimant put up, as well as the main entrance gate. She stated further that they also built the perimeter fence and that they stopped work in 2006. On the extreme right of this lone building are 21 duplexes, one of which has windows/burglary proofs, and occupied by some individuals. The 3rdDefendant's representative told the Court that the occupants are 3rd Defendant's security guards.

From observation, there were 21 uncompleted structures, the roofs of the structures, are old and dilapidated.

The parties (Claimant and 3rd Defendant) were able to show and identify the area their Certificate of Occupancy covered at the locus inquo.

At the conclusion of the proceeding, the parties agreed to file and exchange their respective final written addresses.

In his Final Written Address dated and filed the 10th day of March, 2020, learned counsel for the 1st and 2nd Defendants, O.I. Habeeb, Esq, raised a sole issue for determination, to wit;

> ***"Whether on the state of pleadings and evidence led in this suit, the Claimant has made out a case for the grant of the reliefs sought?"***

Proffering arguments on the issue raised, learned counsel contended that considering the fact that the reliefs sought by the Claimant are declaratory in nature, the Claimant is required to establish her claims by credible and consistent evidence, and by relying on the strength of her case and not on the weakness of the defence. He referred to **Nwokidu v. Okanu (2010) 3 NWLR (Pt 1181) 362 at 390; Maitanmi v. dada (2013) 7 NWLR (Pt 1353) 319 at 330.**He further argued to the effect that in consideration of the facts of this case, vis-à-vis the evidence led by the Claimant, he concludes that the Claimant has failed woefully to establish concrete evidence, her entitlement to any of the reliefs sought as contained in paragraphs 28(1-10) of the statement of claim.

To demonstrate the alleged porosity of the Claimant's claims, the learned counsel argued that the property in dispute was allocated by the 1st Defendant to a non-legal entity, SAUKI HOSPITAL, and curiously, the Claimant 'Supra Investment Ltd' purported to have acquired title to the disputed property by purchase evidenced by a Deed of Assignment, Exh CW1A,

entered between her and a distinct and different entity, SAUKI HOSPITAL LTD. He thus contended that the legal conundrum associated with the invalidity of the allocation of the disputed property to a non-juristic personality – "SAUKI HOSPITAL,", is compounded by the fact that a different legal entity – "SAUKI HOSPITAL LTD", purported to divest interest in the disputed property in favour of the Claimant vide a Deed of Assignment, Exhibit CW1A.

Placing reliance on **FCDA v. Unique Future Leaders Int'l Ltd (2014) 17 NWLR (Pt 1436) 213 at 244-245,** he posited that the law is trite that a business name or enterprise is incapable of owning landed property. He thus argued that SAUKI HOSPITAL is incapable of acquiring any interest in the disputed property, and therefore, that the Certificate of Occupancy, Exhibit CW1A2, issued in the name of SAUKI HOSPITAL is invalid.

Arguing further, on the basis of the principle of Nemodat quod nonhabet, which postulates that you cannot give that which you do not have, learned counsel contended that SAUKI HOSPITAL LTD, which is a distinct entity from SAUKI HOSPITAL, could not have validly transferred any title in the disputed property to the Claimant as purportedly demonstrated in Exhibit CW1A since the title in the property was not allocated to SAUKI HOSPITAL LTD. Hereferred to **Ilona V. Idakwo (2003) 11 NWLR (Pt 830) 53 at 91-92,** and posited that the legal consequence of the foregoing submission, is that the Claimant has not acquired any title in the disputed property to justify her claim in relation thereto.

Learned counsel further contended that assuming, without conceding that in spite of the identified legal deficiencies, the Claimant acquired a valid title to the disputed property, that the

1st Defendant was justified in revoking the said title vide Exhibit DW1A for breach of clause 4 of theCertificate of Occupancy, Exhibit CW1A. In particular, he identified the following as the terms and conditions in the said clause 4 which were breached by the allottee, and indeed, the Claimant;

a) To erect and complete structures with the monetary value of not less than N4.6 million within two years from the commencement of the right, which is from the 13th of February, 1983.
b) The building or structures must be as specified in the detailed plans approved by the Federal Capital Development Authority.
c) That the building or structures so erected and completed must be to the satisfaction of the Federal Capital Development Authority or other officers appointed by the president.

He argued that the evidence of the 1st and 2nd Defendants that the above terms and conditions were breached by the Claimant remained unchallenged. That the Claimant failed to support her assertion that all the terms embedded in the Certificate of Occupancy were complied with, with any evidence such as a detailed plan for the erection of the building. He contended that the failure of the Claimant to plead and or tender the approved building plan which she alleged under cross examination, to be in existence, suggest that they are not favourable to the case of the Claimant. He referred to Section 167(d) of the Evidence Act, 2011.

He posited that the aggregate of the evidence of the parties in relation to the requirement for the development of the disputed property within two years from the commencement of the Statutory Right of Occupancy, preponderate in favour of the

fact that the allottee of the disputed property are in clear breach of the fundamental terms of the grant of title in the disputed property. Placing reliance on Section 28(5)(d) of the Land Use Act, Cap L.5, LFN, 2004, he contended that the 1st Defendant was perfectly justified and within his right when he revoked the title to the disputed property on the basis of the breach of clause of the Certificate of Occupancy as it relates to non-development of the property.

He referred to **C.S.S. Bookshops Ltd v. R.T.M.C.R.S (2006) 11 NWLR (Pt 992) 530 at 582-583.**

On the service of the Revocation Notice, learned counsel posited that paragraph C of Section 44 of the Land Use Act, provides for service of notices by pre-paid registered courier as was done by the 1st Defendant vide Exhibit DW1B. He argued that it was the consistent evidence of the 1st and 2nd Defendants' sole witness under cross examination that the postal address of the Claimant's Attorney on the records of the 1st and 2ndDefendants, is same address that was used in effecting service of the Revocation Notice.

Learned counsel further argued in relation to the reallocation of the disputed property to the 3rd Defendant, that although the 3rd Defendant is a limited liability company, it is wholly owned by the nominees of the 2nd Defendant as evidenced by Exhibits DW2A3 and DW2A4. Furthermore, that it is the case of the 1st and 2nd Defendants, that the 3rd Defendant who is the beneficiary of the reallocation of the disputed property, was incorporated by the 2nd Defendant for public purpose, and as a vehicle to carry out the responsibilities of the 3rd Defendant in relation to municipal infrastructural development within the Federal Capital Territory. He argued that given the status and character of the 3rd Defendant, the reallocation of the disputed

property cannot be said to have been made to a private company or individual, and thatsame is proper and validated by the provision of Section 28(b) of the Land Use Act. He referred to **Aso Tim Do2 Investment Co. Ltd vs. Abuja Markets Management Ltd &Anor (2016) LPELR-40367 (CA) 14-15.**

Learned counsel posited that it is evidently clear in the light of the foregoing, that the revocation of title on the disputed property and the reallocation of same to the 3rd Defendant, is valid and justified as same was done consistent with the extant laws. He argued that there is no basis for the Claimant to allege trespass on the disputed property as the Claimant's title was validly revoked and reallocated to the 3rd Defendant before the later took possession of same.

Arguing further, learned counsel contended that the allegation of the Claimant's witness regarding the alleged demolition or carting away of the building materials of the Claimant, is at best, hearsay, as no iota of admissible evidence was tendered to support the allegation. He posited that the claims of N600 million and N85 million made by the Claimant are in the nature of special damages which must be proved strictly. He argued that the Claimant failed to produce any receipt or document to support the claim of having bought the building materials and or valuation report to support her claims. Relying on **Alhassan v. A.B.U. Zaria (2011) 11 NWLR (Pt 1259) 417 at 469,** he contended that in the absence of particularization of and strict proof of the claims for special damages, there is no basis for the award of same.

On the claim for the sum of N3 billion as general damages for illegal arrest and detention of the Claimant's workers, learned counsel contended that there is no admissible evidence that the Defendants were in any way involved in the alleged arrest and

detention of the workers of the Claimant, or indeed, that the workers of the Claimant were even arrested or detained at all. He argued that the alleged workers of the Claimant that were said to have been arrested and detained, were neither identified nor were they made parties to the instant suit. Herelied on **Effiong v. AIS & S Lts (2011) 16 NWLR (Pt 1243) 266 at 276-277** to posit that damages are not awarded as a matter of course, or out of sympathy, but on sound solid legal principles.

He contended, while referring to **Arike v. S.P.D.C.N. Ltd (2011) 7 NWLR (Pt 1246) 227 at 244,**that the Claimant has failed woefully to establish by concrete evidence any wrong doing by the Defendants, and that in the absence of any wrong doing, there is no basis for any claim for damages or any relief whatsoever.

In conclusion, learned counsel relied on **Ipinlayell vs. Olukotun (1996) 6 NWLR (Pt 453) 148 at 172**to submit that this Court is precluded from relying on its personal observation at the locus in quo in the determination of this suit as the personal observation made by the Court was not supported by sworn testimony of any witness, given that same was done when the witnesses have been discharged.

He urged the Court to resolve the sole issue in the negative and to dismiss the instant suit for want of merit.

