



**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDING AT MAITAMA
BEFORE HIS LORDSHIP: HON. JUSTICE H. B. YUSUF**



SUIT NO: FCT/HC/CV/1984/2015

BETWEEN:

**KIRSTEN ASSOCIATES NIGERIA LIMITED.....PLAINTIFF
(SUING AS THE LAWFUL ATTORNEY OF SALISU INUWA)**

AND

1. ALH. ABDULLAHI IBRAHIM)	
2. ALHAJI NURA SAIDU)	
(Carrying on Business under the name of Al-Nuri Properties Estate Developers Limited))DEFENDANTS
3. HON. MINISTER OF THE FCT)	
4. FEDERAL CAPITAL DEV. AUTHORITY)	
5. DUNSTABLE VENTURES NIG LTD)	

JUDGMENT

The property in dispute in this case is known as Plot No. 847 located at Cadastral Zone B08, Jahi District, Abuja within the Federal Capital Territory. It was allocated to one Salisu Inuwa who testified as DW2 in this case by the 3rd Defendant, the Honourable Minister of the Federal Capital Territory sometimes on the 18/11/1998. The Claimant on the one hand and the 1st and 5th Defendants on the

other, purport to have commenced their claims in this suit as his Attorneys. According to the Claimant, the plot was sold to it in May, 2011 by the 2nd Defendant who stated that he was acting on behalf of the said Salisu Inuwa in the sum of N15, 000, 000. 00 (Fifteen Million Naira) only.

After the sales transaction, the 2nd Defendant handed over to the Claimant the original copies of the letter of offer of terms of grant, the site plan and Certificate of Occupancy in respect of the plot (all in the name of Salisu Inuwa). The 2nd Defendant got Salisu Inuwa to donate an irrevocable Power of Attorney in favour of the Claimant. He also handed over to the Claimant an application for consent to assign the property signed by the self same Salisu Inuwa. The Claimant registered the Power of Attorney in the Land Registry of the Federal Capital Territory (the 4th Defendant) on the 19/11/2014.

In 2015, while the Claimant was doing some construction work on the property, the 1st Defendant brought some police men to prevent and drove the work men from the site on the account that the property belongs to the 5th Defendant. It is on the basis of the foregoing state of affairs, that the Claimant has sued the Defendants to seek the following reliefs:

- (i) A declaration that the Plaintiff is the lawful Attorney of Salisu Inuwa in respect of Plot No. 847, Cadastral Zone B08, Jahi District, Abuja by virtue of the irrevocable Power of Attorney duly registered at the Land Registry in Abuja.**
- (ii) A declaration that the 1st Defendant has no interest whatsoever on Plot No. 847, Cadastral Zone B08, Jahi District, Abuja.**
- (iii) General damages of N100, 000, 000. 00 (One Hundred Million Naira) against the 1st Defendant for his unlawful interference with the Plaintiff's possession over Plot No. 847, Cadastral Zone B08, Jahi District, Abuja.**
- (iv) Perpetual Injunction restraining the 1st Defendant and other Defendants by themselves, their agents, servants, privies, assigns or any other person howsoever described from laying claim, trespassing or in any way ascribing ownership of Plot No. 847, Cadastral Zone B08, Jahi District, Abuja.**
- (v) Perpetual Injunction restraining the 1st Defendant and other Defendants, either by themselves or anybody howsoever described from further**

interference with the Plaintiff's possession over Plot No. 847, Cadastral Zone B08, Jahi District, Abuja.

ALTERNATIVELY:

- (vi) An Order directing the 2nd Defendant to pay to the Plaintiff the sum of N100, 000, 000. 00 (One Hundred Million Naira) representing the purchase price and other expenses incurred by the Plaintiff on the land since 2011 till date."**

Upon service of the originating processes on the Defendants, the 2nd Defendant filed his statement of defence wherein he affirmed and admitted the claims sought by the Claimant and urged the Court to dismiss the claims of the 5th Defendant in the counter claim. The 3rd and 4th Defendants did not file any process in response to the claim of the Claimant. The 1st and 5th Defendants filed their statement of defence wherein they denied the claims of the Claimant and counter claimed as follows:

- (a) A declaration that the 5th Defendant is the true and lawful Attorney of Salisu Inuwa, the original allottee and the 5th Defendant's donor of the subject Plot No. 847, Cadastral Zone B08, Jahi District, Abuja.**
- (b) A declaration that the 5th Defendant is the owner of the said Plot No. 847, Cadastral Zone B08, Jahi District,**

- Abuja, having duly and directly bought same in 2009 from the original allottee and genuine owner of the said land, Mr. Salisu Inuwa, for the furnished commercial consideration.**
- (c) A declaration that the Claimant never obtained the requisite consent nor Power of Attorney of Mr. Salisu Inuwa and therefore lack the locus standi to maintain his action against the 1st and 5th Defendants.**
 - (d) A declaration that the purported registration of the Power of Attorney, purportedly donated by Salisu Inuwa in favour of the Claimant is null and void, being fraudulently procured by the Claimant in connivance with the 2nd Defendant.**
 - (e) A declaration that the Claimant has no interest whatsoever in the subject plot of land.**
 - (f) An Order of this Honourable Court compelling the Claimant to promptly return to the 4th Defendant the Certificate of Occupancy of the subject plot illegally collected from the (AGIS) which is in its unlawful possession for onward delivery to the 5th Defendant.**
 - (g) General damages in the sum of N50, 000, 000. 00 (Fifty Million Naira) only in favour of the 5th Defendant against**

- the Claimant for its trespass on the subject land belonging to the 5th Defendant.**
- (h) General damages in the sum of N100, 000, 000. 00 (One Hundred Million Naira) only against the 2nd Defendant for illegally transacting on the subject plot belonging to the 5th Defendant.**
- (i) Any other Order the Court may deem fit to make in the circumstance of this case.**

According to them, the 5th Defendant bought the disputed property from the original allottee, Salisu Inuwa sometimes in 2009 in the sum of N7, 000, 000. 00 (Seven Million Naira) and was given the letter of allocation, an irrevocable Power of Attorney, letter of authority to collect Certificate of Occupancy, application for stamping and registration and a photocopy of identity card. That the documents were in turn handed over to one Amina O. Muhammed to process at Abuja Geographic Information System (AGIS) and she absconded with them.