The 1st and 2nd Defendants also filed a Reply on points of law to the Claimant's final written address wherein they relied on **Umeh Brothers Co. Ltd v. Oseni (2019) 12 NWLR (Pt 1686) 293 at 317,** to submit that the Deed of Assignment, Exhibit CW1A, being relied upon by the Claimant as proof of her ownership of the disputed property, can only pass as conclusive proof of ownership upon fulfilment of certain

conditions including the fact that the vendor must have authority and capacity to make the transfer/assignment of title and must equally have title capable of being assigned.

Learned counsel therefore, argued that flowing from the above, the argument of the 1st and 2nd Defendants in their final written address which seeks to interrogate the validity of the Claimant's title to the disputed property, is germane and relevant.

He also placed reliance on **Ojiako v. Ewunu (1995) 9 NWLR (Pt 420) 460 at 476** to further urge the Court to resist the temptation to accept as evidence the allegations of fact listed in paragraphs 4.40(a-e) at page 40 of the Claimant's final written address as representing evidence established during the course of the visit to the locus in quo.

Learned counsel further relied on **AGI v. Access Bank PLC (2014) 9 NWLR (Pt 1411) 121 at 158-159** to posit that the argument of the Claimant that the admission by the 1st and 2nd Defendants of service of Quit Notice suffices as proof of the claim for special damages is flawed. He submitted that the absence of particulars of the alleged special damages in the pleadings of the Claimant equally translated to absence of concrete evidence required to prove and establish special damages.

On the nature of evidence required to establish claim for special damages, he referred to **Neka B.B.B. Manufacturing Co. Ltd v. ACB Ltd (2004) 2 NWLR (Pt 858) 521 at 540-541,**and posited that this was conspicuously absent in this case.

On the submission that the workers of the Claimant not being parties to the instant suit, and therefore not entitled to the grant of damages sought on their behalf by the Claimant, learned

counsel referred to **Nnaemeka v. Chukwuogor Nig. Ltd (2007) 5 NWLR (Pt 1026) 60 at 78.**

In his final written address dated the 18th day of March, 2020 and filed on the 19th day of March, 2020, learned counsel for the 3rd Defendant, M.I. Abubakar, Esq, raised two issues for determination, namely;

1. Whether the Claimant has proved its case for declaration of title to the disputed property to be entitled to the reliefs claimed by it in this suit?
2. If issue one(1) above is answered in the positive (which is not conceded), whether the Claimant has established a case for the award of the damages sought by it and what should be the quantum of damages?

In arguing issue one, learned counsel relied on Sections 131-134 of the Evidence Act, 2011, and **Obasanjo Farms v. Muhammad (2016) LPELR-40199 (CA)** to contend that the Claimant has a very heavy burden to prove by credible evidence, her entitlement to the declaratory reliefs sought by her claims in this suit. He posited that it is the law that he who asserts must prove, and that a Claimant must first prove his case with credible evidence before any burden can shift to his opponents to refute the claim. He referred to **Eyo v. Onuoha (2011) 11 NWLR (Pt 1257) 1 at 26-27.**

Placing further reliance on**Chukwuokeke v. Nigerian Agricultural Co-op & Rural Development Bank (2018) LPELR-45037 (CA),**he contended that on the state pleadings and evidence led, the Claimant did not discharge the burden of proof on her at all, in that:

i. The Claimant did not satisfactorily establish her title to the disputed property; and/or

ii. The evidence led show that the title of the Claimant or her predecessor in title to the disputed property was duly revoked by the 1st Defendant and reallocated to the 3rd Defendant.

On the contention that the Claimant did not satisfactorily establish her title to the disputed property, learned counsel contended that in a claim for declaration of title like the instant suit, the title of the Claimant is immediately put in issue, and that the Claimant must therefore, establish her title to the disputed property through one or more of the five recognised methods of proving title to property. He argued to the effect that the Claimant who is relying on production of documents of title to prove her title to the disputed property must not only establish her title to the land in issue, but must go further to establish or satisfy the Court as to the title of the source from whom she derived her title, particularly so as the 3rd Defendant expressly challenged the Claimant's title to the disputed property. He referred inter alia to **Adole v. Gwar (2008) 11 NLWR (Pt 1099) 562 at 592; Daisi v. Oloto (2012) 11 NWLR (Pt 990) 1 at 29.**

Learned counsel argued that the Claimant who averred that she was issued a Statutory Right of Occupancy over the disputed property, admitted under cross examination through PW1, that no Right of Occupancy was ever issued to the Claimant in respect of the property. He urged the Court to hold that the allegation by the Claimant that she was issued a Statutory Right of Occupancy over the disputed property, has been satisfactorily disproved.

Arguing further, learned counsel contended that for the Claimant to validly derive title to the disputed property vide the Deed of Assignment executed in her favour by Sauki Hospital

Ltd, (Exhibit CW1A) the Claimant must prove that Sauki Hospital Ltd had valid title to the property on the basis of nemodat quod non habet. He argued however, that while the Claimant is relying on a Deed of Assignment executed by Sauki Hospital Ltd,the Certificate of Occupancy over the disputed property was issued in favour of Sauki Hospital, a mere business name or enterprise, distinct from Sauki Hospital Ltd. He urged the Court to hold that the Deed of Assignment did not validly convey title in the disputed property to the Claimant as same was executed by a corporate body or company which does not have title to the property.

Placing reliance on **F.C.D.A v. Unique Future Leaders International Ltd (2014) 17 NWLR (Pt 1438) 213 at 244-245,** he argued further that the Certificate of Occupancy in favour of Sauki Hospital (Exhibit CW1A1), the source of the Claimant's title, is invalid or incompetent as the entity, Sauki Hospital is a mere business name, a non-legal person which is incapable of owning landed property or any interest in land.

Placing further reliance on **Dabo v. Abdullahi (2005) 7 NWLR (Pt 923) 181 at 212-213,** he posited that the mere registration of a Deed or Land instrument, does not prove title of the holder or person tracing his root of title to him. Thus, that the registration of an otherwise invalid or incompetent Deed or title document will not confer validity on it.He therefore argued that the mere fact that the Certificate of Occupancy in favour of Sauki Hospital was issued by the 1st Defendant, or that same and the Deed of Assignment are registered with AGIS, does not confer any validity or competency thereon, and that neither does same prove the Claimant's title to the property.

He therefore contended that the end result of the foregoing submissions, is that the Claimant has failed woefully to

establish or prove her title to the disputed property as required by law, and that all her claims for orders of declaration in respect of the disputed property in paragraphs 28(1)-(4) of the statement of claimmust fail and should be dismissed for lacking in merit.

Relying on **Unilorin Teaching Hospital v. Abegunde (2015) 3 NWLR (Pt 1447) 421 at 456** he posited that with the failure of the declaratory reliefs, all other reliefs claimed in the suit as per paragraphs 28(5)-(10) of the statement of claim which are necessarily consequential or incidental to the said declaratory reliefs must also fail and be dismissed as it is the law that failure of the main relief automatically leads to the failure of the consequential or incidental reliefs. He urged the Court to therefore, dismiss the Claimant's entire claim.

Furthermore, on the contention that the evidence led show that the title of the Claimantor her predecessor in title to the disputed property was duly revoked by the 1st Defendant and reallocated to the 3rd Defendant, learned counsel posited that by virtue of Section 28(5)(a)&(b) of the Land Use Act, and Section 13(3) of the Federal Capital Territory Act, the 1st Defendant is vested with statutory power to revoke a Statutory Right of Occupancy for a breach of any of the provisions contained or deemed to be contained in a Certificate of Occupancy. He argued that the 1st Defendant in exercise of his powers under the aforementioned Sections of the Statutes, duly revoked the title held by the Claimant. Aligning himself with the submissions of learned counsel for the 1st and 2nd Defendants in his Final Written Address on the legal essence and effect of the Notice of Revocation along with the evidence of delivery thereof, he urged the Court to hold that the title of the Claimant to the disputed property (if any), waseffectively revoked by the 1st Defendant vide Exhibit DW1A.

On issue two, on whether the Claimant has established a case for the award of damages sought by her, and what should be the quantum of damages; learned counsel argued that in the unlikely event that the Claimant is successful in her claim for orders of declaration in respect of the disputed property, it will become necessary for this honourable Court to take a hard look at the Claimant's pleadings and evidence with a view to determining whether or not the Claimant has made out a case for the award of damages and the quantum of such award (if any).

The learned counsel raised objection to the competence of claims for damages contained in paragraph 28(9)&(10) of the statement of claim and the jurisdiction of this Court to entertain or grant same. He premised his objection on the fact that the Claimant did not pay for the filing of the suit in respect of the said claims or did not pay for the said claims or a substantial part thereof. He argued that in the originating summons with which this suit was commenced on 31/7/2006, the Claimant only claimed ***"N25,000,000.00 general damages for trespass against the Defendants jointly and severally",*** together with the declaratory and injunctive reliefs, and that,that is what the Claimant paid for in commencing the suit. He contended that there is nothing to show that when the Claimant amended her originating summons to introduce the claims for N600 million special damages and increase her claim for general damages from N25 million to N3 billion, that she duly paid filing fees in respect of the additional monetary claims of N600 million and N2,975,000,000.00. Relying on **Onwugbufor v. Okoye (1996) 1 NWLR (Pt 424) 252 at P. 292,** he posited that non-payment of filing fees in respect of a suit or claim, raises a serious jurisdictional issue as it renders the suit or claim incompetent and deprives the Court of the jurisdiction to entertain same.

He contended that except it is shown that the Claimant paid filing fees in respect of the additional claims for N600 million special damages andN2,975,000,000.00 general damages, the said claims are incompetent and must be struck out, in which case, only the originalclaim for N25 million general damages can be properly considered by the Court with a view to either granting it or refusing it.

The learned counsel however, proceeded to address the substance of the Claimant's claims for special and general damages without prejudice and subject to the objection raised thereto. He argued that the claim in paragraph 28(9) of the statement of claim being in the nature of special damages is required in law to be specifically pleaded and particularized and proved strictly with cogent and credible evidence.

He referred inter alia to **Ajigbotosho v. RCC (2018) LPELR-44774 (SC); Alalade&Ors v. Ododo&Ors (2019) LPELR-4688(CA); G.K.F. Investment (Nig) Ltd v. NITEL PLC (2009) LPELR-1294 (SC).**

He posited that the starting point by a trial Court in considering a claim in the nature of special damages is to examine the pleadings of the Claimant to see if there are sufficient facts available to the Defendant that would enable him meet the claim which the Claimant is making against him. That in the absence of sufficient facts pleaded in support of such claim,it fails automatically. – **NURTW &Ors v. First Continental Insurance Co. Ltd (2019) LPELR – 48005 (CA).** He argued that when the applicable principles of law on pleadings and proof of special damages are applied to the instant case, it will be evident that the pleadings of the Claimant in respect of her claim for N600,000,000.00special damages are grossly deficient and that the head of claim ought to be dismissed

pronto without the necessity of even considering the evidence led in support.

Learned counsel further argued to the effect that even if the Court deems it fit to consider the evidence offered by the Claimant in respect of the claim for special damages, that the only evidence led by the Claimant in this regard through the PW1 is grossly deficient. He urged the Court to hold that failure to plead and tender the receipts, waybills and valuation reports which the PW1 confirmed that the Claimant or her Attorneyhave in her possession, is fatal to the Claimant's claim, and to accordingly dismiss the Claimant's claim for special damages of N600,000,00 as there is no legal proof whatsoever in respect thereto.

Learned counsel further contended that even if the Claimant had properly pleaded and established her claim for special damages, she cannot be entitled to any compensation from the Defendants since the alleged development/structures of the Claimant on the disputed property were unapproved or illegal structures. Furthermore, that the Claimant, through the PW1, admitted in paragraphs 12 and 15 of the main witness statement on oath that she demolished the existing structures on the disputed property in 2005 well before the 3rd Defendant entered the property to commence development thereon in June, 2006.

He urged the Court to dismiss the claim for special damages in paragraph 28(9) of the statement of claim for grossly lacking in merit.

Learned counsel argued further, that the Claimant failed to prove any entitlement to the award of general damages claimed in paragraph 28(10) of the statement of claim in respect of the alleged arrest and detention of her workers. He urged the Court

to dismiss the said claim as there is no cogent admissible evidence before the Court from which the alleged arrest and detention of the Claimant's workers can be inferred.

Also, that the Claimant did not establish her entitlement to any award of general damages relating to trespass. That on the state of pleadings and evidence before the Court, it is not in dispute that the 3rd Defendant entered the disputed property only sometime in June, 2006 sequel to the Statutory Rights of Occupancy granted to her over the property by the 1st Defendant before the commencement of this suit and the grant of any interim injunction therein.

While conceding that general damages can be presumed by the Court if the alleged wrong to a Claimant is proved, learned counsel contended that the Claimant still has a serious duty to lead cogent and credible evidence upon which the Court can act to exercise its discretion in awarding general damage in her favour. He posited with reliance on **Access Bank v. Ugwuh (2013) LPELR-20735 (CA),** that the award of general damages by a Court is an exercise of the Court's discretion, and that like all Court's discretions, it must be exercised judicially and judiciously. He further referred to **Benjamin v. Kali (2018) 15 NWLR (Pt.1641) 38 at 56;Effiong v. A.I.S & S Ltd (2011) 6 NWLR (Pt.1243) 266 at 277.**

Learned counsel urged the Court to resolve issue two in the negative in favour of the Defendants and dismiss the Claimant's claim for special and general damages. In all, he posited that the entire claim of the Claimant is unmeritorious and liable to be dismissed. He urged the Court to dismiss this suit with substantial costs for being frivolous and grossly lacking in merit.

In his reply on points of law to the Claimant's final written address, 3rd Defendant's counsel submitted to the effect that the 3rd Defendant is entitled to put up argument in respect of the validity or otherwise of the revocation of the Claimant's title over the disputed property because the validity of the 3rd Defendant's allocation depends on the validity of the said revocation and because the reliefs claimed by the Claimant in the suit are against the three Defendants jointly and severally. He referred to **IfeanyiChukwu(Ojundu) Co. Ltd v. SolehBoneh (Nig) Ltd (2000) LPELR-1432 (SC).**

He further submitted that it will constitute a breach of the 3rd Defendant's fundamental right to fair hearing guaranteed by Section 36(1) of the 1999 Constitution (as amended), to subject the 3rd Defendant to the possibility for liability for the entire reliefs claimed in the suit against her and yet deprive her of the opportunity of defending and resisting the entire claim in the suit.

Learned counsel submitted further that the objection raised by the 3rd Defendant as to the competence of the reliefs claimed in paragraphs 28(9)&(10) of the statement of claim, is a radical and fundamental one touching on the jurisdiction of this Court to entertain or determine the said reliefs. That the objection can therefore, be raised anyhow and at any stage of the proceedings. He referred to**Oloba v. Akereja (1988) 3 NWLR (Pt 84) 508 at 520; Ogembe v. Usman (2011) 17 NWLR (Pt 1277) 638 @ 656.**

Relying on **Jinmi&Ors v. Gbepa&Ors (2017) LPELR 43501 (CA) 15-16,** he submitted that the proper order to be made by the Court upon finding that proper filing fee was not paid in respect of the said reliefs, is one of striking out, as the payment of filing fees in respect of each and every head of claim or relief

is a condition precedent to the exercise of jurisdiction of the Court in respect of such head of claim or relief.

Replying to Claimant's issue one,learned counsel to 3rd Defendant submitted, with reliance on **Olohunde&Anor v. Adeyoju (2000) LPELR-2586 (SC); Adegunle v. Governor of Lagos State &Ors (2019) LPELR-48013 (CA) and Ikwue v. Corpio Construction Nig. Ltd &Ors (2015) LPELR-40914 (CA),** that by virtue of the reliefs for damages, trespass and injunction in respect of the land in dispute claimed by the Claimant, the Claimant had automatically put her title to the land in dispute in issue regardless of whether or not there is counter claim for title by the Defendants. He thus contended that contrary to theargument of the Claimant in paragraph 4.13 of her Final Written Address, the capacity of Sauki Hospital Ltd (not being the grantee of the Right of Occupancy over the land in dispute but Sauki Hospital) to assign the land in dispute to the Claimant, as well as the validity of the grant of the Right of Occupancy over the land to Sauki Hospital (being a mere business name or enterprise with no legal personality), can and was competently raised by the 3rd Defendant regardless of the fact that it was not the basis of the revocation of the Right of Occupancy.

While conceding to the principle of law decided in **Oyebamiji v. Lawanson (2008) 15 NWLR (Pt 1109) 122 at 141** cited by the Claimant to the effect that a Deed of Assignment is sufficient evidence of ownership of property, learned counsel submitted with reliance on **Umeh Brothers Co. Ltd v. Oseni (2019) 12 NWLR (Pt 1686) 293 at 317,** that a Deed of Assignment would only be conclusive proof of ownership of property if it is:

a. Valid
b. Executed, stamped and registered.

c. The vendor has the authority and capacity to make the assignment.
d. The assignor has what he proposes to assign.

He further referred to **Dabo v. Abdullahi (2005) 7 NWLR (Pt 923) 181 at 212-213.**

He reiterated his contention that the Assignor of the Deed of Assignment (Exhibit CW1A), Sauki Hospital Ltd, neither had the capacity to make the assignment nor did it have what it purported to have granted to the Claimant.

On the contention by the Claimant that the Defendants cannot argue or claim that the allocation or grant of Statutory Right of Occupancy over the land to Sauki Hospital is not valid since Exhibits DW2B, DW2C, DW2D and DW2E evidencing the allocation or grant of Statutory Right of Occupancy in respect of the land in dispute to the 3rd Defendant also do not contain the word "Limited" or "Ltd", learned counsel submitted that the said argument completely lost sight of the fact that by virtue of the provisions of Sections 131-134 of the Evidence Act, 2011, the onus rests squarely on the Claimant to satisfactorily prove her claim or entitlement to the reliefs claimed in this suit, including the validity of the source of her root of title. That since the suit involves a claim of title to the land in dispute, the Claimant cannot rely on the weakness of the case of the Defendants or on the evidence of the Defendants, including any admission by them, for her success; particularly so as the Defendants did not have a counter claim to the suit. He referred to **Eyo v. Onuoha (2011) 11 NWLR (Pt.1257) 1 at 26-27 and Chukwuokeke v. Nigerian Agricultural Co-op & Rural Development Bank (2018) LPELR-45037 (CA).**

Replying to the argument canvassed by the Claimant relating to Section 28(1) of the LandUse Act, 1978 to the effect that

theGovernor of a State or the Minister of the Federal Capital Territory can only validly revoke a Right of Occupancy for overriding public interest, learned counsel submitted that as is apparent on the face of the Notice of Revocation (Exhibit DW1A), the title of the Claimant or her predecessor in title, Sauki Hospital, was revoked pursuant to Section 28(5)(a)&(b) of the Land Use Act, 1978 on ground of breach of the provisions or terms of the Certificate of Occupancy over the land, to wit; non-development of the land, and not pursuant to Section 28(1) of the Act which deals with revocation by a Governor for overriding public interest. He further submitted that Section 28(4) of the Land Use Act relied upon by the Claimant in paragraph 4.25 of her Final Written Address is inapplicable to the facts and circumstances of this suit, and that given that the Claimant's or her predecessor's title to the disputed land was revoked pursuant to Section 28(5)(a) & (b); that the requirement of revocation for overriding public interest does not arise in or apply at all to this case.