After the exchange of pleadings, the matter proceeded to trial. One witness testified for the Claimant, the 2nd Defendant testified for himself while the 1st and 5th Defendants called two witnesses. The 3rd and 4th Defendants did not call any witness.

At the close of trial, the parties filed their final written addresses. The 1st and 5th Defendants filed their joint address and reply on points of law to the address of the Claimant and 2nd Defendant separately. In their address, they identify three issues for the determination of this case. These are:

- (1) Whether from the pleadings and evidence before this Court, the Claimant is the lawful Attorney of Salisu Inuwa in respect of Plot No. 847, Cadastral Zone B08, Jahi, District, Abuja.**
- (2) Whether from the pleadings and evidence before this Court, the Claimant is entitled to the reliefs sought for declaration of no interest in the subject land on the part of the 1st Defendant, damages and injunction.**
- (3) Whether from the pleadings and evidence before this Court, the 1st and 5th Defendants are not entitled to their reliefs as contained in their counter claim.**

The 2nd Defendant on his part identified one issue as relevant to the determination of this case. It was couched as follows:

“Between the Plaintiff who initiated this action claiming declaratory and other reliefs in Plot No. 847, Cadastral Zone B08, Jahi District, Abuja, and the 1st and 5th Defendants who have a counter claim touching on the

same plot, who amongst them is the rightful purchaser of the plot from Salisu Inuwa?”

Similarly, one Chukwuma Oliobi of counsel filed a final written address on behalf of the 3rd and 4th Defendants and identified one issue for determination. According to him, the issue for determination in this case, is whether from the totality of the Plaintiff's case and evidence led in support of its case, the Plaintiff has proved its case on the merit to entitle it to all the reliefs sought.

Learned counsel to the Claimant has submitted at the adoption of addresses, that the 3rd and 4th Defendants having not filed statement of defence and failing to defend this suit cannot competently file a final written address. I agree with them, that the 3rd and 4th Defendants are taken to have admitted the claims of the Claimant by their attitude. Their final written address is invalid and it shall not be reckoned with in this Judgment.

The Claimant on the other hand, submitted two issues for consideration. These are:

- (1) Whether the Plaintiff has made out a case to warrant the grant of all its reliefs, having regard to the pleadings and evidence in this case.**

- (2) Whether the 1st and 5th Defendants have made out a case for the grant of their counter claim, having regard to the pleadings and evidence on record.**

Having carefully read the processes filed by the parties and the evidence lead, it is pertinently clear to me that this is a straight fight between the Claimant and the 5th Defendant. It is also clear that the core issue in this matter is as between the Claimant and the 5th Defendant who is the lawful Attorney of Salisu Inuwa.

The question would of course involve a determination of who as between the Claimant and the 5th Defendant is the valid purchaser of the disputed property. To me, the other reliefs sought by parties are merely incidental to a determination of the above fact. That being the case, it is my respectful view that the issues for the determination are:

- (1) Whether the Claimant has led sufficient evidence before the Court to entitle it to the reliefs sought.**
- (2) Whether the 1st and 5th Defendants have led evidence before the Court to enable the Court to grant the reliefs sought.**

ISSUE ONE (1)

The law is clear that the legal burden of prove is on the Claimant to lead evidence to establish the claims which it seeks. In order words, he who assert must prove. The burden is discharged on the balance of probability. See Sections 131, 132, 133 and 134 of the Evidence Act, 2011.

In this case, the two main reliefs sought by the Claimant are declaratory in nature relating to land. The law is that, it must succeed on the strength of its case and not on the weakness of the defence.

See the case of **NEPA VS INAMETI (2002) 11 NWLR (PT. 778) 397 at 425 to 426**. This is the general Rule subject of course to the exception that where the evidence of the defence supports the case of the Plaintiff, the Plaintiff can rely upon it.

In the case of **EYO VS ONUOHA & ANOR 11 NWLR (PT. 1257) 1; (2011) 2 – 3 S.C. (PT. 1) 220, Adekeye JSC** stated the position thus:

“Whereas in a claim for declaration of title to land, a Plaintiff has the burden of proving his case upon his own cogent and credible evidence and cannot rely on the weakness of the Defendant’s case. However, a Plaintiff can take advantage of evidence by the defence which supports his case.”