In response to the Claimant's issue three, learned counsel submitted in summary that in the absence of any sworn evidence at the visit to the locus in quo or in relation thereto, that the Court cannot substitute its personal observations at the said visit for evidence or rely on same to determine the Claimant's claim. He referred inter alia to **Aboyeji v. Momoh&Ors (1994) LPELR – 46 (SC); Ogundele v. FASU (1999) LPELR-2329 (SC);Ojiako v. Ewuru (1995) 9 NWLR (Pt 420) 460 at 476.**

The Claimant on her part, filed two separate Final Written Addresses; one in response to 1st and 2nd Defendants' Final Written Address, and the other in response to 3rd Defendant's Final Written Address.

In his Final Written Address in response to 1st and 2nd Defendants' Final Written Address, dated 8th May, 2020 andfiled the 11th May, 2020, learned senior counsel for the Claimant, Hassan M. Liman (SAN), raised three issues for determination namely;

1. Whether from the content of the Writ of Summons and the statement of claim filed before this Honourable Court, the case of the Claimant does not centre on the purported revocation of the Claimant's title over Plots 366-405, Cadastral Zone A06, Maitama District, covered by Certificate of Occupancy No. FCT/ABU/MISC.2698 only?
2. Whether the purported revocation, if any of the Certificate of Occupancy No. FCT/ABU/MISC.2698 of the Claimant by the 1st and 2nd Defendants and the re-allocation of same to 3rd Defendant, a private limited company notwithstanding the clear provisions of the Land Use Act, 1978 and all other relevant laws and judicial authorities is not invalid, null, void and of no effect whatsoever?
3. Whether having regard to issues 1 & 2 above, the conduct of the Defendants in purportedly revoking the Claimant's title and entering into; demolished the Claimant's existing structures and building new structures on the Claimant's land known as Plots 366-405, Cadastral Zone A06, Maitama District, Abuja covered by Certificate of Occupancy No. FCT/ABU/MISC.2698, is not illegal, null,and void, thus, entitled the Claimant to the reliefs sought in this suit?

In proffering arguments on issue one, learned senior counsel contended that what necessitated the instant suit is the purported revocation of the Claimant's title over Plots 366-405, Cadastral Zone A06, Maitama District, Abuja covered by Certificate of Occupancy No. FCT/ABU/MISC.2698. He argued

that the Claimant's title to the land in dispute is thus not the subject of contention in this suit, but rather, the purported revocation of same by the 1st and 2nd Defendants and the purported re-allocation of same to the 3rd Defendant in utter non-compliance with the relevant laws.

He further argued that the Defendants did not file any counter claim to challenge the Claimant's title to the land in dispute but rather set up a defence to justify the purported revocation. He thus urged the Court to reject the argument of the Defendants whereby they directed the Court to the issue of title to the land in dispute as same is an attempt to mislead the Court.

Relying on **Idundun v. Okumagba (1976)9-10 SC, 227,** learned counsel posited that one of the recognised ways of establishing title to land is by production of documents of title duly authenticated and executed. He argued that the Claimant in proof of her ownership of the land in dispute, tendered the following documents;

i. The CTC of Deed of Assignment executed on 16th December, 1992 and registered on 16th December, 1994 between Messrs Sauki Hospital Ltd and Messrs Supra Investment Ltd.
ii. Certificate of Occupancy No. FCT/ABU/MISC.2698 issued to Sauki Hospital Ltd, and;
iii. Offer of Terms of Grant/Conveyance of Approval to Sauki Hospital (Exhibits CW1A, CW1A1 & CW1A2 respectively).

He placed reliance on **Oyebanji v. Lawanson (2008) 15 NWLR (Pt 1109) 122 at 141** to posit that an assignee of title to land is deemed a valid owner of title through a valid and registeredDeed of Assignment. That a Deed of Assignment is a conclusive proof of ownership of a property.

He further referred to **Umeh Brothers Co. Ltd v. Oseni (2019) 12 NWLR (Pt 1686) 293 @ 317,** and contended that by virtue of the Deed of Assignment, exhibit CW1A, the Claimant was duly assigned the interest in Exhibit CW1A1 and thus became the valid owner of Plots 366-405, Maitama District, Cadastral Zone A06, Abuja, within the meaning and intent of the Land Use Act, 1978.

Learned senior counsel argued to the effect that by the purported revocation conveyed by the Revocation Notice Exhibit DW1A, the 1st and 2nd Defendants acknowledged the subsisting validity of the right and interest of the Claimant in the said land, hence the purported revocation, and that as such, the 1st and 2nd Defendants cannot challenge the validity of the Claimant's title to the land in dispute. He urged the Court to discountenance the submission of the 1st and 2nd Defendants on the issue of capacity of Sauki HospitalLtd to have transferred title in the Certificate of Occupancy No. FCT/ABU/MISC.2698 to the Claimant as the case of the Claimant bothers on the purported revocation of her title over the land in dispute and not on dispute over title or ownership of the Plots.

On issue two, learned senior counsel contended to the effect that in purporting to revoke her title to the land in dispute, the 1st and 2nd Defendants committed two fundamental breaches of the relevant statutory provisions considered sacrosanct to the revocation of titles, to wit;

i. That the contents of the purported Notice of Revocation (Exhibit DW1A), do not show that same was done for overriding public interest.

ii. None-service of the purported Notice of Revocationon the Claimant in utter disregard and violation of Section 44 of the Land Use Act, 1978.

He argued that although Section 28(1) of the Land Use Act, 1978 empowers the Governor of a State or the Minister of the Federal Capital Territory to revoke a Right of Occupancy, such revocation can only be valid when it is done for overriding public interest, and that in the exercise of such power, the Governor of a State or Minister of the Federal Capital Territory, as the case may be, is expected to issue/serve a notice of revocation on the holder of the title at the material time in strict compliance with the procedure laid down under Section 44 of the Land Use Act, 1978.

He contended that in the instant case, the 1st Defendant did not comply with the procedure for revocation of title to land as provided for under the Land Use Act, 1978 while purportedly revocating the Claimant's Certificate of Occupancy No. FCT/ABU/MISC.2698. That no notice of revocation whatsoever was served on the Claimant as required by Section 28(1) of the Land Use Act, and that the purported revocation was not done in the overriding public interest as the 3rd Defendant to whom the land was re-allocated is a profit making private company and not an agency of the 2nd Defendant.

He referred to**Goldmark (Nig) Ltd v. Ibafon Co. Ltd (2012) 10 NWLR (Pt 1308) 291 @ 356; AG. Bendel State v. Aideyen (1989) 4 NWLR (Pt 118) 646 @ 676; Gov. Kwara State v. NICON PLC (2017) All FWLR (Pt 890) 674 @ 734.**

Learned senior counsel further contended that besides the failure to serve the Claimant with the purported Notice of Revocation, that the 1st and 2nd Defendants did not disclose the basis for the revocation in the purported Notice of Revocation

which was tendered in evidence – Exh DW1A. He argued that the said Notice of Revocation is null and void abi-initio for failing to state the reason for the revocation.

On the impropriety of revoking and re-assigning title to a limited liability company, he referred the Court to **Mohammed v. Farmers Supply Co. (KDS) Ltd (2019) 17 NWLR (Pt. 1701) 187 @ 212-213 and Gold mark (Nig) Ltd v. Ibafon Co. Ltd (supra).** He urged the Court to declare,on the strengthof evidence presented by the Claimant and the authorities cited above, that the purported revocation of the Claimant's title over Plots 366-405, Maitama District, Cadastral Zone A06, Abuja, and subsequent purported re-allocation of same to the 3rddefendant is illegal, unconstitutional, null, void and of no effect whatsoever.

In arguing issue three, on ***"whether the conduct of the Defendants in purportedly revoking, entering into, demolished (sic) the Claimant's existing structures and building new structures on the Claimant'sLand known as Plots 366-405, Maitama District, Cadastral Zone A06, Abuja, covered by Certificate of Occupancy No. FCT/ABU/MISC.2698, is not illegal, null and void, thus entitled the Claimant to the reliefs sought in this suit?"*** the learned senior counsel contended that the visit to the locus in quo on the19th of February, 2020, was apt, timely and crucial not only to the determination of the Claimant's claim for trespass and demolition of her existing structures on the land, but also the claim for damages vis-à-vis the Defendants' claim that the Claimant never had any development on the land. He further argued to the effect that the Claimant has by her pleading and evidence justified her claim for trespass and damages for the demolition of her structures on the land against the Defendants.