See also: **KODILINYE VS MBANEFO ODU 2 WACA 336; and JOSIAH AKINOLA & ANOR VS FATOYINBO OLOWU & 2 ORS (1962) 1 ALL NLR 224 at 225.**

In this case, the first relief sought by the Claimant is for a declaration that it is the lawful Attorney of Salisu Inuwa in respect of Plot No. 847, Cadastral Zone B08, Jahi District, Abuja by virtue of the irrevocable Power of Attorney duly registered at the Land Registry, Abuja. The Power of Attorney upon which this claim is predicated was tendered by the Claimant and admitted as (exhibit KA-11). It was according to the evidence of the Claimant, donated by Salisu Inuwa (DW2) for the consideration of the sum of N15, 000, 000. 00 (Fifteen Million Naira) only which was paid to the 2nd Defendant as price for the disputed land. Exhibits (KA-3 and KA-4) were tendered to support the payment. Exhibit (KA-3) is a copy of the statement of account of the PW1 (Kayode Oni Hans) shows that on the 09/05/2011 he made payment of the sum of N15, 000, 000. 00 (Fifteen Million Naira) to the 2nd Defendant (Nura Saidu), the DW3 while exhibit KA-4 is the receipt which was issued to the Claimant by 2nd Defendant to acknowledge the payment.

The foregoing facts were corroborated and admitted by the 2nd Defendant, both in his pleading and evidence before the Court as DW3. Of course, the law is trite, that what is admitted needs no

further prove as the fact admitted is deemed established. In other words, admitted facts ceases to be an issue between the parties. See Section 123 of the Evidence Act, 2011 and the following cases: **CHIEF OKPARAEKE OF NORAKAEME & ORS VS EGBUONU & ORS (1941) 7 WACA 55; DIN VS AFRICAN NEWS PAPERS OF NIGERIA (1990) 3 NWLR (PT. 139) 392.**

In paragraphs 8 to 12 of the amended statement of claim, the Claimant pleaded the following facts:

“8. The Plaintiff avers that sometimes in 2011, the 2nd Defendant offered to it the sale of Plot No. 847, Cadastral Zone B08, Jahi District, Abuja (hereafter referred to as the land) measuring 1079.80 square meters.

9. The Plaintiff state that the 2nd Defendant in order to satisfy it of the genuiness of the land, gave to the Plaintiff original Certificate of Occupancy and other documents of title on the land.

10. The Plaintiff avers that it conducted a search at the Abuja Geographic Information System (AGIS) with the documents handed over to it by the 2nd Defendant to ascertain the authenticity of the land. The search report is hereby pleaded.

11. The Plaintiff states that after being satisfied that there was no encumbrance on the land, it paid to the 2nd Defendant the sum of N15, 000, 000. 00 (Fifteen Million Naira) only for the purchase of the land. The Bank drafts, receipt of payment and statement of account evidencing the payment are hereby pleaded.

12. The Plaintiff avers that an irrevocable Power of Attorney duly executed by Salisu Inuwa was also given to the Plaintiff by the 2nd Defendant. This letter is hereby pleaded.”

The Claimant also averred in its reply to statement of defence and defence to the counter claim of the 1st and 5th Defendants in paragraphs 3 to 5 as follows:

“3. The Plaintiff states that the search it conducted at Abuja Geographic Information System (AGIS) which has the data base of all lands in the Federal Capital Territory, before it paid for this land in 2011 has the name of Salisu Inuwa and no other person as the allottee.

4. The Plaintiff avers that it was based on the assurance that there was no encumbrance on this plot of land and the original documents of title

handed over to it by the 2nd Defendant, who claimed to be the agent authorized by Salisu Inuwa to sell the land that it paid to the 2nd Defendant the sum of N15, 000, 000. 00 (Fifteen Million Naira) only as purchase price of the land. The statement of account showing the transfer to the 2nd Defendant is hereby pleaded.

5. In specific answer to paragraphs 11, 12, 13, 14, 15 and 16 of the statement of defence, the Plaintiff maintains that it was the 2nd Defendant who represented himself as the lawful agent of Salisu Inuwa that gave it the Power of Attorney which he claimed to have taken to Salisu Inuwa in Kano for execution.”

The PW1, who testified on behalf of the Claimant, gave evidence in line with the above averments supported with documents.

Now, what is clear from the evidence led by the Claimant is that he bought the disputed plot from the allottee (DW2) through the 2nd Defendant who introduced himself to the Claimant as the agent of Salisu Inuwa (DW2). That he made payment to the 2nd Defendant and was given title documents.

However, the 2nd Defendant presented a different narrative in his statement of defence and evidence in support of the pleaded facts.

According to him, he bought the disputed plot from Salisu Inuwa through his niece Hajiya Amina O. Muhammed and made payment to him (DW2) through her in the sum of N7, 700, 000. 00 (Seven Million, Seven Hundred Thousand Naira). That when the Claimant approached him to buy the plot, he used the said Hajiya Amina O. Muhammed to get the (DW2) to execute the relevant documents in favour of the Claimant. Exhibit D19 is the photocopy of cheques issued in favour of Amina. The said Amina endorsed the document as follows:

‘I Amina O. Muhammed collected checks (sic) of One Million Naira of Zenith Bank and Six Million Naira of Oceanic Bank from Alhaji Nura Saidu.’

She did not state that she was receiving the money on behalf of the allottee (Salisu Inuwa) and that she was going to hand over the money to him.

That being the case, it is clear to me and I agree with the DW2 that no money was paid to him, and that he did not sell the property to the DW3 and in turn the Claimant. I therefore agree with the DW2 when he testified before the Court, that he never authorized any Amina to sell the disputed property.

The question then is that, if the 2nd Defendant did not purchase the plot from the rightful owner, could he have validly sold to the

Claimant? The answer is no. This is apart from the contradiction between the Claimant and the 2nd Defendant as its Vendor.

The contradiction stems from the fact that while the Claimant stated that it bought the property from the owner and that the 2nd Defendant acted merely as the agent to the DW2, the 2nd Defendant in his evidence told the Court that he bought the property from the DW2 through one Amina and in turn sold to the Claimant. Similarly, there is no evidence that the Claimant who said it bought the plot from Salisu Inuwa has proved that he made payment to the said Salisu Inuwa. The payment was made to the (DW3) on a mere representation by him that he was the agent of the rightful owner.