Arguing further, learned senior counsel contended that the evidence of the Claimant through PW1 as to the state of development on the land, was not discredited by the Defendants during cross examination,and that the visit to the locus in quo availed the Court the opportunity to physically verify and confirm the evidence of PW1. Also, that the CTC of the Order of interim injunction against the Defendants dated 1st August, 2006 – Exh PW1A, corroborate the evidence of PW1 on how theDefendants, especially 3rd Defendant, disobeyed the Court Order and continued the demolition of the Claimant's existing structures. He relied on **Goji v. Ewete (2007) 6 NWLR (Pt 1029) 72 @ 81,** to posit that a party to a suit will not be allowed to benefit from his own wrong.

The learned senior counsel further contended that the Defendants did not dispute the averments of the Clamant in her statement of claim relating to service of Quit Notice on her workers by the 1st and 2nd Defendants, and that the Defendants thus admitted service of the said Quit Notice on Claimant's workers. He argued that the said admission of service of Quit Notice by the 1st and 2nd Defendants is sufficient proof of the fact that the Claimant actually had development with the monetary value of over N600,000,000.00 on the said land. He urged the Court to so hold and to declare the action of the Defendants in demolishing the Claimant's structures despite the service and subsistence of the interim order of injunction as illegal, unconstitutional, contemptuous, null and void, and to consequently order the parties tothe position they were before the disobedience of the order of this Court.

He posited, with reliance on **Fagge v. Tukur(2007) All FWLR (Pt 387) 876 at 900 and UBA PLC v. BTL Ind. Ltd (2004) 18 NWLR (Pt 904) 180 at 235,** that the Claimant is entitled to damages which flowed directly from the consequences of the

Defendants' act of trespass and act of demolition of the Claimant's existing structures on the land.

Furthermore, that the Defendants acted maliciously when they continued with the demolition exercise despite being aware of the order of injunction –**U.B.A. PLC v. Samba Pet. Co. Ltd (2002) 16 NWLR (Pt 793) 402-403.**

He submitted that the purpose of an award of damages is to compensate the Claimant for damages, injury or loss suffered. That the guiding principle is restitutio in integrum; a situation where a party damnified by the act in issue is put back in the position he would have been in if he had not suffered the damage for which he is being compensated.

He urged the Court in conclusion, to resolve all the issues formulated for determination by the Claimant against the Defendants, and to enter judgment for the Claimant by granting all the reliefs sought by the Claimant.

In the Final Written Address in response to 3rd Defendant'sFinal Written Address, also dated 8th May, 2020 and filed on 11th May, 2020, learned senior counsel for the Claimant also raised the exact same three issues for determination as he did in respect of his response to the 1st and 2nd Defendants Final Written Address already summarised above. Before then however, he responded to the objection taken by the 3rd Defendant in her Final Written Address.

In his reply to the said objection wherein the 3rd Defendant urged the Court to strike out reliefs 9 and 10 of the Claimant's claim for non-payment of necessary filing fees, the learned senior counsel for the Claimant urged the Court to dismiss the said objection for being baseless, improperly raised and incompetent for reasons that;

i. The objection relates to the 1st Originating Summons filed by the Claimant, the instant statement of claim having been filed pursuant to the order of this Court and receipts of payment of filing fees have not been placed before this Court.
ii. The said documents could only be properly placed before Court videaffidavit evidence.
iii. The 3rd Defendant ought to have raised the objection by way of Motion on Notice supported by an affidavit and exhibit the said documents to enable the Claimant file a counter affidavit, if need be, to disprove the claim of the 3rd Defendant.
iv. The objection offends Order 5 Rule 2 of the Rules of this Honourable Court, 2018.
v. It is not the duty of this Honourable Court to go in search of evidence to prove the allegation of non-payment of filing fee raised by the 3rd Defendant.
vi. Address of counsel does not constitute evidence; thus, the 3rd Defendant cannot give evidence in her Final Written Address.
vii. The Claimant actually paid the necessary filing fee in respect of this suit and that is what informed the decision of the Registry to accept and file the Claimant's Writ and Statement of Claim. That the Registry would not have accepted to file the Claimant's Writ and Statement of Claim if the necessary filing fees were not paid.
viii. Assuming without conceding if in fact the Court finds that after the amendment of the Originating Summons, especially at the point when it was converted to a Writ of Summons, that proper filing fee was not paid, the proper order would be for the Court to direct the Claimant to pay the additional filing fee and not to strike

out the arm of the monetary claim as erroneously submitted by the 3rd Defendant's counsel.

Having raised the same issuesfor determination in the Final Written Address in response to 3rdDefendant'sFinal Written Address, the learned senior counsel for the Claimant proceeded to replicate the same submissions as he made in response to 1st and 2nd Defendants' Final Written Address. Accordingly, it will be preposterous to reproduce the same submissions again in this judgment, save to add that the learned senior counsel contended that the instant suit affects the 3rd Defendant to the extent that the land in dispute was purportedly reallocated to the 3rd Defendant, a private Limited Liability Company. He thus argued that the question as to how the Claimant derived her title over the land in dispute as well as the purported revocation, can only be answered by the 1st and 2nd Defendants who are parties to the instant suit. He contended that the submissions of the 3rd Defendant in all the facts of this suit other than the attempt to justify the reallocation of the land in dispute to her, is an exercise in futility, and urged the Court to discountenance same.

In the end, he urged the Court to grant all the reliefs sought by the Claimant in this suit.

During trial, the Claimant led evidence that the land was allocated to SAUKI HOSPITAL with a Certificate of Occupancy in 1983 marked Exh CW1A1.

In 1992, one Messrs SAUKI HOSPITAL LTD assigned its rights by Deed of Assignment to Messrs SUPRA INVESTMENT LTD which is the Claimant in this suit. The 1st and 2nd Defendants led evidence to the effect that by Exh DW1A that the allocation to SAUKI HOSPITAL was revoked and allocated same to 3rd Defendant – Abuja Investments Company Ltd.

The Claimant is contending the revocation and allocation of the plots to the 3rd Defendant.

The matter has lasted for more than 14 years in various Court before it was transferred to me in 2019. After listening to the brilliant and intelligent submissions of both sides, I was impressed on their comportment and their corporation in all the proceedings to enable the Court arrive at this judgment stage with 18 months the matter was in this Court despite the lockdown because of Covid-19. I am impressed by the attitude of all the course particularly the learned silk Hassan Liman.

In the determination of this suit, the Court in consolidation of the issues raised by the parties formulates two issues for consideration which are:

(a)Whether the objection to jurisdiction is obtainable based on the allegation of non-payment of necessary filing fees?

(b)Whether the Claimant has proved her claims as to be entitled to the reliefs sought?

In considering the first issue, it is expedient in judgment writing that every objection to the jurisdiction of a trial Court must be treated expediently to give room and authority to the trial Court to continue with its judgment or be ceased of it because of lack of jurisdiction.

In **Aribisala v. Ogunyemi (2005) 6 NWLR (Pt 921),** the Supreme Court held inter alia that;

> ***"Jurisdiction is blood that gives life to survival of an action in law and without jurisdiction, the action will cease to have life and any attempt to resuscitate it without infusing blood into it would be an abortive exercise".***

In the instant case, the Defendants complained about the inadequacies of the filing fees. The question then is **whether inadequacies of filing fees can affect the jurisdiction of this Court?**

This issue was elaborately trashed in the case of **Sterling Bank PLC v. KatagumEnt Ltd (2015) LPELR 25874 (CA).**whereby the Court of Appeal relied on the case of **KayodeOmojuyigbe v. Nigerian Postal Service (2009) 3 CLRN @ 311-312,** the Court of Appeal observed: …

> ***"In any case, even where as in this case the respondent is complaining of inadequacy of filing fees paid by the Appellant in the lower Court, the learned counsel for the Appellant has in my view stated the correct position of the law as backed up with judicial authorities that it is the duty of the Court registrar to assess processes and prescribe the necessary fees payable and for the Court to ensure that the necessary fees are paid by the litigant. Once assessment has been done and a litigant fulfils his own part of the bargain by paying the necessary fees as endorsed in the writ or other processes filed, such a litigant cannot be visited with the negligence of the registry of the Court in under-assessing him. SeePrincewell v. Amachree (2005) 3 NWLR (part 912) 358 at 369 paras H-D per Ikongbeh, JCA ofblessed memory who posited when confronted with a similar scenario in which we have found ourselves thus: I agree with Mr.Anachree that there is no merit in Mr.Senibo's contention here … the registrar's endorsement shows that a total of N12.00 was paid on it. In view of this fact I cannot agree with Mr.Senibo that the respondents failed to pay the prescribed fees. Although the judge***

directed that fees be paid, he did not specify how much was to be paid. Such details were left to the registrar. The latter made his assessment and the respondent paid the assessed, totalling N12.00.Had they paid less than what was assessed, then may be Mr.Senibo might have a point. In this case they paid the exact amount assessed. Mr.Senibo's quarrels appear therefore to be with the Registrar, not with the litigant…Nor has he shown that such under assessment affected the competence of the Court to entertain same… Having paid the exact amount duly assessed as filing fees by the Registrar of the lower Court, it will appear that the quarrel of the Appellant as to the issue of under assessment, if any, ought to be directed at the Registrar of the lower Court and not at the Respondent."

On a further appeal to the Supreme Court, same was dismissed. In the case, Ogbuagu JSC observed: "Surely and certainly, the error and inadvertencies of the said Registrar cannot in my respectful and firm view be said to be that of the Respondent. The Registrar saw and assessed the statement of defence, if he must read the entirety of the statement of defence before assessing it (and I doubt it) and he failed correctly or properly to do so, his error or omission cannot be ascribed to be that of the Respondent and/or his counsel. With profound humility, it will be unfair and unjust in the instant appeal to state by anybody including this Court, that ignorance of the law is no excuse. … I therefore hold that non-payment in full of the appropriate fees, was a mere irregularity and did not vitiate the proceedings

and it has nothing to do with the jurisdiction of the trial Court. At worst it is voidable but not void. As can even be seen, it is not the failure to pay an assessed filing fees, but non-payment of the requisite fee. (i.e. inadequate fees) if the Registrar/Registry under-assessed i.e. not assessing correctly, can it be said, by any stretch of the imagination that the fault to assess adequately, is that of a litigant or a lawyer or the respondent? I think not…" I agree with Mr.Oguntade that there is no basis for the Appellant's contention that the issue in the circumstances of the present appeal is one of jurisdiction. Fees as assessed by the Registrar were paid. The case was therefore commenced by due process and the Court had jurisdiction to entertain same."(underlining mine)

The above decision is on all fours with the present case and I hold that this case was commenced by due process and that this Court can exercise its jurisdiction over this case. Furthermore, I hold that the inadequate payment of filing fees is an irregularity that does not affect the foundation or jurisdiction of this case Baba, JCA, in **Revenue Mobilization, Allocation & Fiscal Commission v. ChidiOnwu (2008) LPELR 8398 (CA)**hold;

"In Duke v. Akpabuyo L.G. (supra),It was held inter alia that:- "The appropriate time at which a party to proceeding should raise an objection based on procedural irregularity is at the commencement of the proceedings or at the time when the irregularity arises. If the party "sleeps" on that right and allows the proceedings to continue on the irregularity, (as happened in this case leading to this Appeal), then the party cannot be heard to complain at the concluding

or concluded stage of the proceedings. The only exception to this rule, is that the party would be allowed to complain on appeal, if it can show that it has suffered a miscarriage of justice by reason of the procedural irregularity".

Indeed the appropriate time at which a party to a proceeding should raise an objection based on procedural irregularity is at the commencement of the proceedings or at the time when the irregularity arose. The Defendants ought to have raised this issue at the commencement to enable the Claimant regularise. However the Defendants have equally not shown that by such inadequate payment of filing fees that there is miscarriage of justice.

Again, in **Akahall& Sons Ltd v. Nig. Deposit Insurance Corp. (2017) LPELR 41984 (SC)**Aka'ahs JSC held;

"A judgment given in proceedings which appear ex facie regular is valid."

On issue two, whether the Claimant has proved her claims, from the reliefs endorsed on the Writ and Statement of Claim in this suit, it is clear, beyond all doubts, that the principal relief sought by the Claimant in this suit is one of declaration of title to land. The law places a burden on the Claimant for declaration of title to land, to establish her claim by preponderance of evidence and to succeed or failin her claim depends on the strength of his case and not the weakness of the case of the defence. Thus in **Odewande&Ors v. Owoeye&Ors (2014) LPELR24421 (CA),** the Court of Appeal, per Tsammani, JCA, held that;

"In an action such as this, where the Plaintiff seeks for a declaration of title to a parcel of land, what is

required of such a Plaintiff is to establish his claim by preponderance of evidence or balance of probabilities. The Plaintiff is therefore expected to adduce sufficient, satisfactory and credible evidence in support of his claim.

That burden of proof to be discharged in a claim for declaration of title to land is however not different from that which is required in civil cases generally. But an action for declaration of title to land, like in all declaratory actions, the burden rests throughout on the Plaintiff and never shifts to the Defendant, even where the Defendant has made an admission. In other words, the burden or onus lies throughout on the Plaintiff to satisfy the Court that he is entitled to the declaration sought.

It is the law that in an action for declaration of title to land, the Plaintiff will succeed or fail on the strength of his own case alone. He can only succeed by adducing credible evidence and cannot rely on the weakness of the case for the defence, even on admissions by such a Defendant, save where such weakness goes to support the Plaintiff's case."

Although the learned silk for the Claimant has argued that the Claimant's case is centred on the illegality of the revocation of Claimant's title to the land in dispute by the 1st and 2nd Defendants and the reallocation of same to the 3rd Defendant; it is however, elementary that one cannot complain about a revocation of his title without first establishing the existence of that title. The Claimant evidently recognised this principle, hence the tendering in evidence, documents of title whereby she tried to establish her title over the said land.

The law is however, trite that reliance on a document of title carries with it other duties which the Court must ascertain. Thus in **Romaine v. Romaine (1992) LPELR-2953 (SC),** the Supreme Court, per NnaemekaAgu, JSC, held that;

> ***"… one of the recognised ways of proving title to land is by production of valid instrument of grant. But it does not mean that once a Claimant produces what he claims to be an instrument of grant, he is automatically entitled to a declaration that the property which such an instrument purports to grant is his own. Rather, production and reliance upon such an instrument invariably carries with it the need for the Court to inquire into some or all of a number of questions, including;***
>
> ***i) Whether the document is genuine and valid;***
> ***ii) Whether it has been duly executed, stamped and registered;***
> ***iii) Whether the grantor had the authority and capacity to make the grant;***
> ***iv) Whether the grantor had in fact what he purported to grant; and***
> ***v) Whether it has the effect claimed by the holder of the instrument.***

In the instant case, the Claimant has placed reliance on Exhibit CW1A, a Deed of Assignment between Messrs **Sauki Hospital Ltd and Messrs Supra Investment Ltd**. It will be very preposterous for the Claimant to assume that by merely producing the said exhibit, the Court will simply presume without more, that title in the land to which it relates resides in the Claimant. The Court must still inquire into the above

questions as enunciated by the apex Court in **Romaine v. Romaine (supra)**.

This is particularly so, because as held by the Supreme Court, per Iguh, JSC, in **Ejilimele v. Opara&Anor (2003) LPELR-1065 (SC);*"... mere registration of title deed does not validate spurious or fraudulent transfers."*** It is therefore, very pertinent for the Claimant to show that the transfer evidenced by the Deed of Assignmentis not spurious or fraudulent.

In applying the principles of **Romaine v. Romaine** to the Deed of Assignment, Exhibit CW1A, relied upon by the Claimant as document of title in this case, the Court will therefore, inquire whether;

i. The Deed is valid;
ii. The Deed is executed, stamped and registered;
iii. The vendor has the authority and capacity to make the assignment; and
iv. The assignor has what he proposes to assign.

Of particular importance to the determination of this suit based on the contentions of the parties thereto, are the authority and capacity of the Assignor to make the assignment, and therefore, whether the Assignor has what he proposes to assign.

The Assignor of Exhibit CW1A is Sauki Hospital Ltd, a supposed limited liability company. By virtue of the said Deed of Assignment, Exhibit CW1A, the Assignor Sauki Hospital Ltd, assigned the legal interests in the disputed property to the Claimant.

In the recitals to the Deed of Assignment, the Assignor claimed that the land in dispute was granted to her by the 1st and 2nd

Defendants vide Certificate of OccupancyNo. FCT/ABU/MISC.2698, Exhibit CW1A1.The said Certificate of OccupancyNo. FCT/ABU/MISC.2698, however, bears the name, **Sauki Hospital and not SAUKI HOSPITAL LTD**, which presupposes that it is a business enterprise as distinct from a limited liability company which the law clothes with the capacity to acquire and own landed properties. It is conceded from the onset that the general position of our jurisprudence is that only natural persons which includes human, juristic or artificial persons can be assigned or allocated land. This legal contemplation of the 1st, 2nd and 3rd Defendants are unchallenged and acceptable by this Court.

Since it is the duty of the Claimant, in the circumstances of this case, to show that the vendor has the authority and capacity to make the assignment, it is incumbent on the Claimant to show by credible evidence that Sauki Hospital has the capacity to acquire, hold and alienate property. That is to say, the Claimant hasthe onus to show that Sauki Hospital is duly clothed with legal personality. This duty to prove the legal personality of the vendor became imperative following the challenge of same by the Defendants, and this can only be discharged by production of Certificate of incorporation of Sauki Hospital and Sauki Hospital Ltd of which none was exhibited.

In **Olatunji v. Akingbasote&Ors (2015) LPELR-24275 (CA),** the Court of Appeal, per Abiriyi, JCA, held that;

> ***"An incorporated company is a creature of law clothed with independent legal personality from the moment of incorporation, distinct and separate from those who laboured to give birth to it. It is capable of acquiring, holding and alienating property, both movable and immovable."***

A mere business name or enterprise does not have such legal capacity to hold or alienate immovable property; hence the need to prove the legal personality of the allottee of Exhibit CW1A1. As stated above, that onus of proof is on the Claimant and same can only be discharged by the Claimant.