From what has transpired, I am not satisfied that the Claimant is a lawful Attorney to Salisu Inuwa. The payment of consideration for the disputed property which ought to be the basis for the donation of exhibit KA-11 was nonexistent. The law is trite, that for there to be a valid sale of land, the purchaser must show evidence of payment of purchase price, acknowledgment receipt duly issued by the Vendor and execution of deed of conveyance.

See: OGUNBAMBI VS ABOWABA (1951) WACA 222; COLE VS FOLARIN (1956) 5 SCNLR 180 and FOLARIN VS DUROJAIYE (1988) 1 NWLR (PT. 70) 351.

In this case, the 2nd Defendant as Vendor to the Claimant did not make payment for the land to the owner of the land. The owner did not acknowledge receipt of the money and did not sign any document in favour of the 2nd Defendant. When therefore he sold to the Claimant, there was no interest whatsoever in him so as to cloth him with authority to sell to the Claimant. It is trite law that no one can validly give what he does not have. This is expressed in the Latin Maxim of *NEMO DAT QUOD NON HABET*.

See also: **OLOHUNDE & ANOR VS ADEYOJU (2000) 10 NWLR (PT. 676) 562; and OLAGUNJU VS YAHAYA (2004) 11 NWLR (PT. 887) 24.**

In **ALIYU & ANOR VS GWADABE (2014) LPELR 23463**, Aboki JCA restated the law thus:

“It is trite law that where a person who has no title to a property sells it to another, the sale is void ab initio.”

This is based on the principle of **NEMO DAT QUOD NON HABET**, meaning he who has not cannot give out. See the case of **AGEH VS TORTYA (2003) 6 NWLR (PT. 816) 385 at 396**. A purchaser, whose Vendor has no title to the property he sold, gets nothing as his Vendor has nothing to give to him. See also the case of **DADY VS GARBA (1995) 8 NWLR (PT. 411) 12-11**.

That being the case, it is my view that the Claimant did not acquire any interest with respect to the disputed property under the transaction.

Learned counsel to the Claimant argued strenuously in his written address to show that the Claimant had satisfied the conditions for a declaration of title to the disputed property as laid down in **IDUNDUN VS OKUMAGBA (1976) 9 - 10 SC 140** and cited **AIYEOLA VS PEDRO (2014) 13 NWLR (PT. 1424) 409 at 446**. While I agree that the case is a sound authority in a claim for declaration of title to land, it is inapplicable to this case as the Claimant does not seek for declaration of title in its reliefs before the Court.

Learned counsel to the Claimant also argued that because the Claimant had registered its Power of Attorney (exhibit KA-11) in the Land Registry and the 5th Defendant did not, priority of first in time should avail the Claimant.

It is my view that the cases cited in support of this proposition as well as the principles of law relied upon, do not apply to this case. The reason simply is that the Power of Attorney which the Claimant registered has not been proven to have been validly donated by the DW2 as the owner of the disputed property.

The law is clear beyond doubt that where a person ab initio has an invalid title to a piece of land, the registration of the invalid title is not sufficient to confer on the registered owner any estate in the land and it cannot avail him against a better title.

See **DIN VS A. G. FEDERATION (2004) 12 NWLR (PT. 888) 459;**
and KAREEM VS OGUNDE (1972) 1 SC 182.

In **EJILEMELE VS OPARA & ANOR (2003) 9 NWLR (PT. 826) 536,**
the Supreme Court stated the position thus:

“Mere registration of title deeds does not validate spurious or fraudulent transfers. See LABADADI & ANOR VS LAGOS METAL INDUSTRIES NIGERIA LIMITED & ANOR (1973) 1 SC 1.”

Taken from the account of the Claimant that he bought the disputed land from the original allottee (DW2), there is nothing to show that it made any payment to the DW2. As a matter fact, the PW1 stated under cross examination that he had no evidence to show that the payment he made to the 2nd Defendant was forwarded to the DW2 who is the owner of the land.

On the other hand, if I believe the account of the DW3 that he sold the land to the Claimant, there is no evidence that he had title in him to transfer to the Claimant or that he paid the DW2 for the land.

On the account of all that I have said, it is my view that the Claimant has not led credible evidence to support the declaration sought and relief one is refused and dismissed.

The second relief is for a declaration that the 1st Defendant has no interest whatsoever in Plot No. 847 Cadastral Zone B08, Jahi District, Abuja. It would appear to me, that this relief is unnecessary. The facts proved before the Court shows that the 1st Defendant merely acted on behalf of the 5th Defendant as a Director of the 5th Defendant in his dealing with the land. He never put himself forward as someone who has acquired any interest in the disputed land. The 5th Defendant Company has an independent personality with power to own a property. That being the case, it is my view that the relief sought was never an issue between the parties in this proceeding. It would be a speculative attempt and academic exercise to consider the relief. As a matter of law, the Courts of law do not engage in speculation.

The next relief sought is for N100, 000, 000. 00 (One Hundred Million Naira) against the 1st Defendant for his unlawful interference with the Plaintiff's possession over Plot No. 847 Cadastral Zone B08, Jahi District, Abuja.

It would appear to me, that although not so specifically stated, this head of claim relates to trespass to the disputed land.

It is trite law, that every unlawful or unauthorized entry on land in possession of another person, is an act of trespass for which an action in damages lie. See **ANYABUNSI VS UGWUNZI (1995) 6 NWLR (PT. 401) 255; and UBA PLC VS SAMBA PETROLEUM CO. LTD (2002) 16 NWLR (PT. 793) 361.**

What the law expects the Claimant to prove to succeed is that he was in exclusive possession, that the 1st Defendant unlawfully interfered with his possession and that the 1st Defendant could not show a better right to possession over the land. See the case of **ADELAJA VS FANOIKI (1990) 2 NWLR (PT. 131) 137.**

The evidence in chief of the PW1 is that the Claimant took possession of the disputed property in 2011 and constructed a short perimeter fence around the property to prevent encroachment. He further testified that the Claimant was in undisturbed possession when in 2015 the 1st Defendant came unto the land with the aid of some police men to chase away and prevent the Claimant workmen from carrying out construction work for the Claimant. Exhibit (KA-9c) was tendered as the receipt the Claimant obtained as payment for the fence work. This claim was denied by the 1st and 5th Defendants. According to them, the Claimant was noticed on the land for the first time in 2015, when the 1st Defendant challenged its workmen.

According to Mr. Oluwole, the Claimant had established the fact that it was in possession since 2011 by tendering documentary evidence in support which in his words should be considered as a hanger from which to access oral evidence. On this point, he cited the cases of **NDIC VS RABO FARMS LTD (2018) 15 NWLR (PT. 1643) 482 at 502; and OLUWA VS BUILDING STOCK LTD (2018) 1 NWLR (PT. 1601) 343 at 398.**

I have considered the evidence led and arguments of parties on this point, and I agree with SEKUP ZUMKA for the 1st and 5th Defendants that the Claimant has not led credible evidence to establish possession. It is true beyond controversy that where there is oral and documentary evidence, the latter should be used as a hanger with which to assess the credibility of the former. However, what has emerged from the evidence led by the Claimant is that exhibit KA-9c which the Claimant tendered to prove when it got into possession, although dated in 2011 is in violent contradiction with exhibits KA-9e and KA-9f. The contradiction stems from the fact that while exhibit KA-9c shows that the fence was constructed in 2011, exhibits KA-9e and KA-9f show that the blocks which were used for the construction were purchased and paid for in February and March, 2015.

Another contradiction stems from the evidence of the 2nd Defendant as DW3, where he told the Court that the Claimant informed him that when it attempted to take possession of the disputed land in 2015, the 1st Defendant prevented him from doing so. This piece of evidence put together with exhibits KA-9c, KA-9e and KA-9f tendered by the Claimant show clearly that the Claimant was never in possession and can never sue for trespass. This head of claim is therefore not proved and it is dismissed as action in trespass is rooted in possession.

Reliefs (4) and (5) seek an Order of Perpetual Injunction against the Defendants from interfering or laying claims to the disputed property. Well, the law is clear beyond controversy, that a Perpetual Injunction is grantable only after the Applicant has established a legal right or interest over the disputed property. See the case of **GLOBE FISHING VS COKER (1990) 7 NWLR (PT. 262) 265**. This is because, it is a Consequential Order which naturally flows from the declaration of right sought and granted by the Court. It is granted to protect the interest of the Claimant in the property. As held earlier, the Claimant by the evidence led by it has not shown that it is in possession of the disputed property or that it has the right to or is entitled to the property.

On the account of the above principle, the reliefs sought for Perpetual Injunction by the Claimant cannot be granted. They are also dismissed.

In the final analysis, all the reliefs sought by the Claimant in the substantive claim are unsuccessful and are dismissed.

ALTERNATIVE RELIEF

The Claimant claims an alternative Order directing the 2nd Defendant to pay the Plaintiff the sum of N100, 000, 000. 00 (One Hundred Million Naira) representing the purchase price and other expenses incurred by the Plaintiff on the land since 2011 till date.

The law is that, although the 2nd Defendant did not join issue with the Claimant on this claim, the Plaintiff has a duty as a matter of law to prove its entitlement to the relief. This is because the relief is in the form of special damages.

The undisputed evidence as supported by documents shows that the Plaintiff paid a consideration of N15, 000, 000. 00 (Fifteen Million Naira) on the property to the 2nd Defendant. The 2nd Defendant had a duty to deliver the property to it unencumbered. As has turned out, the 2nd Defendant is unable to deliver the property which the Claimant paid for. He has an obligation to refund the price. This

position of law has been carefully set out by learned counsel to the Claimant with decided authorities.

See **UBA PLC VS AWMAR PROPERTIES LTD (2018) 10 NWLR (PT. 1626) 64 at 93 to 94** where the Supreme Court held most admirably thus:

“It must be made clear that one cannot make a proper sale of immovable property which he knows is encumbered, but fails to disclose same to the buyer. This kind of behavior is fraudulent and the seller cannot be allowed to keep the money he collected from the sale. I agree with the Court below that the transfer of the property from the seller to the buyer in a document cannot be the end of the sale. The seller must take steps to put the buyer into physical possession, free from all encumbrance. Where the seller fails to put the buyer in physical and peaceable possession of the property, the buyer is entitled to sue for damages plus restitution of the money paid to the seller with interest.”

What has played out in this transaction was that the 2nd Defendant was not honest in his dealing with the Claimant. He had no title in the land he sold and collected the money and although he purported

to be acting on behalf of the DW2 who was the owner of the property, the representation turned out to be a fuss. That being the case, the Claimant is entitled to be refunded the sum of N15, 000, 000.00 (Fifteen Million Naira) that was paid.