Thus in **Atlantic Dawn Ltd &Ors v. G-Net Communication (2019) LPELR-47772 (CA),** the Court of Appeal, per Yahaya, JCA, held that;

> ***"By virtue of Section 37 of the Companies and Allied Maters Act (CAMA), it is only when an entity is registered or incorporated, that it becomes a body corporate by the name contained in the memorandum, capable of exercising all the powers and functions of an incorporated company, which can amongst other things, have the power to sue and be sued. Where the legal personality of an incorporated body is called into question, and issue joined thereon, the Certificate of incorporation should be produced as it is only by that certificate that its legal capacity can be proved in such circumstances."***

The Claimant's root of title has been challenged by the Defendants, by calling into question the legal personality of the allottee of Exhibit CW1A1 (SAUKI HOSPITAL), thereby joining issues with the Claimant.

The contention of the Defendants put together is that allocation of the plot of land by the 1st and 2nd Defendants to 'SAUKI HOSPITAL' a non-legal entity and been a business name is not valid in law and therefore the revocation of the said plot is justified in law.

When such fundamental issues are raised in a trial, it is the duty of the Claimant to prove otherwise.On the contrary the Claimant argued profusely that her cause of action emanated from the revocation letter Exh DW1A. Secondly, that the Defendants failed to show that SAUKI HOSPITALis same as SAUKI HOSPITAL LTD.Thirdlythattheissue of capacity of SAUKI HOSPITAL LTD was not raised by the Defendants in evidence.

In reviewing the pleadings of the parties I find the argument of the Claimant's counsel in congruous because in paragraph 3 p. 2-3 of the 3rd Defendants statement of defence, the 3rd Defendant questioned the legality of 'SAUKI HOSPITAL' which is a business name.

The onus is on the Claimant in an action for declaration of title to land to satisfy the Court with evidence through the root of his title that he is entitled to a declaration of title. In doing this the Claimant must rely on the strength of his own case and not the weakness of the Defendant's case. See **Nkanu v. Onum (1971) 5 SC 13.**

The Claimant failed to produce the Certificate of incorporation; whether of **Sauki Hospital or Sauki Hospital Ltd** to prove the legal capacity of the allottee and/or the vendor.

Again, a primary duty is placed on the Claimant in a case of declaration of title to land to establish precisely and clearly before the Court with satisfactory evidence that the land he lays claim belongs to him bythe 5 ways elaborated in the case of **Idundun v. Okumagba (1976) 9-10 SC 337.**Same Claimantmust by his pleadings, documentary and oral evidence adduced satisfy the Court of his entitlement to declaration of title sought –**Pa OlunusiAdemosun&anr v. Mr. Dupe Ekun (2017) LPELR 43229 (CA).**

It is trite that mere production of a valid instrument of grant does not necessarily carry with it an automatic grant of the reliefs sought. The Court is challenged to a number of questions particularly where the adverse party questions the validity of the documents. Thus it is the duty of the Court to find out;

(a) genuineness and validity of the documents.
(b) whether it has been duly executed, stamped and registered.
(c) whether the grantor had the authority and capacity to make the grant.
(d) whether the grantor had in fact what he purported to grant.
(e) whether it had the effect claimed by the holder of the instrument. – Yele v. OnyeneyinAkinkugbe (2010) 41 NSCOR 416.

I am duty bound to examine the root of title not just the revocation order. It is uncontested that Exh CW1A1- Certificate of Occupancy was issued to SAUKI HOSPITAL as the original grantee. The saidCertificate of Occupancy is genuine, well executed and registered by the authority of the Minister FCT as the grantor, who had what it purports to grant the Certificate of Occupancy but am afraid it does not have the effect claimed by the holder because the proposed holder grantee SAUKI HOSPITAL fails to have the legal personality/capacity to hold the instrument of title to land.

I therefore consider the act of the Hon. Minister, FCT in signing the instrument a void act which has no legal effect because it does not confer any legal right or title what so ever to the 'SAUKI HOSPITAL'. Therefore, the SAUKI HOSPITAL does not have what it takes to be a holder of

that Certificate of Occupancy Exh CW1A1. The document/instrument CW1A1 confers no legal right to the 'SAUKI HOSPITAL' to own the property in question in accordance with the law.

The learned SAN argued that the SAUKI HOSPITAL should be considered same as SAUKI HOSPITAL Ltd, which argument I consider strange because the two are not same in law not even same in eyes of a common man. The SAUKI HOSPITAL is not a legal entity and cannot hold or acquire land/property. The right to the land title cannot be conferred upon 'SAUKI HOSPITAL' simply based upon the state of pleadings or admission or even the address of a counsel. In otherwords the Latin maxim of 'Nemodat quod non habet' affects the supposed original allotee 'SAUKI HOSPITAL'.

It is my opinion and I strongly hold that mere issuance or acquisition of Certificate of Occupancy cannot confer title to a non-legal personality. In other words any person without an authority to acquire land title to land/property, in respect of which Certificate of Occupancy is issued, acquire no right or interest so identified in the Certificate of Occupancy.

Sequel to the above, the Claimant (Supra Investment Ltd) claims she acquired her title from SAUKI HOSPITAL LTD.

In appraising the pleadings and documentary evidence, I have failed to discover any connectivity between 'SAUKI HOSPITAL' and SAUKI HOSPITAL Ltd which are two different entities Exh CW1A1 (Certificate of Occupancy) which purportedly gave title to the Claimant through a Deed of Assignment cannot be traced to the 'SAUKI HOSPITAL Ltd'. The Assignment merely gave a purported title to 'SAUKI HOSPITAL Ltd' without any history of its originating title. The preamble clause I of the Deed of Assignment, Exh CW1A described Certificate of Occupancy

issued to ‘SAUKI HOSPITAL’ and not ‘SAUKI HOSPITAL Ltd’. The Claimant who is relying on the documentary evidence to prove its title never led evidence to establish the conversion of ‘SAUKI HOSPITAL’ to a limited liability company to buttress the Deed of Assignment (DW1A).

By production of documents of title, Ownership or title to land can be proved.

The Claimant pleaded the Deed of Assignment which presupposes that he is relying on the second method of proving title as laid down in **Idundun v. Okumagba (supra).**By the production of the Deed of Assignment, the Claimant in the instant case, is duty bound to show that it is authentic, genuine and valid. The grantor must have authority and capacity to make the grant. Also the Claimant must establish whether the grantor had in fact what he purported to grant.

Again after appraising Exh CW1A, (Deed of Assignment) obviously the grantor ‘SAUKI HOSPITAL Ltd’ had not the authority to make a grant by stepping into the shoes of the purported grant to ‘SAUKI HOSPITAL’ to make a grant to the Claimant “SUPRA INVESTMENT LTD”.

My observation of the Exh CW1A (Deed of Assignment)is that the purported grantor is not the owner of theCertificate of Occupancy No. FCT/ABU/MISC.2698 which purportedly belongs to ‘SAUKI HOSPITAL’. It is my conclusion the Claimant failed to establish the root of her title through Exh CW1A. Exh CW1A (Deed of Assignment) is therefore,invalid and has no legal stamina because the holder of the said (Deed of Assignment) cannot rely or claim through the purported Deed of Assignment as a land title for this litigation.

I believe, I have exhaustively considered the issues relating to production of documents for claim and declaration of title relied upon by the Claimant and my findings as stated above conclude that the Claimant has failed to prove ownership by the production of those documents of title.

Now supposing, without conceding that the only issue before this Court is the alleged revocation of the Claimant's title and reallocation of same to the 3rd Defendant, as contended by the Claimant, the evidence before this Court shows that the revocation of the Claimant's title was predicated on the Claimant's failure "to effect and complete development of (her) plot", pursuant Section 28(5)(a)&(b) of the Land Use Act, 1978.

Section 28(5)(a)&(b) under which the Claimant's Rights of Occupancy was revoked by the 1st Defendant provides thus;

> ***"28.(5) The Governor may revoke a statutory right of occupancy on the grounds of –***
>
> ***(a) A breach of any of the provisions which a certificate of occupancy is by Section 10 of this Act deemed to contain;***
> ***(b) A breach of any term contained in the certificate of occupancy or in any special contract made under Section 8 of this Act."***

Evidently, any revocation done in furtherance of the foregoing Section is not required to be done "for the overriding public interest." The above Section 28(5) LUA emphasises that it is sufficient to revoke the allottee'sRight of Occupancywhen he fails to comply with any term contained or deemed to be contained in the Certificate of Occupancy. From the wordings of Exhibit DW1A, the breach on the basis of which the Right of

Occupancy was revoked is failure to effect and complete development of the plot within the given period of time.