It is also clear on the face of the Power of Attorney, i.e. exhibit KA-11 that N50,000.00 (Fifty Thousand Naira) was paid to the 4th Defendant for registration. I Order that this amount be refunded by the 2nd Defendant to the Claimant. The sums so awarded shall attract 10% interest from the date of Judgment until it is paid to the Claimant.

COUNTER CLAIM

The Counter Claimants sought nine (9) reliefs in their joint statement of defence. They are:

- (1) A declaration that the 5th Defendant is the true and lawful Attorney of Salisu Inuwa, the original allottee and the 5th Defendant's Donor of the subject Plot No. 847, Cadastral Zone B08, Jabi District, Abuja.**
- (2) A declaration that the 5th Defendant is the owner of the said Plot No. 847, Cadastral Zone B08, Jabi District, Abuja, having duly and directly bought same in 2009 from the original allottee and genuine owner of the said**

- land, Mr. Salisu Inuwa, for the furnished commercial consideration.
- (3) A declaration that the Claimant never obtained the requisite consent nor Power of Attorney of Mr. Salisu Inuwa and therefore lack the locus standi to maintain his action against the 1st and 5th Defendants.**
 - (4) A declaration that the purported registration of the Power of Attorney, purportedly donated by Salisu Inuwa in favour of the Claimant is null and void, being fraudulently procured by the Claimant in connivance with the 2nd Defendant.**
 - (5) A declaration that the Claimant has no interest whatsoever in the subject plot of land.**
 - (6) An Order of this Honourable Court compelling the Claimant to promptly return to the 4th Defendant the Certificate of Occupancy of the subject plot illegally collected from the AGIS which is in its unlawful possession for onward delivery to the 5th Defendant.**
 - (7) General damages in the sum of N50, 000, 000. 00 (Fifty Million Naira) only in favour of the 5th Defendant against the Claimant for its trespass on the subject land belonging to the 5th Defendant.**

- (8) General damages in the sum of N100, 000, 000. 00 (One Hundred Million Naira) only against the 2nd Defendant for illegally transacting on the subject plot belonging to the 5th Defendant.**
- (9) Any other Order the Court may deem fit to make in the circumstance of this case.**

The law is that a counter claim is a separate, distinct and independent cause of action. The Counter Claimants as Plaintiffs must plead and led credible evidence to support their claims.

In **JERIC NIGERIA LTD VS UBN PLC (2000) 15 NWLR (PT. 691) 447**, Kalgo, JSC stated the law thus:

“It is trite law, that for all intents and purposes, a counter claim is a separate, independent and distinct action and the Counter Claimant like all other Plaintiffs in an action, must prove his claim against the person counter claimed against, before obtaining Judgment on the counter claim.”

See also the cases of **OGBONNA VS A-G., IMO STATE (1992) 1 NWLR (PT. 220) 647** and **DABUP VS KOLA (1993) 9 NWLR (PT. 317) 254**.

Looking at the counter claim before the Court, it is clear that the Counter Claimants presented five heads of declaratory reliefs. If that

be the case, the law is settled, that in an action for declaration of right or interest, the Claimant must succeed on the strength of his case. Put in another way, where a party seeks declaratory reliefs, the burden is on him to establish his claim. He must succeed on the strength of his own case and not on the weakness of the defence (if any). Such relief will not be granted even on the admission of the Defendant. On this point of law, see the following cases:

- (1). DUMEZ LTD VS NWACHOBA (2008) 18 NWLR (PT. 119) 361.**
- (2). OMISORE VS AREGBESOLA (2015) 15 NWLR (PT. 119) 297.**
- (3). ECHA VS ELECHI (2012) 13 NWLR (PT. 1317) 230.**

I must observe from the onset in the consideration of this counter claim that from the pleadings and evidence led, the 1st Defendant has not disclosed any interest sufficient to cloth him with a legal platform to sue the Plaintiff/Defendant to counter claim with respect to the disputed property.

Reliefs 1, 2, 4 and 8 sought in the counter claim are for the benefit of the 5th Defendant only. They were not sought on behalf of the 1st Defendant. That being the case, it is correct to say, that the 1st Defendant has not disclosed any cause of action against the Plaintiff, 2nd , 3rd and 4th Defendants with respect to those reliefs.

In **ATTORNEY-GENERAL OF THE FEDERATION VS AG OF ABIA STATE & ORS (2001) LPELR 24 862**, Ogundare JSC (of blessed memory) stated the position thus:

“It is trite that what constitutes a cause of action, is the entire set of circumstances giving rise to an enforceable claim (See SAVAGE VS UWEICHE (1972) 3 SC 214 at 221; Lord Esher In Read Vs Brown (1888) 22 QBD 128, defined cause of action as meaning every fact that it would be necessary for the Plaintiff to prove if traversed in order to support his right to the Judgment of the Court. It also includes all those things to give a right of action. (See EMIATOR VS NIGERIA ARMY & ORS (1999) 12 NWLR 362). Where the statement of claim discloses no cause of action, it would be struck out and the action dismissed.”

In **OGBIMI VS OLOLO & ORS (1993) 7 NWLR (PT. 304) 128**, Karibi Wyte JSC observed:

“Of course, a successful submission that a Plaintiff’s claim discloses no cause of action terminates the action in limine.”

The result is that the reliefs sought could be considered in relation to the 5th Defendant to the exclusion of 1st Defendant.

The first relief sought in the counter claim is for a declaration that the 5th Defendant is the true and lawful Attorney of Salisu Inuwa, the original allottee.

In support of this claim, both the DW1 and DW2 testified that the disputed property was sold to the 5th Defendant/Counter Claimant in the sum of N7, 000, 000. 00 (Seven Million Naira) sometimes in 2009. The 5th Defendant's statement of account with Zenith Bank was tendered in support of the testimonies and received in evidence as exhibit D15. The document shows that on the 17/04/2009, the 5th Defendant raised a draft in favour of the DW2. They also testified that after the payment, the DW2 as Vendor donated an irrevocable Power of Attorney in favour of the 5th Defendant. The DW2 also issued a letter of authority to collect the Certificate of Occupancy on the land, application for approval and consent to assign, application for stamping and registration of Power of Attorney and photocopy of his identity card as well as a deed of assignment.

These documents were admitted and marked as exhibits D14, D8, D10, D9, D11 and D3 respectively. All the documents, i.e. exhibits D3, D8, D9, D10 and D14 were not dated. The documents also do not disclose the dates of execution nor the commencement dates. The law is trite, that an undated document such as a Power of Attorney and Deed of Assignment have no probative value. See the case of

OGBAHON VS REGISTERED TRUSTEES OF CCC (2002) 1 NWLR (PT. 749) 649 at 704, where this statement of law was succinctly reinforced by the Court of Appeal thus:

“That a document which bears no date of execution or date when it comes into operation, is invalid and unenforceable.”

In the same way, the Court of Appeal in **AMIZU VS NZERIBE (1989) 4 NWLR (PT. 118) 755** held emphatically as follows:

“I am clearly of the view that for any agreement to be effective, there must be a date when the agreement will become operative. Any agreement which bears no date of execution or the date when it comes into operation, is invalid and unenforceable. It is therefore erroneous for the learned trial Judge to rely on any of the provisions of exhibit E and E2. It was also erroneous for the learned trial Judge to hold at page 30 of the record that the surrender of the Appellant’s title deed was in compliance with the terms of the agreement, for those agreements are invalid.”

See also **AWOLAJA VS SEATRADE CBV (2002) 4 NWLR (PT. 758) 520**; and **ABEJE & ANOR VS APEKE (2013) LPELR (20675) 1**.

Although exhibits D3 and D14 respectively have no commencement date, it was provided in the attestation clause as follows:

“In witness whereof, the parties hereto have hereunto set their respective hands and seals, day and year first above written.”

The simple truth is that the above attestation has nothing to lean upon for survival. In essence, there is no date to support the attestation. It is now clear that both exhibits D3 and D14 are invalid documents and I so hold.

On the strength of the above, it is my view that all the documents which the DW2 executed for the 5th Defendant/Counter Claimant are worthless. The declaration sought that the 5th Defendant is a lawful Attorney to the allottee has not been proved with valid documents and it is dismissed.

The 2nd relief sought by the 5th Defendant/Counter Claimant is for a declaration that the 5th Defendant is the owner of the disputed property.

My immediate impression about this claim is that the 5th Defendant is confused about its status in this proceeding. A party cannot assume the status of an Attorney and in another twist ask the Court to declare it as the owner of the disputed property. The 5th

Defendant can only sue as Lawful Attorney to the Claimant or for himself.

What I am saying is that the 5th Defendant/Counter Claimant having constituted this suit as Lawful Attorney of the DW2 (Salisu Inuwa) has legally conceded that the title in the property is in the said DW2. That being the case, it is common knowledge that title in the property which by its showing resides in the DW2 cannot be declared in its favour. This is irreconcilable and does not make sense.

Having said this, I am not oblivious of the fact that having paid for the price of the land, the 5th Defendant has acquired an equitable interest in the property as the buyer. The problem with the way the Counter Claimant and the Claimant in the substantive suit constituted their suit is that they commenced the suit in their names and merely indicated that they were suing as lawful Attorneys of Salisu Inuwa. This is wrong. I am surprise that this anomaly did not occur to me during trial and parties did not raise it.

The law is clear from decided cases that an Attorney suing on behalf of his principal cannot sue in his name. The suit has to be constituted in the name of the Donor.

In VULCAN GASES LTD VS G. F. IND GASVERWERTUNE AG (GIV) (2001) 9 NWLR (PT. 719) 610, the Court observed:

“One last word must be said before I am done with issue 1. This has to do with the submission of counsel for the Respondent, that the issue whether or not the suit was properly commenced and whether or not Mr. Okunlola had the requisite authority to commence the action, is no longer a live issue in this proceeding. I find myself in total agreement with learned Respondent’s counsel in this regard. Before this Court, on the 24th February, 1997 upon an application brought by the Respondent, the name of the said Respondent, to wit: Gesellschaft Tour Industries Gasverwertung AG (GIV) was substituted in place of Mr. Olaniyi Okunlola. This application was not opposed by the Appellant. It was accordingly Ordered that Mr. Okunlola who instituted the suit in his own name as the lawful Attorney of the Respondent be substituted by the Respondent’s Company, the Donor of the Power of Attorney. It was further Ordered that all the processes in this case be amended to reflect the proper parties to the action.”

(Underlining supplied for the sake of emphasis)

The Court further observed:

“I think I ought to observe in the first place, that this amendment of the 24th of February, 1997 which was not opposed in no small way, helped to save this proceeding. This is because, the Donee of a Power of Attorney or an agent in the presentation of a Court suit or action pursuant to his powers, must sue in the name of the Donor or his principal and not otherwise. See TIMOTHY OFODUM VS ONYEACHO (1966/1967) 10 ENLR 132; JONES VS GURNEY (1913) WN 77 and JOHN AGBIM VS GEMBA JEMEYITA (1972) 2 ECLSR 365.”