The grant of the Certificate of OccupancyNo. FCT/ABU/MISC.2698 , Exhibit CW1A1, was made subject to some “special terms and conditions”, one of which is clause 4 thereof which provides thus;

> ***“(4) Within two years from the date of the commencement of this right of occupancy to erect and complete on the said land the buildings or other works specified in detailed plans approved or to be approved by the Federal Capital Development Authority, or other officer appointed by the President, such buildings or other works to be of the value of not less than N4,600,000.00 (Four Million Six Hundred Thousand Naira) and to be erected and completed in accordance with such plans and to the satisfaction of the said Federal Capital Development Authority or other officer appointed by the President.”***

The contention of the 1st and 2nd Defendants is that the Claimant failed to comply with the above clause in consequence of which the Right of Occupancy evidenced by the Certificate of Occupancy No. FCT/ABU/MISC.2698 was revoked. The Claimant failed to present any credible evidence before the Court to show that she complied with the said clause.In addition to the allocation of the said plot to a non-legal entity, there is clear breach of clause 4 of the Certificate of Occupancy,Exh CW1A1 whereby, the purported allocation was made in 1983.By clause 4 of the Certificate of Occupancy, the Claimant was to erect and complete on the said land buildings or other works specified in detailed plans approved or to be approved…”. The Claimant failed and contravened clause 4 of

Exh CW1A1. This evidence was unchallenged by the Claimant.There is no evidence of any building approval from the Federal Capital Development Authority applied for or obtained at any time by the Claimant as required by the said clause 4 of the Certificate of Occupancy. There is also no evidence of any building or other works of the nature and value specified by the said clause 4 of the Certificate of Occupancy erected and completed by the Claimant within two years from the commencement of the Certificate of Occupancy or any time whatsoever.

However, the Claimant argued that the revocation was invalid for reasons of non-service of statutory required notice of revocation and consequently null and void. The evidence to the contrary by the 1st and 2nd Defendants was that Exh DW1A was served through DHL courier service "Shipment Air Way Bill" marked Exh DW1B. On the face of the faint Exh DW1A (Way Bill) which describes the content of the Exh DW1A as a letter and was signed by the person on who picked, dated on '11th Jan.'

The law allows the service of letters by DHL services. By Exh DW1B, there is therefore,evidence that the notice of revocation was served on the Claimant. I believe the evidence of DW1 that the Notice of Revocation dated 4th January, 2006 was duly served on the Claimant on 11th of Jan. the reasons for the revocation was stated in the last sentence of the Exh DW1A as;

> ***"… for your continued contravention of the terms of development of the Right of Occupancy."***

To satisfy myself, I looked at the terms on the Certificate of OccupancyExh CW1A1 and have, reproduced clause 4 of the terms and conditions on Exh CW1A1 on page 59 of this judgment.

It follows therefore, that the revocation of the Certificate of Occupancy No. FCT/ABU/MISC.2698 by the 1st and 2ndDefendants, was done within the ambits of the law, and I so hold.

The arguments of learned senior counsel for the Claimant that the 1st and 2nd Defendants did not state the reason for the revocation flies in the face of the clear wordings of the Revocation Notice, Exhibit DW1A. The revocation Notice clearly stated the reason for the revocation, which as stated above, is for Claimant's failure to erect and complete the stipulated development within the time prescribed.

It is also pertinent to note that since revocation of Right of Occupancy pursuant to Section 28(5) of the Land Use Act, 1978 is not required to be done for the overriding public interest only, the subsequent re-allocation after such revocation, must not necessarily be for public purposes. The argument of the Claimant that the subsequent reallocation of the plot in dispute to the 3rd Defendant is illegal on the ground that the 3rd Defendant is a limited liability company, is therefore misconceived.

The 3rd Defendant has not made any counter claim in this suit.In the absence of any counter claim,suffice it to say that the 1st and 2nd Defendants, having validlyrevoked the Right of Occupancy for the stated reasons, have the powers to reallocate the plot as they deem fit.

In furtherance to the issue of service of the revocation notice.The evidence before me shows that the Revocation Notice was served through registered post at Plot 1341, Nkwere crescent, off Ahmadu Bello Way, Abuja, said to be the Claimant's Attorney's address. The Claimant contended that the said address belongs to the 3rd Defendant and not the

Claimant's Attorney and in this regard, tendered Exhibit PW1C, Form CAC3, to show that the Claimant's Attorney's registered address is different from the address stated in the Notice of Revocation.

I have clearly noted that the said Exhibit PW1C was made on the 24 day of January, 2011 while this case filed in 2006 was already pending before the Court.It is trite law that statement made in a document by a person interested during the pendency of proceedings shall not be admissible as evidence in proof of what the documenttend to establish.

See Section 83(3) of the Evidence Act, 2011 which provides thus;

> ***"(3) Nothing in this Section shall render admissible as evidence any statement made by aperson interested at a time when proceedings were pending or anticipated involving a dispute as to any fact which the statement might tend to establish."***

The Claimant is a person interested in the instant proceedings and she caused one Sunday Egwuchide to file Exhibit PW1Cwith the corporate Affairs Commission while this proceedings was pending before this Court. That therefore, renders the document inadmissible in law and Exh PW1C is hereby discontinuanced.

Although the said document has in error been admitted in evidence, its admission in evidence is not sacrosanct. This Court still has a duty to expunge any wrongfully admitted evidence in the course of judgment. Thus, it was held by the Supreme Court in **Abubakar v. Chuks (2007) MJSC 190 at 217**, that;

"Where evidence is admitted in error, then it is the duty of the trial Court to expunge it in giving its judgment."

Accordingly, I hold that Exhibit PW1C was wrongfully admitted in evidence, the same having been made by a person interested at the time the proceeding was pending before this Court. Consequently, the said Exhibit PW1C is hereby expunged from the records of this Court.

Contrary to the Claimant's contention that plot 1341, Nkwere Crescent, off Ahmadu Bello Way, Abuja to which the Revocation Notice was delivered, belongs to the 3rd Defendant, the DW2 was emphatic under cross examination, that the 3rd Defendant's address is No. 4 Nkwere Crescent, off MohammaduBuhari Way, Abuja.Paragraph 4 of the Claimant's statement of claim and paragraph 6 of the statement on oath of PW1 also corroborate the evidence of DW2 regarding the address of the 3rd Defendant. Evidentlytherefore, the Notice of Revocation Exhibit DW1A was not delivered to the address of the 3rd Defendant as was contended by the Claimant.

The DW1 was unshaken in her evidence under cross examination that the address to which the Revocation Notice was delivered, was the Claimant's Attorney's address as contained in their record. I believe the evidence of the 1st and 2ndDefendants in this regard and disbelieve the claim of the Claimant that she did not receive the Notice of Revocation.

I therefore, hold that Exhibit DW1A, Notice of Revocation, was duly delivered to the address of the Claimant's Attorney in accordance with Section 44(d) of the Land Use Act, 1978.

Section 28(7) of the Land Use Act, 1978 provides to the effect that the title of the holder of a right of occupancy shall be

extinguished on receipt by him of a notice of revocation. It is therefore my finding that the Claimant's right of occupancy (if any) in the land in dispute was duly and legally revoked by the 1st and 2nd Defendants, and that her title (if any) in the said land was duly extinguished.

The Claimant has not made out any cogent evidence to establish otherwise.

Since the principal claim of the Claimant for declaration oftitle has failed, there is therefore no basis for the claim for injunction and damages for alleged trespass.

There is also no scintilla of evidence to prove the allegation of demolition of property or structures worth N600,000,000.00or indeed structures of any value by the Defendants.

The purpose of my visit to the locus was to clear doubt that arose from evidence and the Court is allowed suomoto or by invitation of the parties to visit the locus to confirm what is already on the record. The purpose of the inspection is not to substitute what the ear heard with the eye without evidence NO! it is to resolve any evidence as to the physical facts. I was therefore,satisfied with what I saw regarding the structures the Claimant claimed she constructed which remains uncompleted and also the 21 duplexes the 3rd Defendant had constructed within a short period of 3 months. This was my observation. It was unnecessary to call further evidence when it was discovered that the root of title was defective. Therefore, the service of the Quit notice was proper.

In my conclusion, I take pains to consider the reliefs:-

Relief 1 – The Claimant has failed to prove that the 'Supra Investment Ltd' (the Claimant) is the valid and legal title holder of the plots 366-405 situate and lying at Maitama District

Cadastral Zone A06 Abuja covered by Certificate of Occupancy No. FCT/Abu/MISC 2699. Therefore relief 1 fails.

Relief 2 – The Claimant failed to comply with clause 4 of Exh CW1A1 which required the development of the plot within 2 years of issuance of the Certificate of Occupancy which was issued in 1983.The Court holds from the documents and oral evidence before it that revocation of the said plots was done within the ambits of the law. Relief 2 therefore fails.

Relief 3 –Sequel to the decision of the Court in relief 2, the Court holds that the 1st and 2nd Defendants who revoked the plot have also the authority to reallocate the plots to whom they deem fit. Relief 3 also fails.

Relief 4 – The Claimant failed to prove theillegality of the 2nd and 3rd Defendants in entering the plot after the revocation. The Claimant also failed to prove the demolishing and carting away of her property as any act of trespass.Relief 4 fails.

Relief 5 –By Claimant's failure to prove title, Court orders that he has no right to request for Certificate of Occupancy. Order refused and Relief 5 fails.

Relief 6 – Relief 6 fails consequent upon failure of all other reliefs.

Reliefs 7 and 8 –order as to perpetual injunction restraining the 1st and 2nd Defendants and their agents and privies from further entering into the land is hereby refused.

Relief 9 – Relief 9 fails consequent upon failure of the above reliefs particularly relief 4.

Relief 10 –fails equally from the findings of this Court.

From the totality of the foregoing, it is the finding of this Court that the Claimant has not made out credible and cogent evidencefrom the inception of the grant to warrant the grant of the reliefs sought. The Claimant's case therefore, fails in its totality and the same is accordingly dismissed.

HON. JUSTICE A. O. OTALUKA
16/9/2020.