See also the case of **MELWANI VS FIVE STAR INT’L LTD (2002) 3 NWLR (PT. 753) 217,**

What has played out from the above decision, is that the real party in this suit commenced by the Claimant and the Counter Claimant as Attorneys to the DW2 (Salisu Inuwa) is the said Salisu Inuwa not any of them. Salisu Inuwa as the Donor of the respective Power of Attorney is suing and claiming through each of them as lawful Attorney.

My only regret is that this was not an issue before the Court during trial, otherwise, I would have declared the entire suit incompetent.

The next relief sought in the counter claim is for a declaration that the Plaintiff never obtained any requisite consent nor Power of Attorney of Salisu Inuwa and therefore lacked locus standi to maintain his subject action against the 1st and 5th Defendants.

This claim is predicated on the contention of the 5th Defendant as Counter Claimant that exhibit KA-11 was not donated by Salisu Inuwa (DW2) as the owner of the disputed property. I have held earlier in this Judgment that Kirsten Associates Nigeria Limited as Claimant did not successfully establish before this Court through credible evidence that it is the lawful Attorney to the DW2. The reason is that, the Irrevocable Power of Attorney (exhibit KA-11) could not have been donated to it without showing that it furnished any monetary consideration in respect of the disputed property.

In **OSAKWE VS NWOKEDI & ANOR (2018) LPELR 45054**, the Court of Appeal held thus:

“The other point is that before a Power of Attorney can be irrevocable, it must be given in financial and not filial consideration as was done in this case as the Appellant did not pay any money to the Donor-her father.”

In my view, this claim is no longer a live issue since I have already held and declared in this Judgment that the Claimant is not a lawful Attorney of Salisu Inuwa.

The 4th relief is for a declaration that the purported registration of exhibit KA-11 is null and void. This relief just like the foregoing has ceased to be an issue having held earlier that the registration of exhibit KA-11 does not validate Claimant/Defendant to Counter Claim's interest which was void ab initio.

The Counter Claimant is also seeking an Order of this Court compelling the Plaintiff to promptly return to the 4th Defendant, the Certificate of Occupancy of the subject plot illegally collected from AGIS for onward delivery to the 5th Defendant.

Well, on this claim, I must observe that the evidence before me which was not contradicted by the 5th Defendant or any other Defendant is that, it was the 2nd Defendant who released to the Claimant the said Certificate of Occupancy after the Claimant paid to him the sum of N15, 000, 000.00 (Fifteen Million Naira) as price for the disputed property. I have held earlier in this Judgment that the sale between the 2nd Defendant and the Claimant was invalid as he had no authority to sell to the Claimant. I also held that the 2nd Defendant should return to the Claimant the money paid in respect of the property as there is failure to deliver unencumbered

property. That being the case, the appropriate Order to make is for the Claimant to return the Certificate of Occupancy it collected from the 2nd Defendant in exchange for the money and I so direct.

The next relief sought is for the payment of N50, 000, 000. 00 (Fifty Million Naira) in favour of the 1st Defendant against the Plaintiff for trespass on the subject land belonging to the 5th Defendant.

From the evidence led by parties and established before the Court, the workmen for the Claimant came on to the disputed property to do construction work there. The 5th Defendant called the police to drive them away. The PW1 did not deny this fact as he gave evidence that the 1st Defendant brought in the Police to chase the workmen from the site. The 5th Defendant as valid purchaser of the disputed property is deemed to be in possession as against the Claimant who acquired no interest in the land. There is therefore entry by the Claimant upon the disputed property. The law is that, a slight entry upon the land in possession of another, constitute trespass upon the land which entitles the Claimant to damages and no actual damage need be proved to sustain the claim.

I am satisfied from the evidence before me that the entry by the Claimant/Defendant to Counter Claim in 2015 constitute trespass for which I award the sum of N50,000,00 (Fifty Thousand Naira) Only in favour of the 5th Defendant.

The last relief sought by the Counter Claimant which is the sum of N100,000,000.00 (One Hundred Million Naira) against the 2nd Defendant for illegally transacting on the disputed property belonging to the 5th Defendant is vague, imprecise and accordingly refused and dismissed.

At the end of the day, the Claimant's main claim are refused and dismissed in its entirety, while the alternative claim succeed in part. In a related development, the 5th Defendant/Counter Claimant's case succeed in part and for avoidance of doubt, I make the following Orders:

1. Reliefs (i) - (v) sought by the Claimant in the main suit are refused and dismissed for want of merit.

2. Claimant's alternative relief (vi) is granted in part as set out below:

(a) The 2nd Defendant is hereby Ordered to refund to the Claimant the sum of N15, 000, 000. 00 (Fifteen Million Naira) being the amount paid and collected by the 2nd Defendant in respect of the disputed property.

(b) The 2nd Defendant is also directed to pay to the Claimant the sum of N50,000.00 (Fifty Thousand Naira) being the cost of registration of the invalid

**title document executed in favour of the Claimant
by the 2nd Defendant.**

- 3. The declarations sought on the face of 5th Defendant/Counter Claimant's reliefs 1, 2 and 3 are refused and dismissed.**
- 4. Counter Claimant's relief 4 is granted. I declare the Irrevocable Power of Attorney purportedly donated by the DW2 (Salisu Inuwa) to the Claimant as null and void.**
- 5. The Claimant is hereby Ordered to return the Certificate of Occupancy it collected from the 2nd Defendant to him.**
- 6. General damages in the sum of N50,000.00 (Fifty Thousand Naira) is awarded in favour of the 5th Defendant and against the Claimant/Defendant to Counter Claim for trespass.**

**SIGNED
HON. JUSTICE H. B. YUSUF
(PRESIDING JUDGE)
09/09/2020**